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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001

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ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2199**

(By Delegates Staton, Amores, Mahan,
Pino, Wills, Faircloth and Riggs)

—●—
Passed March 22, 2001

In Effect from Passage

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(By Delegates Staton, Amores, Mahan,
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[Passed March 22, 2001; in effect from passage.]

AN ACT to repeal chapters forty-eight-a, forty-eight-b and forty-eight-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two, chapter five-f of said code; to amend and reenact sections twelve and eighteen-b, article five, chapter sixteen of said code; to amend and reenact section thirteen, article five-b of said chapter; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact sections thirteen and eighteen, article four, chapter twenty-three of said code; to amend and reenact section twenty-seven-a, article twenty-two, chapter twenty-nine of said code; to amend and reenact section eleven, article eight, chapter thirty-eight of said code; to amend and reenact section five, article one, chapter forty-two of said code; to amend and reenact chapter forty-eight of said code; to amend and reenact section one, article three, chapter forty-nine of said code; to amend and reenact section ten, article two-a, chapter

fifty-one of said code; to amend and reenact section eight, article ten, chapter fifty-six of said code; to amend and reenact section nine, article three, chapter fifty-seven of said code; and to amend and reenact section twenty-eight-a, article one, chapter fifty-nine of said code, all relating to revising, arranging, consolidating and recodifying the laws of the state of West Virginia relating to domestic relations.

Be it enacted by the Legislature of West Virginia:

That chapters forty-eight-a, forty-eight-b and forty-eight-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article two, chapter five-f of said code be amended and reenacted; that sections twelve and eighteen-b, article five, chapter sixteen of said code be amended and reenacted; that section thirteen, article five-b of said chapter be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that sections thirteen and eighteen, article four, chapter twenty-three of said code be amended and reenacted; that section twenty-seven-a, article twenty-two, chapter twenty-nine of said code be amended and reenacted; that section eleven, article eight, chapter thirty-eight of said code be amended and reenacted; that section five, article one, chapter forty-two of said code be amended and reenacted; that chapter forty-eight of said code be amended and reenacted; that section one, article three, chapter forty-nine of said code be amended and reenacted; that section ten, article two-a, chapter fifty-one of said code be amended and reenacted; that section eight, article ten, chapter fifty-six of said code be amended and reenacted; that section nine, article three, chapter fifty-seven of said code be amended and reenacted; and that section twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE
BRANCH OF STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

**§5F-2-1. Transfer and incorporation of agencies and boards;
funds.**

1 (a) The following agencies and boards, including all of the
2 allied, advisory, affiliated or related entities and funds associ-
3 ated with any such agency or board, are hereby transferred to
4 and incorporated in and shall be administered as a part of the
5 department of administration:

6 (1) Building commission provided for in article six, chapter
7 five of this code;

8 (2) Public employees insurance agency and public employ-
9 ees insurance agency advisory board provided for in article
10 sixteen, chapter five of this code;

11 (3) Governor's mansion advisory committee provided for
12 in article five, chapter five-a of this code;

13 (4) Commission on uniform state laws provided for in
14 article one-a, chapter twenty-nine of this code;

15 (5) Education and state employees grievance board pro-
16 vided for in article twenty-nine, chapter eighteen of this code
17 and article six-a, chapter twenty-nine of this code;

18 (6) Board of risk and insurance management provided for
19 in article twelve, chapter twenty-nine of this code;

20 (7) Boundary commission provided for in article
21 twenty-three, chapter twenty-nine of this code;

22 (8) Public defender services provided for in article
23 twenty-one, chapter twenty-nine of this code;

24 (9) Division of personnel provided for in article six, chapter
25 twenty-nine of this code;

26 (10) The West Virginia ethics commission provided for in
27 article two, chapter six-b of this code; and

28 (11) Consolidated public retirement board provided for in
29 article ten-d, chapter five of this code.

30 (b) The department of commerce, labor and environmental
31 resources and the office of secretary of the department of
32 commerce, labor and environmental resources are hereby
33 abolished. For purposes of administrative support and liaison
34 with the office of the governor, the following agencies and
35 boards, including all allied, advisory and affiliated entities shall
36 be grouped under three bureaus as follows:

37 (1) Bureau of commerce:

38 (A) Division of labor provided for in article one, chapter
39 twenty-one of this code, which shall include:

40 (i) Occupational safety and health review commission
41 provided for in article three-a, chapter twenty-one of this code;
42 and

43 (ii) Board of manufactured housing construction and safety
44 provided for in article nine, chapter twenty-one of this code;

45 (B) Office of miners' health, safety and training provided
46 for in article one, chapter twenty-two-a of this code. The
47 following boards are transferred to the office of miners' health,
48 safety and training for purposes of administrative support and
49 liaison with the office of the governor:

50 (i) Board of coal mine health and safety and coal mine
51 safety and technical review committee provided for in article
52 six, chapter twenty-two-a of this code;

53 (ii) Board of miner training, education and certification
54 provided for in article seven, chapter twenty-two-a of this code;
55 and

56 (iii) Mine inspectors' examining board provided for in
57 article nine, chapter twenty-two-a of this code;

58 (C) The West Virginia development office provided for in
59 article two, chapter five-b of this code, which shall include:

60 (i) Enterprise zone authority provided for in article two-b,
61 chapter five-b of this code;

62 (ii) Economic development authority provided for in article
63 fifteen, chapter thirty-one of this code; and

64 (iii) Tourism commission provided for in article two,
65 chapter five-b of this code and the office of the tourism
66 commissioner;

67 (D) Division of natural resources and natural resources
68 commission provided for in article one, chapter twenty of this
69 code. The Blennerhassett historical state park provided for in
70 article eight, chapter twenty-nine of this code shall be under the
71 division of natural resources;

72 (E) Division of forestry provided for in article one-a,
73 chapter nineteen of this code;

74 (F) Geological and economic survey provided for in article
75 two, chapter twenty-nine of this code;

76 (G) Water development authority and board provided for in
77 article one, chapter twenty-two-c of this code;

78 (2) Bureau of employment programs provided for in article
79 one, chapter twenty-one-a of this code;

80 (3) Bureau of environment:

81 (A) Air quality board provided for in article two, chapter
82 twenty-two-b of this code;

83 (B) Solid waste management board provided for in article
84 three, chapter twenty-two-c of this code;

85 (C) Environmental quality board, or its successor board,
86 provided for in article three, chapter twenty-two-b of this code;

87 (D) Division of environmental protection provided for in
88 article one, chapter twenty-two of this code;

89 (E) Surface mine board provided for in article four, chapter
90 twenty-two-b of this code;

91 (F) Oil and gas inspectors' examining board provided for in
92 article seven, chapter twenty-two-c of this code; and

93 (G) Shallow gas well review board provided for in article
94 eight, chapter twenty-two-c of this code; and

95 (H) Oil and gas conservation commission provided for in
96 article nine, chapter twenty-two-c of this code.

97 (c) The following agencies and boards, including all of the
98 allied, advisory, affiliated or related entities and funds associ-
99 ated with any such agency or board, are hereby transferred to
100 and incorporated in and shall be administered as a part of the
101 department of education and the arts:

102 (1) Library commission provided for in article one, chapter
103 ten of this code;

104 (2) Educational broadcasting authority provided for in
105 article five, chapter ten of this code;

106 (3) University of West Virginia board of trustees provided
107 for in article two, chapter eighteen-b of this code;

108 (4) Board of directors of the state college system provided
109 for in article three, chapter eighteen-b of this code;

110 (5) Joint commission for vocational-technical-occupational
111 education provided for in article three-a, chapter eighteen-b of
112 this code;

113 (6) Division of culture and history provided for in article
114 one, chapter twenty-nine of this code; and

115 (7) Division of rehabilitation services provided for in
116 section two, article ten-a, chapter eighteen of this code.

117 (d) The following agencies and boards, including all of the
118 allied, advisory, affiliated or related entities and funds associ-
119 ated with any such agency or board, are hereby transferred to
120 and incorporated in and shall be administered as a part of the
121 department of health and human resources:

122 (1) Human rights commission provided for in article eleven,
123 chapter five of this code;

124 (2) Division of human services provided for in article two,
125 chapter nine of this code;

126 (3) Bureau of public health provided for in article one,
127 chapter sixteen of this code;

128 (4) Office of emergency medical services and advisory
129 council thereto provided for in article four-c, chapter sixteen of
130 this code;

131 (5) Health care cost review authority provided for in article
132 twenty-nine-b, chapter sixteen of this code;

133 (6) Commission on mental retardation provided for in
134 article fifteen, chapter twenty-nine of this code;

135 (7) Women's commission provided for in article twenty,
136 chapter twenty-nine of this code; and

137 (8) The bureau for child support enforcement provided for
138 in chapter forty-eight of this code.

139 (e) The following agencies and boards, including all of the
140 allied, advisory, affiliated or related entities and funds associ-
141 ated with any such agency or board, are hereby transferred to
142 and incorporated in and shall be administered as a part of the
143 department of military affairs and public safety:

144 (1) Adjutant general's department provided for in article
145 one-a, chapter fifteen of this code;

146 (2) Armory board provided for in article six, chapter fifteen
147 of this code;

148 (3) Military awards board provided for in article one-g,
149 chapter fifteen of this code;

150 (4) West Virginia state police provided for in article two,
151 chapter fifteen of this code;

152 (5) Office of emergency services and disaster recovery
153 board provided for in article five, chapter fifteen of this code
154 and emergency response commission provided for in article
155 five-a of said chapter;

156 (6) Sheriffs' bureau provided for in article eight, chapter
157 fifteen of this code;

158 (7) Division of corrections provided for in chapter
159 twenty-five of this code;

160 (8) Fire commission provided for in article three, chapter
161 twenty-nine of this code;

162 (9) Regional jail and correctional facility authority provided
163 for in article twenty, chapter thirty-one of this code;

164 (10) Board of probation and parole provided for in article
165 twelve, chapter sixty-two of this code; and

166 (11) Division of veterans' affairs and veterans' council
167 provided for in article one, chapter nine-a of this code.

168 (f) The following agencies and boards, including all of the
169 allied, advisory, affiliated or related entities and funds associ-
170 ated with any such agency or board, are hereby transferred to
171 and incorporated in and shall be administered as a part of the
172 department of tax and revenue:

173 (1) Tax division provided for in article one, chapter eleven
174 of this code;

175 (2) Racing commission provided for in article twenty-three,
176 chapter nineteen of this code;

177 (3) Lottery commission and position of lottery director
178 provided for in article twenty-two, chapter twenty-nine of this
179 code;

180 (4) Agency of insurance commissioner provided for in
181 article two, chapter thirty-three of this code;

182 (5) Office of alcohol beverage control commissioner
183 provided for in article sixteen, chapter eleven of this code and
184 article two, chapter sixty of this code;

185 (6) Board of banking and financial institutions provided for
186 in article three, chapter thirty-one-a of this code;

187 (7) Lending and credit rate board provided for in chapter
188 forty-seven-a of this code; and

189 (8) Division of banking provided for in article two, chapter
190 thirty-one-a of this code.

191 (g) The following agencies and boards, including all of the
192 allied, advisory, affiliated or related entities and funds associ-
193 ated with any such agency or board, are hereby transferred to
194 and incorporated in and shall be administered as a part of the
195 department of transportation:

196 (1) Division of highways provided for in article two-a,
197 chapter seventeen of this code;

198 (2) Parkways, economic development and tourism authority
199 provided for in article sixteen-a, chapter seventeen of this code;

200 (3) Division of motor vehicles provided for in article two,
201 chapter seventeen-a of this code;

202 (4) Driver's licensing advisory board provided for in article
203 two, chapter seventeen-b of this code;

204 (5) Aeronautics commission provided for in article two-a,
205 chapter twenty-nine of this code;

206 (6) State rail authority provided for in article eighteen,
207 chapter twenty-nine of this code; and

208 (7) Port authority provided for in article sixteen-b, chapter
209 seventeen of this code.

210 (h) Except for such powers, authority and duties as have
211 been delegated to the secretaries of the departments by the
212 provisions of section two of this article, the existence of the
213 position of administrator and of the agency and the powers,
214 authority and duties of each administrator and agency shall not
215 be affected by the enactment of this chapter.

216 (i) Except for such powers, authority and duties as have
217 been delegated to the secretaries of the departments by the
218 provisions of section two of this article, the existence, powers,
219 authority and duties of boards and the membership, terms and
220 qualifications of members of such boards shall not be affected
221 by the enactment of this chapter and all boards which are
222 appellate bodies or were otherwise established to be independ-
223 ent decision makers shall not have their appellate or independ-
224 ent decision-making status affected by the enactment of this
225 chapter.

226 (j) Any department previously transferred to and incorpo-
227 rated in a department created in section two, article one of this
228 chapter by prior enactment of this section in chapter three, acts
229 of the Legislature, first extraordinary session, one thousand nine
230 hundred eighty-nine, and subsequent amendments thereto, shall
231 henceforth be read, construed and understood to mean a
232 division of the appropriate department so created. Wherever
233 elsewhere in this code, in any act, in general or other law, in
234 any rule or regulation, or in any ordinance, resolution or order,
235 reference is made to any department transferred to and incorpo-
236 rated in a department created in section two, article one of this
237 chapter, such reference shall henceforth be read, construed and
238 understood to mean a division of the appropriate department so

239 created, and any reference elsewhere to a division of a depart-
 240 ment so transferred and incorporated shall henceforth be read,
 241 construed and understood to mean a section of the appropriate
 242 division of the department so created.

243 (k) When an agency, board or commission is transferred
 244 under a bureau or agency other than a department headed by a
 245 secretary pursuant to this section, that transfer shall be con-
 246 strued to be solely for purposes of administrative support and
 247 liaison with the office of the governor, a department secretary
 248 or a bureau. The bureaus created by the Legislature upon the
 249 abolishment of the department of commerce, labor and environ-
 250 mental resources in the year one thousand nine hundred
 251 ninety-four shall be headed by a commissioner or other
 252 statutory officer of an agency within that bureau. Nothing in
 253 this section shall be construed to extend the powers of depart-
 254 ment secretaries under section two of this article to any person
 255 other than a department secretary and nothing herein shall be
 256 construed to limit or abridge the statutory powers and duties of
 257 statutory commissioners or officers pursuant to this code. Upon
 258 the abolishment of the office of secretary of the department of
 259 commerce, labor and environmental resources, the governor
 260 may appoint a statutory officer serving functions formerly
 261 within that department to a position which was filled by the
 262 secretary ex officio.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of pater- nity.

1 (a) A certificate of birth for each live birth which occurs in
 2 this state shall be filed with the local registrar of the district in
 3 which the birth occurs within seven days after the birth and
 4 shall be registered by the registrar if it has been completed and
 5 filed in accordance with this section . When a birth occurs in a
 6 moving conveyance, a birth certificate shall be filed in the
 7 district in which the child is first removed from the conveyance.
 8 When a birth occurs in a district other than where the mother

9 resides, a birth certificate shall be filed in the district in which
10 the child is born and in the district in which the mother resides.

11 (b) When a birth occurs in an institution, the person in
12 charge of the institution or his or her designated representative
13 shall obtain the personal data, prepare the certificate, secure the
14 signatures required for the certificate and file it with the local
15 registrar. The physician in attendance shall certify to the facts
16 of birth and provide the medical information required for the
17 certificate within five days after the birth.

18 (c) When a birth occurs outside an institution, the certificate
19 shall be prepared and filed by one of the following in the
20 indicated order of priority:

21 (1) The physician in attendance at or immediately after the
22 birth, or in the absence of such a person;

23 (2) Any other person in attendance at or immediately after
24 the birth, or in the absence of such a person; or

25 (3) The father, the mother, or, in the absence of the father
26 and the inability of the mother, the person in charge of the
27 premises where the birth occurred.

28 (d) Either of the parents of the child shall sign the certifi-
29 cate of live birth to attest to the accuracy of the personal data
30 entered thereon, in time to permit its filing within the seven
31 days prescribed above.

32 (e) In order that each county may have a complete record of
33 the births occurring in said county, the local registrar shall
34 transmit each month to the county clerk of his or her county the
35 copies of the certificates of all births occurring in said county,
36 from which copies the clerk shall compile a record of such
37 births and shall enter the same in a systematic and orderly way
38 in a well-bound register of births, which said register shall be
39 a public record: *Provided*, That such copies and register shall
40 not state that any child was either legitimate or illegitimate. The

41 form of said register of births shall be prescribed by the state
42 registrar of vital statistics.

43 (f) In addition to the personal data furnished for the
44 certificate of birth issued for a live birth in accordance with the
45 provisions of this section, a person whose name is to appear on
46 such certificate of birth as a parent shall contemporaneously
47 furnish to the person preparing and filing the certificate of birth
48 the social security account number (or numbers, if the parent
49 has more than one such number) issued to the parent. A record
50 of the social security number or numbers shall be filed with the
51 local registrar of the district in which the birth occurs within
52 seven days after such birth, and the local registrar shall transmit
53 such number or numbers to the state registrar of vital statistics
54 in the same manner as other personal data is transmitted to the
55 state registrar.

56 (g) If the mother was married either at the time of concep-
57 tion or birth, the name of the husband shall be entered on the
58 certificate as the father of the child unless paternity has been
59 determined otherwise by a court of competent jurisdiction
60 pursuant to the provisions of article twenty-four, chapter forty-
61 eight of this code or other applicable law, in which case the
62 name of the father as determined by the court shall be entered.

63 (h) If the mother was not married either at the time of
64 conception or birth, the name of the father shall not be entered
65 on the certificate of birth without the written consent of the
66 mother and of the person to be named as the father unless a
67 determination of paternity has been made by a court of compe-
68 tent jurisdiction pursuant to the provisions of article twenty-
69 four, chapter forty-eight of this code or other applicable law, in
70 which case the name of the father as determined by the court
71 shall be entered.

72 (i) A written, notarized acknowledgment of both the man
73 and the woman that the man is the father of a named child
74 legally establishes the man as the father of the child for all
75 purposes, and child support may be established pursuant to the
76 provisions of chapter forty-eight of this code.

77 (1) The written acknowledgment shall include filing
78 instructions, the parties' social security number and addresses
79 and a statement, given orally and in writing, of the alternatives
80 to, the legal consequences of, and the rights and obligations of
81 acknowledging paternity, including, but not limited to, the duty
82 to support a child. If either of the parents is a minor, the
83 statement shall include an explanation of any rights that may be
84 afforded due to the minority status.

85 (2) The failure or refusal to include all information required
86 by subdivision (1) of this subsection shall not affect the validity
87 of the written acknowledgment, in the absence of a finding by
88 a court of competent jurisdiction that the acknowledgment was
89 obtained by fraud, duress or material mistake of fact, as
90 provided in subdivision (4) of this subsection.

91 (3) The original written acknowledgment should be filed
92 with the state registrar of vital statistics. Upon receipt of any
93 acknowledgment executed pursuant to this section, the registrar
94 shall forward the copy of the acknowledgment to the bureau for
95 child support enforcement and the parents, if the address of the
96 parents is known to the registrar. If a birth certificate for the
97 child has been previously issued which is incorrect or incom-
98 plete, a new birth certificate shall be issued.

99 (4) An acknowledgment executed under the provisions of
100 this subsection may be rescinded as follows:

101 (A) The parent wishing to rescind the acknowledgment
102 shall file with the clerk of the circuit court of the county in
103 which the child resides a verified complaint stating the name of
104 the child, the name of the other parent, the date of the birth of
105 the child, the date of the signing of the affidavit, and a state-
106 ment that he or she wishes to rescind the acknowledgment of
107 the paternity. If the complaint is filed more than sixty days from
108 the date of execution or the date of an administrative or judicial
109 proceeding relating to the child in which the signatory is a
110 party, the complaint shall include specific allegations concern-
111 ing the elements of fraud, duress or material mistake of fact.

112 (B) The complaint shall be served upon the other parent as
 113 provided in rule 4 of the West Virginia rules of civil procedure.

114 (C) The family law master shall hold a hearing within sixty
 115 days of the service of process upon the other parent. If the
 116 complaint was filed within sixty days of the date the acknowl-
 117 edgment of paternity was executed, the court shall order the
 118 acknowledgment to be rescinded without any requirement of a
 119 showing of fraud, duress, or material mistake of fact. If the
 120 complaint was filed more than sixty days from the date of
 121 execution or the date of an administrative or judicial proceeding
 122 relating to the child in which the signatory is a party, the court
 123 may only set aside the acknowledgment upon a finding, by clear
 124 and convincing evidence, that the acknowledgment was
 125 executed under circumstances of fraud, duress or material
 126 mistake of fact. The circuit clerk shall forward a copy of any
 127 order entered pursuant to this proceeding to the state registrar
 128 of vital statistics by certified mail.

§16-5-18b. Limitation on use of social security numbers.

1 A social security account number obtained in accordance
 2 with the provisions of this article with respect to the filing of:
 3 (1) A certificate of birth; (2) an application for a delayed
 4 registration of birth; (3) a judicial order establishing a record of
 5 birth; (4) an adoption order or decree; or (5) a certificate of
 6 paternity shall not be transmitted to a clerk of the county
 7 commission. The social security account number shall not
 8 appear upon the public record of the register of births or upon
 9 any certificate of birth registration issued by the state registrar,
 10 local registrar, county clerk or other issuing authority, if any.
 11 The social security account numbers shall be made available by
 12 the state registrar to the bureau for child support enforcement
 13 upon the request of the bureau, to be used solely in connection
 14 with the enforcement of child support orders.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-13. Hospital-based paternity program.

1 (a) Every public and private hospital licensed pursuant to
2 section two of this article and every birthing center licensed
3 pursuant to section two, article two-e of this chapter, that
4 provides obstetrical services in West Virginia shall participate
5 in the hospital-based paternity program.

6 (b) The bureau for child support enforcement as described
7 in article eighteen, chapter forty-eight of this code shall provide
8 all public and private hospitals and all birthing centers provid-
9 ing obstetric services in this state with:

10 (1) Information regarding the establishment of paternity;

11 (2) An acknowledgment of paternity fulfilling the require-
12 ments of subsection (i), section twelve, article five, chapter
13 sixteen of this code; and

14 (3) The telephone contact number for the bureau for child
15 support enforcement that a parent may call for further informa-
16 tion regarding the establishment of paternity.

17 (c) Prior to the discharge from any facility included in this
18 section of any mother who has given birth to a live infant, the
19 administrator, or his or her assignee, shall ensure that the
20 following materials are provided to any unmarried woman and
21 any person holding himself out to be the natural father of the
22 child:

23 (1) Information regarding the establishment of paternity;

24 (2) An acknowledgment of paternity fulfilling the require-
25 ments of subsection (i), section twelve, article five, chapter
26 sixteen of this code; and

27 (3) The telephone contact number for the bureau for child
28 support enforcement that a parent may call for further informa-
29 tion regarding the establishment of paternity.

30 (d) The bureau for child support enforcement shall notify
31 the state department of health of any failure of any hospital or
32 birthing center to conform with the requirements of this section.

33 (e) Any hospital or birthing center described in this article
34 should provide the information detailed in subsection (c) of this
35 section at any time when such facility is providing obstetrical
36 services.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10. Restricted licenses.

1 (a) The division upon issuing a driver's license shall have
2 authority whenever good cause appears to impose restrictions
3 suitable to the licensee's driving ability with respect to the type
4 of or special mechanical control devices required on a motor
5 vehicle which the licensee may operate or such other restric-
6 tions applicable to the licensee as the division may determine
7 to be appropriate to assure the safe operation of a motor vehicle
8 by the licensee.

9 (b) The division shall issue a restricted license to a person
10 who has failed to pay overdue child support or comply with
11 subpoenas or warrants relating to paternity or child support
12 proceedings, if a circuit court orders restrictions of the person's
13 license as provided in article fifteen, chapter forty-eight of this
14 code.

15 (c) The division may either issue a special restricted license
16 or may set forth such restrictions upon the usual license form.

17 (d) The division may upon receiving satisfactory evidence
18 of any violation of the restrictions of such license suspend or
19 revoke the same but the licensee shall be entitled to a hearing
20 as upon a suspension or revocation under this chapter.

21 (e) It is a misdemeanor for any person to operate a motor
22 vehicle in any manner in violation of the restrictions imposed
23 in a restricted license issued to such person.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-13. Effect of abandonment of spouse.

1 Notwithstanding anything herein contained, no sum will be
2 paid to a widow or widower who abandoned the employee
3 before the injury causing death. However, the provisions of this
4 section may not be construed to preclude a widow or widower
5 from receiving compensation in accordance with section ten of
6 this article if the widow or widower was abandoned within a
7 period of two years by the employee for any reason except a
8 reason that would have entitled the deceased employee to an
9 annulment or a divorce as provided in articles three or five,
10 chapter forty-eight of this code.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

1 Except as provided by this section, compensation shall be
2 paid only to such employees or their dependents, and shall be
3 exempt from all claims of creditors and from any attachment,
4 execution or assignment other than compensation to counsel for
5 legal services, under the provisions of, and subject to the
6 limitations contained in section sixteen, article five of this
7 chapter, and other than for the enforcement of orders for child
8 or spousal support entered pursuant to the provisions of chapter
9 forty-eight of this code. Payments may be made in such
10 periodic installments as determined by the division in each
11 case, but in no event less frequently than semimonthly for any
12 temporary award and monthly for any permanent award.
13 Payments for permanent disability shall be paid on or before the
14 third day of the month in which they are due. In all cases where
15 compensation is awarded or increased, the amount thereof shall
16 be calculated and paid from the date of disability.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-27a. Payment of prizes to the bureau for child support enforcement.

1 (a) Upon notification by the bureau for child support
2 enforcement that a person who is entitled to all or part of a
3 lottery prize is delinquent in the payment of child support or
4 spousal support, the director shall forward to the bureau for
5 child support enforcement the prize or portion to be distributed
6 directly from the state lottery office that is available to be
7 applied to the delinquent support payment.

8 (b) The director shall enter into a written agreement with
9 the bureau for child support enforcement for the purpose of
10 establishing a procedure for the collection of prizes as set forth
11 in subsection (a) of this section. The director shall include in
12 the agreement a method by which the bureau for child support
13 enforcement will receive the names of lottery winners as
14 expeditiously as possible.

CHAPTER 38. LIENS.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-11. No exemption from claims for child or spousal support, purchase money or taxes.

1 No exemption claimed under the preceding sections of this
2 article, or any of them, shall affect or impair any claim for child
3 or spousal support established or enforced under the provisions
4 of chapter forty-eight of this code, the purchase money of the
5 personal estate in respect to which such exemption is claimed,
6 or any proceeding for the collection of taxes, or county or
7 district or municipal levies. Any increase in the exemption
8 provided by a prior enactment of other sections of this article
9 are not applicable to liens and all other debts and liabilities
10 contracted and incurred prior to the effective date of the prior
11 enactment of those sections.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.

1 (a) Children born out of wedlock shall be capable of
2 inheriting and transmitting inheritance on the part of their
3 mother and father.

4 (b) Prior to the death of the father, paternity shall be
5 established by:

6 (1) An acknowledgment that he is the child's father;

7 (2) An adjudication of paternity pursuant to the provisions
8 of article twenty-four, chapter forty-eight of this code; or

9 (3) An order of a court of competent jurisdiction issued in
10 another state.

11 (c) After the death of the father, paternity is established if,
12 after a hearing on the merits, the court finds, by clear and
13 convincing evidence, that the man is the father of the child. The
14 civil action must be filed in the circuit court of the county
15 where the administration of the decedent's estate has been filed
16 or could be filed:

17 (1) Within six months of the date of the final order of the
18 county commission admitting the decedent's will to probate or
19 commencing intestate administration of the estate; or

20 (2) If none of the above apply, within six months from the
21 date of decedent's death.

22 (d) Any putative child who at the time of the decedent's
23 death is under the age of eighteen years, a convict or a mentally
24 incapacitated person may file such civil action within six
25 months after he or she becomes of age or the disability ceases.

26 (e) The provisions of this section do not apply where the
27 putative child has been lawfully adopted by another man and
28 stands to inherit property or assets through his or her adopted
29 father.

30 (f) The provisions of this section do not apply where the
31 father or putative father has expressly disinherited the child in
32 a provision of his will.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART 1. GENERAL PROVISIONS.

§48-1-101. Short title; intent of recodification.

1 (a) This chapter sets forth the “West Virginia Domestic
2 Relations Act.”

3 (b) The recodification of this chapter during the regular
4 session of the Legislature in the year 2001 is intended to
5 embrace in a revised, consolidated, and codified form and
6 arrangement the laws of the state of West Virginia relating to
7 domestic relations at the time of that enactment.

§48-1-102. Legislative intent; continuation of existing statutory provisions.

1 In recodifying the domestic relations law of this state
2 during the regular session of the Legislature in the year 2001
3 through the passage of House Bill 2199 it is intended by the
4 Legislature that each specific reenactment of a substantively
5 similar prior statutory provision will be construed as continuing
6 the intended meaning of the corresponding prior statutory
7 provision and any existing judicial interpretation of the prior
8 statutory provision. It is not the intent of the Legislature, by
9 recodifying the domestic relations law of this state during the
10 regular session of the Legislature in the year 2001 through the
11 passage of House Bill 2199 to alter the substantive law of this
12 state as it relates to domestic relations.

§48-1-103. Operative date of enactment; effect on existing law.

1 The amendment and reenactment of chapter forty-eight of
2 this code and the repeal of chapters forty-eight-a, forty-eight-b
3 and forty-eight-c of this code pursuant to the provisions of

4 Enrolled Committee Substitute for House Bill No. 2199, as
5 enacted by the Legislature during the regular session, 2001, are
6 operative on the first day of September, two thousand one. The
7 prior enactments of chapters forty-eight, forty-eight-a, forty-
8 eight-b and forty-eight-c of this code, whether amended and
9 reenacted or repealed by the passage of Enrolled Committee
10 Substitute for House Bill No. 2199 have full force and effect
11 until the provisions of Enrolled Committee Substitute for House
12 Bill No. 2199 are operative on the first day of September, two
13 thousand one, unless after the effective date of Enrolled
14 Committee Substitute for House Bill No. 2199 and prior to the
15 operative date of the first day of September, two thousand one,
16 the provisions of Enrolled Committee Substitute for House Bill
17 No. 2199 are otherwise repealed or amended and reenacted.

§48-1-104. West Virginia code replacement.

1 The department of health and human resources is not
2 required to change any form or letter that contains a citation to
3 this code that is changed or otherwise affected by the
4 recodification of this chapter during the regular session of the
5 Legislature in the year 2001 through the passage of Committee
6 Substitute for House Bill 2199, unless specifically required by
7 a provision of this code.

PART 2. DEFINITIONS.

§48-1-201. Applicability of definitions.

1 For the purposes of this chapter the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

§48-1-202. Adjusted gross income defined.

1 (a) "Adjusted gross income" means gross income less the
2 payment of previously ordered child support, spousal support
3 or separate maintenance.

4 (b) A further deduction from gross income for additional
5 dependents may be allowed by the court or master if the parent
6 has legal dependents other than those for whom support is being
7 determined. An adjustment may be used in the establishment of
8 a child support order or in a review of a child support order.
9 However, in cases where a modification is sought, the adjust-
10 ment should not be used to the extent that it results in a support
11 amount lower than the previously existing order for the children
12 who are the subject of the modification. The court or master
13 may elect to use the following adjustment because it allots
14 equitable shares of support to all of the support obligor's legal
15 dependents. Using the income of the support obligor only,
16 determine the basic child support obligation (from the table of
17 basic child support obligations in section 13-301 of this
18 chapter) for the number of additional legal dependents living
19 with the support obligor. Multiply this figure by 0.75 and
20 subtract this amount from the support obligor's gross income.

21 (c) As used in this section, the term "legal dependents"
22 means:

23 (1) Minor natural or adopted children who live with the
24 parent; and

25 (2) Natural or adopted adult children who are totally
26 incapacitated because of physical or emotional disabilities and
27 for whom the parent owes a duty of support.

§48-1-203. Antenuptial or prenuptial agreement defined.

1 "Antenuptial agreement" or "prenuptial agreement" means
2 an agreement between a man and woman before marriage, but
3 in contemplation and generally in consideration of marriage, by
4 which the property rights and interests of the prospective
5 husband and wife, or both of them, are determined, or where
6 property is secured to either or both of them, to their separate
7 estate, or to their children or other persons. An antenuptial
8 agreement may include provisions that define the respective
9 property rights of the parties during the marriage, or upon the
10 death of either or both of the parties. The agreement may

11 provide for the disposition of marital property upon an annul-
12 ment of the marriage or a divorce or separation of the parties.
13 A prenuptial agreement is void if at the time it is made either of
14 the parties is a minor.

§48-1-204. Arrearages or past due support defined.

1 “Arrearages” or “past due support” means the total of any
2 matured, unpaid installments of child support required to be
3 paid by an order entered or modified by a court of competent
4 jurisdiction, or by the order of a magistrate court of this state,
5 and shall stand, by operation of law, as a decretal judgment
6 against the obligor owing such support. The amount of unpaid
7 support shall bear interest from the date it accrued, at a rate of
8 ten dollars upon one hundred dollars per annum, and propor-
9 tionately for a greater or lesser sum, or for a longer or shorter
10 time. Except as provided in rule 23 of rules of practice and
11 procedure for family law and as provided in section 1-302, a
12 child support order may not be retroactively modified so as to
13 cancel or alter accrued installments of support.

§48-1-205. Attributed income defined.

1 (a) “Attributed income” means income not actually earned
2 by a parent, but which may be attributed to the parent because
3 he or she is unemployed, is not working full time, or is working
4 below full earning capacity, or has nonperforming or un-
5 der-performing assets. Income may be attributed to a parent if
6 the court or master evaluates the parent’s earning capacity in
7 the local economy (giving consideration to relevant evidence
8 that pertains to the parent’s work history, qualifications,
9 education and physical or mental condition) and determines that
10 the parent is unemployed, is not working full time, or is
11 working below full earning capacity. Income may also be
12 attributed to a parent if the court or master finds that the obligor
13 has nonperforming or under-performing assets.

14 (b) If an obligor: (1) Voluntarily leaves employment or
15 voluntarily alters his or her pattern of employment so as to be
16 unemployed, underemployed or employed below full earning

17 capacity; (2) is able to work and is available for full-time work
18 for which he or she is fitted by prior training or experience; and
19 (3) is not seeking employment in the manner that a reasonably
20 prudent person in his or her circumstances would do, then an
21 alternative method for the court or master to determine gross
22 income is to attribute to the person an earning capacity based on
23 his or her previous income. If the obligor's work history,
24 qualifications, education or physical or mental condition cannot
25 be determined, or if there is an inadequate record of the
26 obligor's previous income, the court or master may, as a
27 minimum, base attributed income on full-time employment (at
28 forty hours per week) at the federal minimum wage in effect at
29 the time the support obligation is established.

30 (c) Income shall not be attributed to an obligor who is
31 unemployed or underemployed or is otherwise working below
32 full earning capacity if any of the following conditions exist:

33 (1) The parent is providing care required by the children to
34 whom the parties owe a joint legal responsibility for support,
35 and such children are of preschool age or are handicapped or
36 otherwise in a situation requiring particular care by the parent;

37 (2) The parent is pursuing a plan of economic
38 self-improvement which will result, within a reasonable time,
39 in an economic benefit to the children to whom the support
40 obligation is owed, including, but not limited to,
41 self-employment or education: *Provided*, That if the parent is
42 involved in an educational program, the court or master shall
43 ascertain that the person is making substantial progress toward
44 completion of the program;

45 (3) The parent is, for valid medical reasons, earning an
46 income in an amount less than previously earned; or

47 (4) The court or master makes a written finding that other
48 circumstances exist which would make the attribution of
49 income inequitable: *Provided*, That in such case, the court or
50 master may decrease the amount of attributed income to an
51 extent required to remove such inequity.

52 (d) The court or master may attribute income to a parent's
53 nonperforming or under-performing assets, other than the
54 parent's primary residence. Assets may be considered to be
55 nonperforming or under-performing to the extent that they do
56 not produce income at a rate equivalent to the current six-month
57 certificate of deposit rate, or such other rate that the court or
58 master determines is reasonable.

§48-1-206. Automatic data processing and retrieval system defined.

1 "Automatic data processing and retrieval system" means a
2 computerized data processing system designed to do the
3 following:

4 (1) To control, account for and monitor all of the factors in
5 the support enforcement collection and paternity determination
6 process, including, but not limited to:

7 (A) Identifiable correlation factors (such as social security
8 numbers, names, dates of birth, home addresses and mailing
9 addresses of any individual with respect to whom support
10 obligations are sought to be established or enforced and with
11 respect to any person to whom such support obligations are
12 owing) to assure sufficient compatibility among the systems of
13 different jurisdictions to permit periodic screening to determine
14 whether such individual is paying or is obligated to pay support
15 in more than one jurisdiction;

16 (B) Checking of records of such individuals on a periodic
17 basis with federal, interstate, intrastate and local agencies;

18 (C) Maintaining the data necessary to meet applicable
19 federal reporting requirements on a timely basis; and

20 (D) Delinquency and enforcement activities;

21 (2) To control, account for and monitor the collection and
22 distribution of support payments (both interstate and intrastate)
23 the determination, collection and distribution of incentive
24 payments (both interstate and intrastate), and the maintenance
25 of accounts receivable on all amounts owed, collected and
26 distributed;

27 (3) To control, account for and monitor the costs of all
28 services rendered, either directly or by exchanging information
29 with state agencies responsible for maintaining financial
30 management and expenditure information;

31 (4) To provide access to the records of the department of
32 health and human resources in order to determine if a collection
33 of a support payment causes a change affecting eligibility for or
34 the amount of aid under such program;

35 (5) To provide for security against unauthorized access to,
36 or use of, the data in such system;

37 (6) To facilitate the development and improvement of the
38 income withholding and other procedures designed to improve
39 the effectiveness of support enforcement through the monitor-
40 ing of support payments, the maintenance of accurate records
41 regarding the payment of support and the prompt provision of
42 notice to appropriate officials with respect to any arrearage in
43 support payments which may occur; and

44 (7) To provide management information on all cases from
45 initial referral or application through collection and enforce-
46 ment.

§48-1-207. Basic child support obligation defined.

1 “Basic child support obligation” means the base amount of
2 child support due by both parents as determined by the table of
3 basic child support obligations set forth in section 13-301 of
4 this chapter, based upon the combined adjusted gross income of
5 the parents and the number of children to whom support is due.

§48-1-208. Bureau for child support enforcement defined.

1 “Bureau for child support enforcement” means the agency
2 created under the provisions of article eighteen of this chapter,
3 or any public or private entity or agency contracting to provide
4 a service. The “bureau for child support enforcement” is that
5 agency intended by the Legislature to be the single and separate
6 organizational unit of state government administering programs
7 of child and spousal support enforcement and meeting the

8 staffing and organizational requirements of the secretary of the
9 federal department of health and human services. A reference
10 in this chapter and elsewhere in this code to the “child advocate
11 office” or the child support enforcement division shall be
12 interpreted to refer to the bureau for child support enforcement.

§48-1-209. Bureau for child support enforcement attorney defined.

1 “Bureau for child support enforcement attorney” means
2 those persons or agencies or entities providing services under
3 the direction of or pursuant to a contract with the bureau for
4 child support enforcement as provided in article eighteen of this
5 chapter.

§48-1-210. Caretaker and caretaking functions defined.

1 (a) “Caretaker” means a person who performs one or more
2 caretaking functions for a child. The term “caretaking func-
3 tions” means activities that involve interaction with a child and
4 the care of a child. Caretaking functions also include the
5 supervision and direction of interaction and care provided by
6 other persons.

7 (b) Caretaking functions include the following:

8 (1) Performing functions that meet the daily physical needs
9 of the child. These functions include, but are not limited to, the
10 following:

11 (A) Feeding;

12 (B) Dressing;

13 (C) Bedtime and wake-up routines;

14 (D) Caring for the child when sick or hurt;

15 (E) Bathing and grooming;

16 (F) Recreation and play;

17 (G) Physical safety; and

18 (H) Transportation.

19 (2) Direction of the child's various developmental needs,
20 including the acquisition of motor and language skills, toilet
21 training, self-confidence and maturation;

22 (3) Discipline, instruction in manners, assignment and
23 supervision of chores and other tasks that attend to the child's
24 needs for behavioral control and self-restraint;

25 (4) Arrangements for the child's education, including
26 remedial or special services appropriate to the child's needs and
27 interests, communication with teachers and counselors and
28 supervision of homework;

29 (5) The development and maintenance of appropriate
30 interpersonal relationships with peers, siblings and adults;

31 (6) Arrangements for health care, which includes making
32 medical appointments, communicating with health care
33 providers and providing medical follow-up and home health
34 care;

35 (7) Moral guidance; and

36 (8) Arrangement of alternative care by a family member,
37 baby-sitter or other child care provider or facility, including
38 investigation of alternatives, communication with providers and
39 supervision.

§48-1-211. Chief judge defined.

1 "Chief judge" means the circuit judge of the circuit court in
2 a judicial circuit that has only one circuit judge, or the chief
3 judge of the circuit court in a judicial circuit that has two or
4 more circuit judges.

§48-1-212. Clergy defined.

1 “Clergy” includes a minister, priest, rabbi or other clergy
2 who has qualified as such before the county commission or the
3 clerk of the county commission as provided for in section 2-402
4 of this chapter.

§48-1-213. Combined adjusted gross income defined.

1 “Combined adjusted gross income” means the combined
2 monthly adjusted gross incomes of both parents.

§48-1-214. Commissioner defined.

1 “Commissioner” means any person appointed pursuant to
2 section 18-102, who directs all child support establishment and
3 enforcement services for the bureau for child support enforce-
4 ment.

§48-1-215. Contingent fee agreement defined.

1 (a) “Contingent fee agreement” means a contract under
2 which an attorney may be compensated for work in progress,
3 dependent on the occurrence of some future event which is not
4 certain and absolute. As such, a contingent fee agreement is not
5 an asset, but is potential income or income capacity. This
6 potential income may have current value, and a portion of that
7 current value, if any, may be considered to be a marital asset. In
8 the event a party seeks to quantify the current value of a
9 particular contingent fee agreement for the purpose of establish-
10 ing the value of the agreement as marital property, the court
11 must find that the party has proved such value by a preponder-
12 ance of the evidence. Factors to be considered by the court
13 include, but are not limited to, the following:

14 (1) The nature of the particular case or claim which
15 underlies the agreement;

16 (2) The jurisdiction or venue of any projected trial or
17 proceeding;

18 (3) Any historical data relevant to verdicts or settlements
19 within the jurisdiction where the case or claim is pending or
20 may be brought;

21 (4) The terms and particulars of the agreement;

22 (5) The status of the case or claim at valuation date;

23 (6) The amount of time spent working on the case or claim
24 prior to the valuation date, and an analysis of the nature of how
25 that time was spent, including, but not limited to, such activities
26 such as investigation, research, discovery, trial or appellate
27 practice;

28 (7) The extent of the person's active role in the work in
29 process, whether as an actual participant or as an indirect
30 participant such as a partner, local counsel or other ancillary
31 role;

32 (8) The age of the case or claim;

33 (9) The expenses accrued or projected to bring the case or
34 claim to resolution, including any office overhead attributable
35 to case or claim; and

36 (10) The probable tax consequences attendant to a success-
37 ful resolution of the case or claim.

38 (b) The provisions of this section as enacted during the
39 regular session of the Legislature, one thousand nine hundred
40 ninety-six, are to be applied prospectively and shall have no
41 application to any action for annulment, divorce or separate
42 maintenance that was commenced on or before June 7, 1996.

§48-1-216. Court defined.

1 "Court" means a circuit court of this state, unless the
2 context in which such term is used clearly indicates that
3 reference to some other court is intended.

§48-1-217. Court of competent jurisdiction defined.

1 “Court of competent jurisdiction” means a circuit court
2 within this state or a court or administrative agency of another
3 state having jurisdiction and due legal authority to deal with the
4 subject matter of the establishment and enforcement of support
5 obligations. Whenever in this chapter reference is made to an
6 order of a court of competent jurisdiction, or similar wording,
7 such language shall be interpreted so as to include orders of an
8 administrative agency entered in a state where enforceable
9 orders may by law be properly made and entered by such
10 administrative agency.

§48-1-218. Custodial parent defined.

1 “Custodial parent” or “custodial parent of a child” means a
2 parent who has been granted custody of a child by a court of
3 competent jurisdiction. “Noncustodial parent” means a parent
4 of a child with respect to whom custody has been adjudicated
5 with the result that such parent has not been granted custody of
6 the child.

§48-1-219. Custodial responsibility defined.

1 “Custodial responsibility” refers to physical custodianship
2 and supervision of a child. It usually includes, but does not
3 necessarily require, the exercise of residential or overnight
4 responsibility.

§48-1-220. Decision-making responsibility defined.

1 “Decision-making responsibility” refers to authority for
2 making significant life decisions on behalf of a child, including,
3 but not limited to, the child’s education, spiritual guidance and
4 health care.

§48-1-221. Divorce defined.

1 “Divorce” means the judicial termination of a marriage
2 contract. The termination of a marriage contract must be based
3 on misconduct or other statutory cause arising after the mar-
4 riage. A divorce is established by the order of a circuit court
5 that changes the status of a husband and wife from a state of
6 marriage to that of single persons.

§48-1-222. Domestic relations action defined.

1 “Domestic relations action” means an action:

2 (1) To obtain a divorce;

3 (2) To have a marriage annulled;

4 (3) To be granted separate maintenance;

5 (4) To establish paternity;

6 (5) To establish and enforce child support, including actions
7 brought under the provisions of the uniform interstate family
8 support act; and

9 (6) To allocate custodial responsibility and determine
10 decision-making responsibility, or to otherwise determine child
11 custody, as in an action petitioning for a writ of habeas corpus
12 wherein the issue is child custody.

§48-1-223. Earnings defined.

1 “Earnings” means compensation paid or payable for
2 personal services, whether denominated as wages, salary,
3 commission, bonus, or otherwise, and includes periodic
4 payments pursuant to a pension or retirement program.

5 “Disposable earnings” means that part of the earnings of any
6 individual remaining after the deduction from those earnings of
7 any amounts required by law to be withheld.

§48-1-224. Employer defined.

1 “Employer” means any individual, sole proprietorship,
2 partnership, association, public or private corporation, the
3 United States or any federal agency, this state or any political
4 subdivision of this state, any other state or a political subdivi-
5 sion of another state and any other legal entity which hires and
6 pays an individual for his services.

§48-1-225. Extraordinary medical expenses defined.

1 “Extraordinary medical expenses” means uninsured
2 medical expenses in excess of two hundred fifty dollars per year
3 per child which are recurring and can reasonably be predicted
4 by the court or master at the time of establishment or modifica-
5 tion of a child support order. Such expenses shall include, but
6 not be limited to, insurance copayments and deductibles,
7 reasonable costs for necessary orthodontia, dental treatment,
8 asthma treatments, physical therapy, vision therapy and eye
9 care, and any uninsured chronic health problem.

§48-1-226. Family law master defined.

1 “Family law master” means a commissioner of the circuit
2 court appointed or elected and authorized to hear certain
3 domestic relations actions under section 51-2A-10 of this code.

§48-1-227. Final divorce or final annulment order defined.

1 “Final divorce order” or “final annulment order” means an
2 order that grants or denies the judicial termination of a marriage
3 contract.

§48-1-228. Gross income defined.

1 (a) “Gross income” means all earned and unearned income.
2 The word “income” means gross income unless the word is
3 otherwise qualified or unless a different meaning clearly
4 appears from the context. When determining whether an
5 income source should be included in the child support calcula-
6 tion, the court shall consider the income source if it would have
7 been available to pay child-rearing expenses had the family
8 remained intact or, in cases involving a nonmarital birth, if a
9 household had been formed.

10 (b) “Gross income” includes, but is not limited to, the
11 following:

12 (1) Earnings in the form of salaries, wages, commissions,
13 fees, bonuses, profit sharing, tips and other income;

14 (2) Any payment from a pension plan, an insurance
15 contract, an annuity, social security benefits, unemployment
16 compensation, supplemental employment benefits, workers'
17 compensation benefits and state lottery winnings and prizes;

18 (3) Interest, dividends or royalties;

19 (4) In kind payments such as business expense accounts,
20 business credit accounts and tangible property such as automo-
21 biles and meals, to the extent that they provide the parent with
22 property or services he or she would otherwise have to provide:
23 *Provided*, That reimbursement of actual expenses incurred and
24 documented shall not be included as gross income;

25 (5) Attributed income of the parent, calculated in accor-
26 dance with the provisions of section 1-205;

27 (6) An amount equal to fifty percent of the average com-
28 pensation paid for personal services as overtime compensation
29 during the preceding thirty-six months: *Provided*, That overtime
30 compensation may be excluded from gross income if the parent
31 with the overtime income demonstrates to the court that the
32 overtime work is voluntarily performed and that he or she did
33 not have a previous pattern of working overtime hours prior to
34 separation or the birth of a nonmarital child;

35 (7) Income from self-employment or the operation of a
36 business, minus ordinary and necessary expenses which are not
37 reimbursable, and which are lawfully deductible in computing
38 taxable income under applicable income tax laws, and minus
39 FICA and medicare contributions made in excess of the amount
40 that would be paid on an equal amount of income if the parent
41 was not self-employed: *Provided*, That the amount of monthly
42 income to be included in gross income shall be determined by
43 averaging the income from such employment during the
44 previous thirty-six-month period or during a period beginning
45 with the month in which the parent first received such income,
46 whichever period is shorter;

47 (8) Income from seasonal employment or other sporadic
48 sources: *Provided*, That the amount of monthly income to be
49 included in gross income shall be determined by averaging the
50 income from seasonal employment or other sporadic sources
51 received during the previous thirty-six-month period or during
52 a period beginning with the month in which the parent first
53 received such compensation, whichever period is shorter; and

54 (9) Spousal support and separate maintenance receipts.

55 (c) Depending on the circumstances of the particular case,
56 the court may also include severance pay, capital gains and net
57 gambling, gifts or prizes as gross income.

58 (d) "Gross income" does not include:

59 (1) Income received by other household members such as
60 a new spouse;

61 (2) Child support received for the children of another
62 relationship;

63 (3) Means-tested assistance such as temporary assistance
64 for needy families, supplemental security income and food
65 stamps; and

66 (4) A child's income unless the court determines that the
67 child's income substantially reduces the family's living
68 expenses.

§48-1-229. Guardian of the property of a child defined.

1 "Guardian of the property of a child" means a person
2 lawfully invested with the power, and charged with the duty, of
3 managing and controlling the estate of a child.

§48-1-230. Income defined.

1 "Income" includes, but is not limited to, the following:

2 (1) Commissions, earnings, salaries, wages, and other
3 income due or to be due in the future to an individual from his
4 or her employer and successor employers;

5 (2) Any payment due or to be due in the future to an
6 individual from a profit-sharing plan, a pension plan, an
7 insurance contract, an annuity, social security, unemployment
8 compensation, supplemental employment benefits, workers'
9 compensation benefits, state lottery winnings and prizes, and
10 overtime pay;

11 (3) Any amount of money which is owing to an individual
12 as a debt from an individual, partnership, association, public or
13 private corporation, the United States or any federal agency,
14 this state or any political subdivision of this state, any other
15 state or a political subdivision of another state, or any other
16 legal entity which is indebted to the obligor.

**§48-1-231. Individual entitled to support enforcement services
under the provisions of this chapter and the
provisions of Title IV-D of the federal Social
Security Act defined.**

1 (a) "Individual entitled to support enforcement services
2 under the provisions of this chapter and the provisions of Title
3 IV-D of the federal Social Security Act" means:

4 (1) An individual who has applied for or is receiving
5 services from the bureau for child support enforcement and who
6 is the parent of a child, or the caretaker of a child, or the
7 guardian of the property of a child when:

8 (A) The child has a parent and child relationship with an
9 obligor who is not a custodial parent, a caretaker or a guardian;
10 and

11 (B) The obligor with whom the child has a parent and child
12 relationship is not meeting an obligation to support the child, or
13 has not met such obligation in the past; or

14 (2) An individual who has applied for or is receiving
15 services from the bureau for child support enforcement and who
16 is an adult or an emancipated minor whose spouse or former
17 spouse has been ordered by a court of competent jurisdiction to
18 pay spousal support to the individual, whether such support is
19 denominated spousal support or separate maintenance, or is
20 identified by some other terminology, thus establishing a
21 support obligation with respect to such spouse, when the
22 obligor required to pay such spousal support is not meeting the
23 obligation, or has not met such obligation in the past; or

24 (3) Any individual who is an obligee in a support order,
25 entered by a court of competent jurisdiction after the thirty-first
26 day of December, one thousand nine hundred ninety-three.

27 (b) The filing of an action wherein the establishment or
28 enforcement of child support is an issue constitutes an applica-
29 tion to receive services from the bureau for child support
30 enforcement, if the individual filing the action is otherwise
31 eligible for such services: *Provided*, That any such individual
32 has the option to decline the receipt of such services.

§48-1-232. Legal parent defined.

1 "Legal parent" means an individual defined as a parent, by
2 law, on the basis of biological relationship, presumed biological
3 relationship, legal adoption or other recognized grounds.

§48-1-233. Marital property defined.

1 "Marital property" means:

2 (1) All property and earnings acquired by either spouse
3 during a marriage, including every valuable right and interest,
4 corporeal or incorporeal, tangible or intangible, real or personal,
5 regardless of the form of ownership, whether legal or benefi-
6 cial, whether individually held, held in trust by a third party, or
7 whether held by the parties to the marriage in some form of co-
8 ownership such as joint tenancy or tenancy in common, joint
9 tenancy with the right of survivorship, or any other form of

10 shared ownership recognized in other jurisdictions without this
11 state, except that marital property does not include separate
12 property as defined in section 1-238; and

13 (2) The amount of any increase in value in the separate
14 property of either of the parties to a marriage, which increase
15 results from: (A) an expenditure of funds which are marital
16 property, including an expenditure of such funds which reduces
17 indebtedness against separate property, extinguishes liens, or
18 otherwise increases the net value of separate property; or (B)
19 work performed by either or both of the parties during the
20 marriage.

21 The definitions of “marital property” contained in this
22 section has no application outside of the provisions of this
23 article, and the common law as to the ownership of the respec-
24 tive property and earnings of a husband and wife, as altered by
25 the provisions of article 29 of this chapter and other provisions
26 of this code, are not abrogated by implication or otherwise,
27 except as expressly provided for by the provisions of this article
28 as such provisions are applied in actions brought under this
29 article or for the enforcement of rights under this article.

§48-1-234. Obligee defined.

1 “Obligee” means:

2 (1) An individual to whom a duty of support is or is alleged
3 to be owed or in whose favor a support order has been issued or
4 a judgment determining parentage has been rendered;

5 (2) A state or political subdivision to which the rights under
6 a duty of support or support order have been assigned or which
7 has independent claims based on financial assistance provided
8 to an individual obligee; or

9 (3) An individual seeking a judgment determining parent-
10 age of the individual’s child.

§48-1-235. Obligor defined.

- 1 "Obligor" means an individual or the estate of a decedent:
- 2 (1) Who owes or is alleged to owe a duty of support;
- 3 (2) Who is alleged, but has not been adjudicated, to be a
4 parent of a child; or
- 5 (3) Who is liable under a support order.

§48-1-236. Secretary defined.

- 1 "Secretary" means the secretary of the department of health
2 and human resources.

§48-1-237. Separate property defined.

- 1 "Separate property" means:
- 2 (1) Property acquired by a person before marriage;
- 3 (2) Property acquired by a person during marriage in
4 exchange for separate property which was acquired before the
5 marriage;
- 6 (3) Property acquired by a person during marriage, but
7 excluded from treatment as marital property by a valid agree-
8 ment of the parties entered into before or during the marriage;
- 9 (4) Property acquired by a party during marriage by gift,
10 bequest, devise, descent or distribution;
- 11 (5) Property acquired by a party during a marriage but after
12 the separation of the parties and before ordering an annulment,
13 divorce or separate maintenance; or
- 14 (6) Any increase in the value of separate property as
15 defined in subdivision (1), (2), (3), (4) or (5) of this section
16 which is due to inflation or to a change in market value result-
17 ing from conditions outside the control of the parties.

§48-1-238. Separation defined.

- 1 "Separation" or "separation of the parties" means the
2 uninterrupted separation of a husband and wife for some

3 continuous period of time during which they do not cohabit or
4 otherwise live together as husband and wife. When a separation
5 is required as a predicate for filing an action under this article,
6 the separation must continue through the date of filing.

§48-1-239. Shared physical custody defined.

1 “Shared physical custody” means an arrangement under
2 which each parent keeps a child or children overnight for more
3 than thirty-five percent of the year and under which both
4 parents contribute to the expenses of the child or children in
5 addition to the payment of child support.

§48-1-240. Source of income defined.

1 “Source of income” means an employer or successor
2 employer or any other person who owes or will owe income to
3 an obligor.

§48-1-241. Split Physical custody defined.

1 “Split physical custody” means a situation where there is
2 more than one child and where each parent has physical custody
3 of at least one child.

§48-1-242. Spousal support defined.

1 “Spousal support” means an allowance that a person may
2 be ordered to pay for the support and maintenance of a spouse
3 or a former spouse, while they are living separate and apart or
4 after an order for divorce, annulment or separate maintenance.

§48-1-243. Spousal support in gross defined.

1 “Spousal support in gross” means spousal support payable
2 either in a lump sum, or in periodic payments of a definite
3 amount over a specific period of time. A spousal support award
4 is “spousal support in gross” only if the award grants spousal
5 support in such terms that a determination can be made of the
6 total amount to be paid as well as the time such payments will
7 cease.

§48-1-244. Support defined.

1 "Support" means the payment of money, including interest:

2 (1) For a child or spouse, ordered by a court of competent
3 jurisdiction, whether the payment is ordered in an emergency,
4 temporary, permanent or modified order, the amount of unpaid
5 support shall bear simple interest from the date it accrued, at a
6 rate of ten dollars upon one hundred dollars per annum, and
7 proportionately for a greater or lesser sum, or for a longer or
8 shorter time;

9 (2) To third parties on behalf of a child or spouse, includ-
10 ing, but not limited to, payments to medical, dental or educa-
11 tional providers, payments to insurers for health and hospital-
12 ization insurance, payments of residential rent or mortgage
13 payments, payments on an automobile or payments for day
14 care; or

15 (3) For a mother, ordered by a court of competent jurisdic-
16 tion, for the necessary expenses incurred by or for the mother
17 in connection with her confinement or of other expenses in
18 connection with the pregnancy of the mother.

§48-1-245. Support order defined.

1 (a) For cases being enforced pursuant to Title IV-D of the
2 Social Security Act, "support order" means a judgment, decree
3 or order, whether temporary, final, or subject to modification,
4 issued by a court or an administrative agency of competent
5 jurisdiction, for the support and maintenance of a child,
6 including a child who has attained the age of majority under the
7 law of the issuing state, or a child and the parent with whom the
8 child is living, which provides for monetary support, health
9 care, arrearage or reimbursements, and which may include
10 related costs and fees, interest and penalties, income withhold-
11 ing, attorneys' fees and other relief.

12 (b) For all other cases, "support order" means an order as
13 defined in subsection (a) of this section and, in addition, an
14 order for the support and maintenance of a spouse or former
15 spouse.

§48-1-246. Unreimbursed health care expenses defined.

1 “Unreimbursed health care expenses” means the child’s
2 portion of health insurance premiums and extraordinary
3 medical expenses.

§48-1-247. Work-related child care costs defined.

1 “Work-related child care costs” shall mean the cost of child
2 care the parent incurs due to employment or the search for
3 employment.

**PART 3. MISCELLANEOUS PROVISIONS
RELATING TO DOMESTIC RELATIONS.**

§48-1-301. Communications between clergy and party.

1 (a) A party to a domestic relations action cannot compel a
2 member of the clergy to testify regarding any communications
3 or statements made to the member of the clergy in his or her
4 capacity as spiritual counselor or spiritual adviser by a party to
5 the action, if the following conditions exist:

6 (1) Both the clergy and the party making such communica-
7 tions or statements claim that the communications or statements
8 were made to the clergy in his capacity as a clergy and spiritual
9 counselor or spiritual adviser to such party;

10 (2) No person, other than a member of the clergy, a party
11 and the spouse of the party, was present when such communica-
12 tions or statements were made; and

13 (3) The party making such communications or statements
14 does not either consent to their disclosure or otherwise waive
15 the privilege granted by this section.

16 (b) The privilege granted by this section shall be in addition
17 to and not in derogation of any other privileges recognized by
18 law.

§48-1-302. Calculation of interest.

1 (a) If an obligation to pay interest arises under this chapter,
2 the rate of interest is that specified in section 56-6-31 of this
3 code. Interest accrues only upon the outstanding principal of
4 such obligation. On and after the ninth day of June, one
5 thousand nine hundred ninety-five, this section will be con-
6 strued to permit the accumulation of simple interest, and may
7 not be construed to permit the compounding of interest. Interest
8 which accrued on unpaid installments accruing before the ninth
9 day of June, one thousand nine hundred ninety-five, may not be
10 modified by any court, irrespective of whether such installment
11 accrued simple or compound interest: *Provided*, That unpaid
12 installments upon which interest was compounded before the
13 effective date of this section shall accrue only simple interest
14 thereon on and after the ninth day of June, one thousand nine
15 hundred ninety-five.

16 (b) Except as otherwise provided in this subsection,
17 prejudgment interest shall not be awarded in a domestic
18 relations action. The circuit court may only award prejudgment
19 interest in a domestic relations action against a party if the court
20 finds, in writing, that the party engaged in conduct that would
21 violate subsection (b), rule eleven of the West Virginia rules of
22 civil procedure. If prejudgment interest is awarded, the court
23 shall calculate prejudgment interest from the date the offending
24 representation was presented to the court.

25 (c) Upon written agreement by both parties, an obligor may
26 petition the court to enter an order conditionally suspending the
27 collection of all or part of the interest that has accrued on past
28 due child support prior to the date of the agreement: *Provided*,
29 That said agreement shall also establish a reasonable payment
30 plan which is calculated to fully discharge all arrearages within
31 twenty-four months. Upon successful completion of the
32 payment plan, the court shall enter an order which permanently
33 relieves the obligor of the obligation to pay the accrued interest.
34 If the obligor fails to comply with the terms of the written
35 agreement, then the court shall enter an order which reinstates
36 the accrued interest. Any proceeding commenced pursuant to
37 the provisions of this subsection may only be filed after the first

38 day of January, two thousand one and before the thirty-first day
39 of December, two thousand one.

§48-1-303. Confidentiality of domestic relations court files.

1 (a) All orders in domestic relations actions entered in the
2 civil order books by circuit clerks are public records.

3 (b) Upon the filing of a domestic relations action, all
4 pleadings, exhibits or other documents, other than orders, that
5 are contained in the court file are confidential and not open for
6 public inspection either during the pendency of the case or after
7 the case is closed.

8 (c) When sensitive information has been disclosed during
9 a hearing or in pleadings, evidence, or documents filed in the
10 record, a circuit judge or family law master may, sua sponte or
11 upon motion of a party, order such information sealed in the
12 court file. Sealed documents or court files can only be opened
13 by order of a circuit judge or family law master.

14 (d) The parties, their designees, their attorneys, a duly
15 appointed guardian ad litem or any other person who has
16 standing to seek modification or enforcement of a support
17 order, has the right to examine and copy any document in a
18 confidential court file that has not been sealed by order of a
19 circuit judge or family law master. Upon motion and for good
20 cause shown, the circuit court or family law master may permit
21 a person who is not a party to the action to examine and copy
22 any documents that are necessary to further the interests of
23 justice.

24 (e) The clerk of the circuit court shall keep a written log of
25 all persons who examine confidential documents as provided
26 for in this section. Every person who examines confidential
27 documents shall first sign the clerk's written log, except for a
28 circuit judge or family law master before whom the case is
29 pending, or court personnel acting within the scope of their
30 duties. The clerk shall record the time and date of every
31 examination of confidential documents. The log must be

32 retained by the clerk and must be available upon request for
33 inspection by the court or the family law master.

§48-1-304. Proceedings in contempt.

1 (a) Upon a verified petition for contempt, notice of hearing
2 and hearing, if the petition alleges criminal contempt or the
3 court informs the parties that the matter will be treated and tried
4 as a criminal contempt, the matter shall be tried before a jury,
5 unless the party charged with contempt shall knowingly and
6 intelligently waive the right to a jury trial with the consent of
7 the court and the other party. If the jury, or the court sitting
8 without a jury, shall find the defendant in contempt for willfully
9 failing to comply with an order of the court made pursuant to
10 the provisions of this article, as charged in the petition, the
11 court may find the person to be in criminal contempt and may
12 commit such person to the county jail for a determinate period
13 not to exceed six months.

14 (b) If trial is had under the provisions of subsection (a) of
15 this section and the court elects to treat a finding of criminal
16 contempt as a civil contempt, or if the petition alleges civil
17 contempt and the matter is not tried before a jury and the court
18 finds the defendant in contempt for willfully failing to comply
19 with an order of the court made pursuant to the provisions of
20 this article, and if the court further finds the person has the
21 ability to purge himself of contempt, the court shall afford the
22 contemnor a reasonable time and method whereby he may
23 purge himself of contempt. If the contemnor fails or refuses to
24 purge himself of contempt, the court may confine the
25 contemnor to the county jail for an indeterminate period not to
26 exceed six months or until such time as the contemnor has
27 purged himself, whichever shall first occur.

28 (c) In the case of a charge of contempt based upon the
29 failure of the defendant to pay alimony, child support or
30 separate maintenance, if the court or jury finds that the defen-
31 dant did not pay because he was financially unable to pay, the
32 defendant may not be imprisoned on charges of contempt of
33 court.

34 (d) Regardless of whether the court or jury finds the
35 defendant to be in contempt, if the court shall find that a party
36 is in arrears in the payment of alimony, child support or
37 separate maintenance ordered to be paid under the provisions of
38 this article, the court shall enter judgment for such arrearage
39 and award interest on such arrearage from the due date of each
40 unpaid installment. Following any hearing wherein the court
41 finds that a party is in arrears in the payment of alimony, child
42 support or separate maintenance, the court may, if sufficient
43 assets exist, require security to ensure the timely payment of
44 future installments.

45 (e) At any time during a contempt proceeding, the court
46 may enter an order to attach forthwith the body of, and take into
47 custody, any person who refuses or fails to respond to the
48 lawful process of the court or to comply with an order of the
49 court. Such order of attachment shall require the person to be
50 brought forthwith before the court or the judge thereof in any
51 county in which the court may then be sitting.

§48-1-305. Suit money, counsel fees and costs.

1 (a) Costs may be awarded to either party as justice requires,
2 and in all cases the court, in its discretion, may require payment
3 of costs at any time, and may suspend or withhold any order
4 until the costs are paid.

5 (b) The court may compel either party to pay attorney's
6 fees and court costs reasonably necessary to enable the other
7 party to prosecute or defend the action in the trial court. An
8 order for temporary relief awarding attorney fees and court
9 costs may be modified at any time during the pendency of the
10 action, as the exigencies of the case or equity and justice may
11 require, including, but not limited to, a modification which
12 would require full or partial repayment of fees and costs by a
13 party to the action to whom or on whose behalf payment of
14 such fees and costs was previously ordered. If an appeal is
15 taken or an intention to appeal is stated, the court may further
16 order either party to pay attorney fees and costs on appeal.

17 (c) When it appears to the court that a party has incurred
18 attorney fees and costs unnecessarily because the opposing
19 party has asserted unfounded claims or defenses for vexatious,
20 wanton or oppressive purposes, thereby delaying or diverting
21 attention from valid claims or defenses asserted in good faith,
22 the court may order the offending party, or his or her attorney,
23 or both, to pay reasonable attorney fees and costs to the other
24 party.

§48-1-306. Proceeding for release of support lien.

1 If any person deem that his or her interest, or that of any
2 person for whom he or she may act in a fiduciary or representa-
3 tive capacity, will be promoted by a release, in full or in part, of
4 a lien created upon his or her real or personal property for the
5 support or maintenance of another person or persons, or for
6 spousal or child support, he or she may apply by petition, in a
7 summary way, to the court that entered the order or decree
8 creating such lien for relief from said order. The petition shall
9 be verified and shall describe said lien, the circumstances of the
10 petitioner or the person for whom he is acting, the name or
11 names of the person or persons holding such lien, and the
12 circumstances calculated to show the propriety of the release
13 requested. All persons interested shall be made defendants and
14 shall be given ten days' notice before hearing upon the petition.
15 If authorized by the court, the release may be so conditioned as
16 to promote substantial justice, but the release may only be
17 prospective in effect, and may not operate to deprive the person
18 secured by the lien of the right to receive spousal or child
19 support payments accrued to the date of the hearing.

ARTICLE 2. MARRIAGE.

PART 1. APPLICATION FOR MARRIAGE LICENSE.

§48-2-101. Necessity of marriage license.

1 Every marriage in this state must be solemnized under a
2 marriage license issued by a clerk of the county commission in
3 accordance with the provisions of this article. If a ceremony of
4 marriage is performed without a license, the attempted marriage

5 is void, and the parties do not attain the legal status of husband
6 and wife.

§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.

1 (a) If one or both of the applicants are residents of this
2 state, they may apply for a marriage license to be issued by the
3 clerk of the county commission of the county in which a
4 resident applicant usually resides. If both parties are nonresi-
5 dents of this state, they may apply for a license to be issued by
6 the clerk of the county commission in any county in this state.

7 (b) Applications for licenses may be received and licenses
8 may be issued by the clerk of the county commission when the
9 office of the clerk is officially open for the conduct of business.

§48-2-103. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

1 (a) Except as otherwise provided in subsection(b) of this
2 section, if either or both of the applicants for a marriage license
3 is under eighteen years of age, the clerk of the county commis-
4 sion may not issue a marriage license until two full days elapse
5 after the day the license application is filed.

6 (b) In case of an emergency or extraordinary circumstances,
7 as shown by affidavit or other proof, a circuit judge of the
8 county in which an application for a marriage license will be
9 filed may order the clerk of the county commission to issue a
10 license at any time before the expiration of the waiting period
11 prescribed in subsection (a) of this section. The clerk of the
12 county commission shall attach a certified copy of the judge's
13 order to the application and issue the marriage license in
14 accordance with the order. If the judge or judges of the county
15 in which the application will be filed are absent or incapaci-
16 tated, the order may be made and directed to the clerk of the
17 county commission of the county by a circuit judge in any

18 adjoining judicial circuit, or a special judge appointed by the
19 supreme court of appeals.

§48-2-104. Contents of the application for a marriage license.

1 (a) The application for a marriage license must contain a
2 statement of the full names of both female and male parties,
3 their social security account numbers, dates of birth, places of
4 birth and residence addresses.

5 (b) If either of the parties is a legal alien in the United
6 States of America and has no social security account number,
7 a tourist or visitor visa number or number equivalent to a
8 United States social security account number must be provided.

9 (c) Every application for a marriage license must contain
10 the following statement: "Marriage is designed to be a loving
11 and lifelong union between a woman and a man.

12 The laws of this state affirm your right to enter into this
13 marriage and to live within the marriage free from violence and
14 abuse. Neither of you is the property of the other. Physical
15 abuse, sexual abuse, battery and assault of a spouse or other
16 family member, and other provisions of the criminal laws of
17 this state are applicable to spouses and other family members,
18 and these violations are punishable by law."

§48-2-105. Execution of the application for a marriage license.

1 Both female and male parties to a contemplated marriage
2 are required to sign the application for a marriage license, under
3 oath. The application must be signed before the clerk of the
4 county commission or another person authorized to administer
5 oaths under the laws of this state.

§48-2-106. Proof of age.

1 (a) At the time of the execution of the application, the clerk
2 or the person administering the oath to the applicants shall
3 require evidence of the age of each of the applicants. Evidence
4 of age may be as follows:

5 (1) A certified copy of a birth certificate or a duplicate
6 certificate produced by any means that accurately reproduces
7 the original;

8 (2) A voter's registration certificate;

9 (3) An operator's or chauffeur's license;

10 (4) The affidavit of both parents or the legal guardian of the
11 applicant; or

12 (5) Other good and sufficient evidence.

13 (b) If an affidavit is relied upon as evidence of the age of an
14 applicant, and if one parent is dead, the affidavit of the surviv-
15 ing parent or of the guardian of the applicant is sufficient. If
16 both parents are dead, the affidavit of the guardian of the
17 applicant is sufficient. If the parents of the applicant live
18 separate and apart, the affidavit of the parent having custody of
19 the applicant is sufficient.

§48-2-107. Recording an application for a marriage license.

1 The clerk of the county commission shall record the
2 application for a marriage license in the register of marriages
3 provided for in section 2-203. The clerk shall note the date of
4 the filing of the application in the register. The clerk's notation,
5 or a certified copy thereof, is legal evidence of the facts
6 contained in the license.

PART 2. MARRIAGE LICENSE.

§48-2-201. Form of marriage license.

1 The marriage license shall be in form substantially as
2 follows:

3 Marriage License.

4 State of West Virginia, County of _____,
5 to wit:

6 To any person authorized to celebrate marriages:

7 You are hereby authorized to join together in matrimony
8 _____ and _____

9 Given under my hand, as clerk of the county commission of
10 the county of _____, this _____ day of
11 _____, 2_____.

12 _____
13 Clerk as aforesaid.

§48-2-202. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.

1 (a) The person solemnizing a marriage shall retain the
2 marriage license and place an endorsement on it establishing
3 the fact of the marriage and the time and place it was cele-
4 brated.

5 (b) Before the sixth day of the month after the month in
6 which the marriage was celebrated, the person who solemnized
7 the marriage shall forward the original of the marriage license
8 to the clerk who issued the license.

9 (c) In the event that the marriage authorized by the license
10 is not solemnized within sixty days from the date of its issu-
11 ance, then the license is null and void. If the county clerk has
12 not received the original license within sixty days after the
13 expiration date on the license, the clerk shall notify each of the
14 applicants of that fact, by certified mail, return receipt re-
15 quested.

§48-2-203. Register of marriages.

1 (a) The clerk of the county commission is required to
2 maintain a suitable book to be used as a register of marriages.
3 The clerk shall keep a complete record of the following
4 information:

5 (1) Factual information that relates to the eligibility of a
6 person to obtain a marriage license: *Provided*, That if the
7 license is issued because the female is pregnant, the pregnancy
8 will not be noted by the clerk in the register of marriages;

9 (2) Each marriage license issued by the clerk; and

10 (3) An endorsement by a minister, priest, rabbi, or judge
11 certifying that the marriage was solemnized.

12 (b) The clerk shall index the register of marriages in the
13 names of both parties to the marriage.

§48-2-204. Record of marriage celebrated outside of state.

1 If at the time of celebrating any marriage out of this state,
2 either or both of the parties thereto is a resident of this state, a
3 certificate or statement of that fact, verified by the affidavit of
4 any person present at such celebration, or a transcript of the
5 marriage record, certified by the custodian of such records,
6 from the state where the marriage was celebrated, may be
7 returned to the clerk of the county commission of the county in
8 which the husband resides, if he is a resident, or otherwise to
9 the clerk of the county in which the wife resides, and an
10 abstract thereof shall be recorded by the clerk in the register of
11 marriages and indexed in the name of both parties.

PART 3. CAPACITY TO MARRY.

§48-2-301. Age of consent for marriage; exception.

1 (a) The age of consent for marriage for both the male and
2 the female is eighteen years of age. A person under the age of
3 eighteen lacks the capacity to contract a marriage without the
4 consent required by this section.

5 (b) The clerk of the county commission may issue a
6 marriage license to an applicant who is under the age of
7 eighteen but sixteen years of age or older if the clerk obtains a
8 valid written consent from the applicant's parents or legal
9 guardian.

10 (c) Upon order of a circuit judge, the clerk of the county
11 commission may issue a marriage license to an applicant who
12 is under the age of sixteen, if the clerk obtains a valid written
13 consent from the applicant's parents or legal guardian. A circuit
14 judge of the county in which the application for a marriage
15 license is filed may order the clerk of the county commission to
16 issue a license to an applicant under the age of sixteen if, in the
17 court's discretion, the issuance of a license is in the best interest
18 of the applicant and if consent is given by the parents or
19 guardian.

20 (d) A consent to marry must be duly acknowledged before
21 an officer authorized to acknowledge a deed. If the parents are
22 living together at the time the application for a marriage license
23 is made and the consent is given, the signatures of both parents
24 or the applicant's legal guardian is required. If one parent is
25 dead, the signature of the surviving parent or the applicant's
26 legal guardian is required. If both parents are dead, the signa-
27 ture of the applicant's legal guardian is required. If the parents
28 of the applicant are living separate and apart, the signature of
29 the parent having custody of the applicant or the applicant's
30 legal guardian is required.

31 (e) If a person under the age of consent is married in
32 violation of this section, the marriage is not void for this reason,
33 and such marriage is valid until it is actually annulled.

34 (f) A marriage by an underage person without a valid
35 consent as required by this section, though voidable at the time
36 it is entered into, may be ratified and become completely valid
37 and binding when the underage party reaches the age of
38 consent. Validation of a marriage by ratification is established
39 by some unequivocal and voluntary act, statement, or course of
40 conduct after reaching the age of consent. Ratification includes,
41 but is not limited to, continued cohabitation as husband and
42 wife after the age of consent is attained.

§48-2-302. Prohibition against marriage of persons related within certain degrees.

1 (a) A man is prohibited from marrying his mother, grand-
2 mother, sister, daughter, granddaughter, half sister, aunt,
3 brother's daughter, sister's daughter, first cousin or double
4 cousin. A woman is prohibited from marrying her father,
5 grandfather, brother, son, grandson, half brother, uncle,
6 brother's son, sister's son, first cousin or double cousin.

7 (b) The prohibitions described in subsection (a) of this
8 section are applicable to consanguineous relationships where
9 persons are blood related by virtue of having a common
10 ancestor.

11 (c) The prohibitions described in subsection (a) of this
12 section are applicable to persons related by affinity, where the
13 relationship is founded on a marriage, and the prohibition
14 continues in force even though the marriage is terminated by
15 death or divorce, unless the divorce was ordered for a cause
16 which made the marriage, originally, unlawful or void.

§48-2-303. Prohibition against marriage not to include persons related by adoption.

1 For the purpose of section 2-302, cousin or double cousin
2 does not include persons whose relationship is created solely by
3 adoption. If it necessary to open and examine the record of any
4 adoption proceeding in the state to ascertain that a relationship
5 of cousin or double cousin is created solely by adoption, then an
6 application may be made to the circuit court that held the
7 adoption proceeding, by the clerk of the county commission
8 seeking to issue the marriage license, or either party applying
9 for the license, to open the record and cause it to be examined.
10 Upon such application, the judge shall examine the record
11 confidentially and report to the clerk whether the record
12 discloses any consanguinity prohibited by this section and may
13 grant such other relief prayed for which may be proper under
14 article 22 of this chapter.

PART 4. MARRIAGE CEREMONY.

§48-2-401. Persons authorized to perform marriages.

1 A religious representative who has complied with the
2 provisions of section 2-402, or a judge of any court of record in
3 this state, is authorized to celebrate the rites of marriage in any
4 county of this state. Celebration or solemnization of a marriage
5 means the performance of the formal act or ceremony by which
6 a man and woman contract marriage and assume the status of
7 husband and wife.

8 For purposes of this chapter, the term "religious representa-
9 tive" means a minister, priest, or rabbi and includes, without
10 being limited to, a leader or representative of a generally
11 recognized spiritual assembly, church, or religious organization
12 which does not formally designate or recognize persons as
13 ministers, priests or rabbis.

**§48-2-402. Qualifications of religious representative for celebrat-
ing marriages.**

1 (a) The county commission of any county in this state may
2 make an order authorizing a person who is a religious represen-
3 tative to celebrate the rites of marriage in all the counties of the
4 state, upon proof that the person:

5 (1) Is eighteen years of age or older;

6 (2) Is duly authorized to perform marriages by his or her
7 church, synagogue, spiritual assembly or religious organization;
8 and

9 (3) Is in regular communion with the church, synagogue,
10 spiritual assembly or religious organization of which he or she
11 is a member.

12 (b) The person shall give bond in the penalty of one
13 thousand five hundred dollars, with surety approved by the
14 commission. Any religious representative who gives proof
15 before the county commission of his or her ordination or
16 authorization by his or her respective church, synagogue,
17 spiritual assembly or religious organization, is exempt from
18 giving the bond.

§48-2-403. Ritual for ceremony of marriage by a religious representative.

1 A religious representative authorized to celebrate the rites
2 of marriage shall perform the ceremony of marriage according
3 to the rites and ceremonies of his or her religious denomination,
4 church, synagogue, spiritual assembly or religious organization
5 and the laws of the state of West Virginia.

§48-2-404. Ritual for ceremony of marriage by a judge.

1 The ritual for the ceremony of marriages by judges of
2 courts of record in this state may be as follows: At the time
3 appointed, the persons to be married, being qualified according
4 to the law of the state of West Virginia, standing together facing
5 the judge, the man at the judge's left hand and the woman at the
6 right, the judge shall say:

7 "We are gathered here, in the presence of these witnesses,
8 to join together this man and this woman in matrimony. It is not
9 to be entered into unadvisedly but discreetly, sincerely, and in
10 dedication of life.

11 (Then shall the judge say to the man, using his christian
12 name:)

13 "N., wilt thou have this woman to be thy wedded wife, to
14 live together in the bonds of matrimony? Wilt thou love her,
15 comfort her, honor and keep her in sickness and in health?

16 (Then the man shall answer:)

17 "I will.

18 (Then the judge shall say to the woman, using her christian
19 name:)

20 "N., wilt thou have this man to be thy wedded husband, to
21 live together in the bonds of matrimony? Wilt thou love him,
22 comfort him, honor and keep him in sickness and health?

23 (The woman shall answer:)

24 "I will.

25 (Then may the judge say:)

26 "Who giveth this woman to be married to this man?

27 (The father of the woman, or whoever giveth her in
28 marriage, shall answer:)

29 "I do.

30 (Then the judge shall ask the man to say after him:)

31 "I, N., take thee, N., to be my wedded wife, to have and to
32 hold, from this day forward, for better, for worse, for richer, for
33 poorer, in sickness and in health, to love, and to cherish, as long
34 as life shall last, and thereto I pledge thee my faith.

35 (Then the judge shall ask the woman to repeat after him:)

36 "I, N., take thee, N., to be my wedded husband, to have and
37 to hold, from this day forward, for better, for worse, for richer,
38 for poorer, in sickness and in health, to love and to cherish, as
39 long as life shall last, and thereto I pledge thee my faith.

40 (Then, if there be a ring, the judge shall say:)

41 "The wedding ring is an outward and visible sign--signify-
42 ing unto all, the uniting of this man and this woman in matri-
43 mony.

44 (The judge then shall deliver the ring to the man to put on
45 the third finger of the woman's left hand. The man shall say
46 after the judge:)

47 "In token and pledge of the vow between us made, with this
48 ring, I thee wed.

49 (Then, if there be a second ring, the judge shall deliver it to
50 the woman to put upon the third finger of the man's left hand;
51 and the woman shall say after the judge:)

52 "In token and pledge of the vow between us made, with this
53 ring, I thee wed.

54 (Then shall the judge say:)

55 "Forasmuch as N. and N. have consented together in
56 wedlock, and have witnessed the same each to the other and
57 before these witnesses, and thereto have pledged their faith each
58 to the other, and have declared the same by giving (and
59 receiving) a ring, by virtue of the authority vested in me as
60 judge of this court, I pronounce that they are husband and wife
61 together."

§48-2-405. Record of marriage to be kept by person officiating.

1 A record of each marriage performed, with the names of the
2 parties, their respective places of residence prior to marriage,
3 and the date of marriage, shall be kept by the officiating
4 religious representative in the permanent record of the church,
5 synagogue, spiritual assembly or religious organization which
6 he or she serves.

PART 5. OFFENSES AND PENALTIES.

**§48-2-501. Unlawful acts by clerk of the county commission;
penalties.**

1 (a) It is unlawful for a clerk of the county commission to do
2 any of the following acts:

3 (1) To make a false entry as to the date of application for a
4 marriage license;

5 (2) To issue a marriage license prior to the end of the
6 required three-day period (unless a circuit judge dispenses with
7 this requirement by order pursuant to section 2-103);

8 (3) To issue a license on any Sunday or a legal holiday; or

9 (4) To receive an application for a marriage license or issue
10 a marriage license in any place other than the office of the clerk
11 of the county commission.

12 (b) A clerk of the county commission who violates the
13 provisions of subsection (a) of this section is guilty of a
14 misdemeanor and, upon conviction thereof, shall be punished
15 by a fine of not less than two hundred dollars nor more than one
16 thousand dollars, or by confinement in the county or regional
17 jail for not less than three months nor more than nine months,
18 or by both such fine and confinement, in the discretion of the
19 court.

§48-2-502. Issuing marriage license contrary to law; penalty.

1 A clerk of the county commission who knowingly issues
2 a marriage license contrary to law is guilty of a misdemeanor
3 and, upon conviction thereof, shall be punished by a fine not
4 exceeding five hundred dollars, or by confinement in the county
5 or regional jail for not more than one year, or by both such fine
6 and confinement, in the discretion of the court.

§48-2-503. Consanguineous marriage; penalty.

1 (a) If a person marries another who is within the degrees of
2 relationship described in section 2-302, and the relationship is
3 founded on consanguinity, the person is guilty of a misde-
4 meanor and, upon conviction thereof, shall be fined not more
5 than five hundred dollars, or be confined in the county or
6 regional jail for not more than six months, or both, in the
7 discretion of the court.

8 (b) If a person who is a resident of this state marries in
9 another state or country, the person violates subsection (a) of
10 this section if:

11 (1) The persons married are within the degrees of relation-
12 ship described in section 2-302 and the relationship is founded
13 on consanguinity;

- 14 (2) The person intends to evade the law of this state;
- 15 (3) The person intends to return and reside in this state; and
- 16 (4) The persons, after marrying, return to this state and
17 cohabit as man and wife.
- 18 (c) For purposes of this section, the fact of cohabitation of
19 the persons as man and wife is evidence of their marriage.

§48-2-504. Failure to endorse and return license; penalties.

1 If a person who is authorized to celebrate marriages in this
2 state willfully fails to comply with the provisions of section 2-
3 202, relating to the endorsement and return of a license, his or
4 her authority must be suspended for a period of not less than six
5 months nor more than one year. If the person gave bond under
6 the provisions of section 2-402, the conditions of the bond are
7 deemed to be broken and the bond must be forfeited as other-
8 wise provided by law. The county clerk shall notify the prose-
9 cuting attorney of the county of any failure to comply with
10 section 2-202. The prosecuting attorney shall institute proceed-
11 ings before the circuit court to suspend the person's authority
12 to celebrate marriages. The court shall determine all questions
13 of law and fact.

§48-2-505. Unlawful solicitation of a celebration of marriage.

- 1 (a) It is unlawful for any religious representative in any
2 manner to solicit the celebration of a marriage ceremony.
- 3 (b) It is unlawful for a religious representative to give
4 anything of value, directly or indirectly, as a reward to any
5 person who may accompany, bring, send or direct the holders
6 of a marriage license to the religious representative.
- 7 (c) If a person violates the provisions of subsection (a) or
8 (b) of this section, his or her license to celebrate marriages shall
9 be revoked, and no such license shall thereafter be issued to the
10 person. It is the duty of the prosecuting attorney of the county
11 in which the violation occurs to institute proceedings in the

12 circuit court to revoke the license. Reasonable notice of
13 proceedings to revoke a license shall be given to the licensee.
14 The court shall determine all questions of law and fact.

PART 6. MISCELLANEOUS PROVISIONS.

§48-2-601. Belief of parties in lawful marriage validates certain defects.

1 If a marriage is solemnized by a person professing to be
2 authorized to celebrate marriages when, in fact, the person is
3 not authorized, or if a marriage is solemnized after the license
4 is expired, the marriage is not void and subject to a judgment of
5 nullity based on that fact alone if:

6 (1) The marriage is lawful in all other respects, and

7 (2) The marriage is consummated with a full belief on the
8 part of either or both of the persons married that they have been
9 lawfully joined in marriage.

§48-2-602. Marriage out of state to evade law.

1 If a resident of this state marries in another state or country,
2 the marriage is governed by the same law, in all respects, as if
3 it had been solemnized in this state if, at the time of the
4 marriage:

5 (1) The marriage would have been in violation of section 3-
6 103 if performed in this state;

7 (2) The person intended to evade the law of this state; and

8 (3) The person intended to return and reside in this state.

§48-2-603. Certain acts, records, and proceedings not to be given effect in this state.

1 A public act, record or judicial proceeding of any other
2 state, territory, possession or tribe respecting a relationship
3 between persons of the same sex that is treated as a marriage
4 under the laws of the other state, territory, possession, or tribe,

5 or a right or claim arising from such relationship, shall not be
6 given effect by this state.

§48-2-604. Additional fee to be collected for each marriage license issued.

1 In addition to any fee heretofore established for the
2 issuance of a marriage license, the county clerk shall collect a
3 sum of fifteen dollars for each marriage license issued which
4 additional sum shall be paid into a special revenue account of
5 the state treasury to be dispersed to local family protection
6 shelters as provided in article 26-101, et seq.

ARTICLE 3. ANNULMENT OR AFFIRMATION OF MARRIAGE.

§48-3-101. Right to sue to annul or affirm marriage.

1 (a) Except as otherwise provided in subsection (b) of this
2 section, an action to annul or affirm a marriage is not maintain-
3 able unless one of the parties is a resident of this state at the
4 time the action is commenced.

5 (b) Even if neither party is a resident of this state, an action
6 to annul a marriage that was performed in this state is maintain-
7 able if the parties have not established a matrimonial domicile
8 elsewhere.

§48-3-102. Venue of actions for annulment or affirmation.

1 (a) If the respondent to an action for annulling or affirming
2 a marriage is a resident of this state, the petitioner has an option
3 to bring the action in the county in which the parties last
4 cohabited or in the county where the respondent resides.

5 (b) If the respondent to an action for annulling or affirming
6 a marriage is not a resident of this state, the petitioner has an
7 option to bring the action in the county in which the parties last
8 cohabited or in the county where the petitioner resides.

9 (c) If neither party is a resident of this state, the action must
10 be brought in the county where the marriage was performed.

§48-3-103. Voidable marriages.

1 (a) The following marriages are voidable and are void from
2 the time they are so declared by a judgment order of nullity:

3 (1) Marriages that are prohibited by law on account of
4 either of the parties having a wife or husband of a prior mar-
5 riage, when the prior marriage has not been terminated by
6 divorce, annulment or death;

7 (2) Marriages that are prohibited by law on account of
8 consanguinity or affinity between the parties;

9 (3) Marriages solemnized when either of the parties:

10 (A) Was an insane person, idiot or imbecile;

11 (B) Was afflicted with a venereal disease;

12 (C) Was incapable, because of natural or incurable impo-
13 tency of the body, of entering into the marriage state;

14 (D) Was under the age of consent; or

15 (E) Had been, prior to the marriage and without the
16 knowledge of the other party, convicted of an infamous offense;

17 (4) Marriages solemnized when, at the time of the marriage,
18 the wife, without the knowledge of the husband:

19 (A) Was with child by some person other than the husband;
20 or

21 (B) Had been, prior to the marriage, notoriously a prosti-
22 tute; or

23 (5) Marriages solemnized when, prior to the marriage, the
24 husband, without the knowledge of the wife, had been notori-
25 ously a licentious person.

§48-3-104. Affirmation or annulment of marriage.

1 If a marriage is supposed to be void, or voidable, or any
2 doubt exists as to its validity, for any of the causes set forth in
3 section 3-103, or for any other cause recognized in law, either
4 party may, except as provided in section 3-105, institute an
5 action for annulling or affirming the marriage. Upon hearing the
6 proofs and allegations of the parties, the court shall enter a
7 judgment order annulling or affirming the marriage. In every
8 case where the validity of a marriage is called into question, it
9 is presumed that the marriage is valid, unless the contrary is
10 clearly proved. If the court orders that the marriage is valid, the
11 finding of the court is conclusive upon all persons concerned.

§48-3-105. What persons may not institute annulment action.

1 An action for annulling a marriage may not be instituted:

2 (a) Where the cause is the natural or incurable impotency
3 of body of either of the parties to enter the marriage state, by
4 the party who had knowledge of such incapacity at the time of
5 marriage; or

6 (b) Where the cause is fraud, force or coercion, by the party
7 who was guilty of such fraud, force or coercion, nor by the
8 injured party if, after knowledge of the facts, he or she has by
9 acts or conduct confirmed such marriage; or

10 (c) Where the cause is affliction with a venereal disease
11 existing at the time of marriage, by the party who was so
12 afflicted if such party has subsequent to the marriage become
13 cured of such disease, nor by the person who was not so
14 afflicted if he or she after the curing of the afflicted person has
15 by acts or conduct confirmed the marriage; or

16 (d) Where the cause is the nonage of either of the parties,
17 by the party who was capable of consenting, nor by the party
18 not so capable if he or she has by acts or conduct confirmed the
19 marriage after arriving at the age of consent; or

20 (e) Where the cause is lack of consent on the part of either
21 of the parties, by the party consenting or bringing about the
22 marriage; or

23 (f) Where the cause is that either of the parties has been
24 convicted of an infamous offense prior to marriage, by the other
25 party if, after knowledge of such fact, he or she has cohabited
26 with the party so convicted; or

27 (g) Where the cause is that the wife was at the time of
28 marriage with child by some person other than the husband, or
29 that prior to the marriage the wife had been notoriously a
30 prostitute, by the husband, if after knowledge of the fact, he has
31 cohabited with the wife; or

32 (h) Where the cause is that the husband was prior to the
33 marriage notoriously a licentious person, by the wife if, after
34 knowledge of the fact, she has cohabited with the husband.

§48-3-106. Relief ordered in annulment.

1 In an action for annulment, the court may order all or any
2 portion of the final relief provided for in sections 5-603 through
3 5-614 and all or any portion of the temporary relief provided for
4 in part 5, article 5 of this chapter.

§48-3-107. Modification of order granting annulment.

1 Upon the petition of either party, the court may revise or
2 alter an order entered in an action for annulment or make
3 further orders, concerning the following matters:

4 (1) The support and maintenance of either spouse;

5 (2) The interest of one spouse in the property of the other
6 spouse;

7 (3) The allocation of responsibility for the children of the
8 parties; and

9 (4) The support of the children of the parties.

ARTICLE 4. SEPARATE MAINTENANCE.

§48-4-101. Where an action for separate maintenance may be brought.

1 An action for separate maintenance may be brought in the
2 circuit court of any county where an action for divorce between
3 the parties could be brought. An action for separate mainte-
4 nance may be brought whether or not a divorce is prayed for.

§48-4-102. Grounds for separate maintenance.

1 Separate maintenance may be ordered:

2 (1) If the party seeking separate maintenance has grounds
3 for divorce; or

4 (2) If the party from whom separate maintenance is sought,
5 without good and sufficient cause:

6 (A) Has failed to provide suitable support for the other
7 spouse; or

8 (B) Has abandoned or deserted the other spouse.

§48-4-103. Award of relief in action for separate maintenance.

1 (a) In an action for separate maintenance, the court may
2 order all or any portion of the temporary or final relief that the
3 court may order in an action for divorce, other than a divorce.

4 (b) During the pendency of the action, the court has the
5 same powers to make temporary orders as the court would have
6 in actions for divorce, insofar as those powers are applicable, on
7 behalf of either spouse.

8 (c) Any order entered in the case is effective during the
9 time the court by its order directs, until further order of the
10 court.

§48-4-104. Modification of order awarding separate maintenance.

1 Upon the petition of either party, the court may revise or
2 alter an order entered in an action for separate maintenance, or
3 may make further orders, concerning the following matters:

4 (1) The support and maintenance of either spouse;

5 (2) The interest of one spouse in the property of the other
6 spouse;

7 (3) The allocation of responsibility for the children of the
8 parties; and

9 (4) The support of the children of the parties.

ARTICLE 5. DIVORCE.

PART 1. GENERAL PROVISIONS.

§48-5-101. Absolute divorce.

1 A divorce ordered in this state is an absolute divorce.

§48-5-102. Circuit courts vested with subject matter jurisdiction.

1 The circuit courts of this state, by act of the Legislature, are
2 vested with jurisdiction over the subject matter of divorce. A
3 circuit court has the right and authority to adjudicate actions for
4 divorce, and the power to carry its judgment and order into
5 execution. Jurisdiction of the subject matter of divorce em-
6 braces the power to determine every issue or controverted
7 question in an action for divorce, according to the court's view
8 of the law and the evidence.

§48-5-103. Jurisdiction of parties; service of process.

1 (a) In an action for divorce, it is immaterial where the
2 marriage was celebrated, where the parties were domiciled at
3 the time the grounds for divorce arose, or where the marital
4 offense was committed. If one or both of the parties is domi-
5 ciled in this state at the time the action is commenced, the
6 circuit courts of this state have jurisdiction to grant a divorce
7 for any grounds fixed by law in this state, without any reference

8 to the law of the place where the marriage occurred or where
9 the marital offense was committed.

10 (b) A judgment order may be entered upon service of
11 process in the manner specified in the Rules of Civil Procedure
12 for the service of process upon individuals.

§48-5-104. Retention of jurisdiction when divorce is denied.

1 If a divorce is denied, the court shall retain jurisdiction of
2 the case and may order all or any portion of the relief provided
3 for in this article that has been demanded in the pleadings.

§48-5-105. Residency requirements for maintaining an action for divorce.

1 (a) Except as otherwise provided in subsection (b) of this
2 section:

3 (1) If the marriage was entered into within this state, an
4 action for divorce is maintainable if one of the parties is an
5 actual bona fide resident of this state at the time of commence-
6 ment of the action, without regard to the length of time resi-
7 dency has continued; or

8 (2) If the marriage was not entered into within this state, an
9 action for divorce is maintainable if:

10 (A) One of the parties was an actual bona fide resident of
11 this state at the time the cause of action arose, or has become a
12 resident since that time; and

13 (B) The residency has continued uninterrupted through the
14 one-year period immediately preceding the filing of the action.

15 (b) An action for divorce cannot be maintained if the cause
16 for divorce is adultery, whether the cause of action arose in or
17 out of this state, unless one of the parties, at the commencement
18 of the action, is a bona fide resident of this state. In such case,
19 if the respondent is a nonresident of this state and cannot be
20 personally served with process within this state, the action is

21 not maintainable unless the petitioner has been an actual bona
22 fide resident of this state for at least one year next preceding the
23 commencement of the action; or

24 (c) When a divorce is granted in this state upon constructive
25 service of process and personal jurisdiction is thereafter
26 obtained of the respondent in the case, the court may order all
27 or any portion of the relief that has been demanded in the
28 pleadings.

§48-5-106. Venue of actions for divorce.

1 (a) If the respondent in an action for divorce is a resident of
2 this state, the petitioner has an option to bring the action in the
3 county in which the parties last cohabited or in the county
4 where the respondent resides.

5 (b) If the respondent in an action for divorce is not a
6 resident of this state, the petitioner has an option to bring the
7 action in the county in which the parties last cohabited or in the
8 county where the petitioner resides.

§48-5-107. Parties to a divorce action.

1 (a) Either or both of the parties to a marriage may initiate
2 an action for divorce.

3 (b) A spouse who is under the age of majority has standing
4 in a divorce action to sue, answer, or plead by a next friend.

5 (c) An incompetent or insane person shall sue, answer or
6 plead by his or her committee. If a person has not been adjudi-
7 cated incompetent or insane and has not been divested of the
8 power to act on his or her own behalf, it is presumed that the
9 person has the capacity to bring the action or be made a party
10 respondent. This presumption may be rebutted by evidence
11 which shows that the person cannot reasonably understand the
12 nature and purpose of the action and the effect of his or her acts
13 with reference to the action.

14 (d) The appointment of a guardian ad litem for a minor, an
15 incompetent or an insane party is not required unless specifi-
16 cally ordered by the judge or law master hearing the action.

17 (e) Anyone charged as a particeps criminis shall be made a
18 party to a divorce action, upon his or her application to the
19 court, subject to such terms and conditions as the court may
20 prescribe.

21 (f) In a divorce action where the interests of the minor
22 children of the parties are or may be substantially different from
23 those of either or both of the parents, and the best interests of
24 the children may be in conflict with the desires of either or both
25 parents, the court may make the children parties respondent and
26 appoint a guardian ad litem to advocate and protect their rights
27 and welfare.

PART 2. GROUNDS FOR DIVORCE.

§48-5-201. Grounds for divorce; irreconcilable differences.

1 A circuit judge may order a divorce if the complaint alleges
2 that irreconcilable differences exist between the parties and an
3 answer is filed admitting that allegation. A complaint alleging
4 irreconcilable differences shall set forth the names of any
5 dependent children of either or both of the parties. A divorce on
6 this ground does not require corroboration of the irreconcilable
7 differences or of the issues of jurisdiction or venue. The court
8 may approve, modify or reject any agreement of the parties and
9 make orders concerning spousal support, custodial responsibil-
10 ity, child support, visitation rights or property interests.

§48-5-202. Grounds for divorce; voluntary separation.

1 (a) A divorce may be ordered when the parties have lived
2 separate and apart in separate places of abode without any
3 cohabitation and without interruption for one year. The separa-
4 tion may occur as a result of the voluntary act of one of the
5 parties or the mutual consent of both parties.

6 (b) Allegations of res judicata or recrimination with respect
7 to any other alleged grounds for divorce are not a bar to either
8 party obtaining a divorce on the ground of voluntary separation.

9 (c) When required by the circumstances of a particular case,
10 the court may receive evidence bearing on alleged marital
11 misconduct and may consider issues of fault for the limited
12 purpose of deciding whether spousal support should be
13 awarded. Establishment of fault does not affect the right of
14 either party to obtain a divorce on the ground of voluntary
15 separation.

§48-5-203. Grounds for divorce; cruel or inhuman treatment.

1 (a) A divorce may be ordered for cruel or inhuman treat-
2 ment by either party against the other. Cruel or inhuman
3 treatment includes, but is not limited to, the following:

4 (1) Reasonable apprehension of bodily harm;

5 (2) False accusation of adultery or homosexuality; or

6 (3) Conduct or treatment which destroys or tends to destroy
7 the mental or physical well-being, happiness and welfare of the
8 other and render continued cohabitation unsafe or unendurable.

9 (b) It is not necessary to allege or prove acts of physical
10 violence in order to establish cruel and inhuman treatment as a
11 ground for divorce.

§48-5-204. Grounds for divorce; adultery.

1 A divorce may be ordered for adultery. Adultery is the
2 voluntary sexual intercourse of a married man or woman with
3 a person other than the offender's wife or husband. The burden
4 is on the party seeking the divorce to prove the alleged adultery
5 by clear and convincing evidence.

§48-5-205. Grounds for divorce; conviction of crime.

1 A divorce may be ordered when either of the parties
2 subsequent to the marriage has, in or out of this state, been
3 convicted for the commission of a crime that is a felony, and
4 the conviction is final.

§48-5-206. Grounds for divorce; permanent and incurable insanity.

1 (a) A divorce may be ordered for permanent and incurable
2 insanity, only if the person is permanently and incurably insane
3 and has been confined in a mental hospital or other similar
4 institution for a period of not less than three consecutive years
5 next preceding the filing of the complaint and the court has
6 heard competent medical testimony that such insanity is
7 permanently incurable.

8 (b) A court granting a divorce on this grounds may in its
9 discretion order support and maintenance for the permanently
10 incurably insane party by the other.

11 (c) In an action for divorce or annulment, where the
12 petitioner is permanently incurably insane, the respondent shall
13 not enter a plea of recrimination based upon the insanity of the
14 petitioner.

§48-5-207. Grounds for divorce; habitual drunkenness or drug addiction.

1 (a) A divorce may be ordered for habitual drunkenness of
2 either party subsequent to the marriage.

3 (b) A divorce may be ordered for the addiction of either
4 party, subsequent to the marriage, to the habitual use of any
5 narcotic or dangerous drug defined in this code.

§48-5-208. Grounds for divorce; desertion.

1 A divorce may be ordered to the party abandoned, when
2 either party willfully abandons or deserts the other for six
3 months.

§48-5-209. Grounds for divorce; abuse or neglect of a child.

1 (a) A divorce may be ordered for abuse or neglect of a child
2 of the parties or of one of the parties, "abuse" meaning any
3 physical or mental injury inflicted on such child including, but
4 not limited to, sexual molestation; and "neglect" is willful
5 failure to provide, by a party who has legal responsibility for
6 such child, the necessary support, education as required by law,
7 or medical, surgical or other care necessary for the well-being
8 of such child.

9 (b) A divorce shall not be granted on this ground except
10 upon clear and convincing evidence sufficient to justify
11 permanently depriving the offending party of any allocation of
12 custodial responsibility for the abused or neglected child.

PART 3. DEFENSES.

§48-5-301. When a divorce not to be granted.

1 No divorce for adultery shall be granted on the uncorrobo-
2 rated testimony of a prostitute, or a particeps criminis, or when
3 it appears that the parties voluntarily cohabited after the
4 knowledge of the adultery, or that it occurred more than three
5 years before the institution of the action; nor shall a divorce be
6 granted for any cause when it appears that the offense charged
7 has been condoned, or was committed by the procurement or
8 connivance of the plaintiff, or that the plaintiff has, within three
9 years before the institution of action, been guilty of adultery not
10 condoned, but such exception shall not be applicable to causes
11 of action brought pursuant to sections 5-201 and 5-202 of this
12 chapter . The defense of collusion shall not be pleaded as a bar
13 to a divorce.

PART 4. PRACTICE AND PROCEDURE.

§48-5-401. Verification of pleadings.

1 All pleadings in a divorce action must be verified by the
2 party in whose name they are filed.

§48-5-402. Petition for divorce.

1 (a) An action for divorce is instituted by a verified petition,
2 and the formal style and the caption for all pleadings is “In Re
3 the marriage of _____ and _____”. The parties shall be
4 identified in all pleadings as “petitioner” and “respondent”.

5 (b) The petition must set forth the ground or grounds for
6 divorce. It is not necessary to allege the facts constituting a
7 ground relied on, and a petition or counter-petition is sufficient
8 if a ground for divorce is alleged in the language of the statute
9 as set forth in this article. A judge or law master has the
10 discretionary authority to grant a motion to require a more
11 definite and certain statement, set forth in ordinary and concise
12 language, alleging facts and not conclusions of law.

13 (c) If the jurisdiction of the circuit court to grant a divorce
14 depends upon the existence of certain facts, including, but not
15 limited to, facts showing domicile or domicile for a certain length
16 of time, the petition must allege those facts. It is not necessary
17 that allegations showing requisite domicile be in the language of
18 the statute, but they should conform substantially thereto so that
19 everything material to the fact of requisite domicile can be
20 ascertained therefrom.

21 (d) A petition shall not be taken for confessed, and whether
22 the respondent answers or not, the case shall be tried and heard
23 independently of the admissions of either party in the pleadings
24 or otherwise. No judgment order shall be granted on the
25 uncorroborated testimony of the parties or either of them,
26 except for a proceeding in which the grounds for divorce are
27 irreconcilable differences.

§48-5-403. Answer to petition.

1 (a) The responsive pleading to a petition for divorce is
2 denominated an answer. The form and requisites for an answer
3 to a petition for divorce are governed by the rules of civil
4 procedure for trial courts of record.

5 (b) Except as provided in subsection (c) of this section, an
6 allegedly guilty party who relies upon an affirmative defense

7 must assert such defense by both pleadings and proof. Affirma-
8 tive defenses include, but are not limited to, condonation,
9 connivance, collusion, recrimination, insanity, and lapse of
10 time.

11 (c) In an action in which a party seeks a divorce based on
12 an allegation that the parties have lived separate and apart in
13 separate places of abode without any cohabitation and without
14 interruption for one year, the affirmative defenses including,
15 but not limited to condonation, connivance, collusion, recrimi-
16 nation, insanity, and lapse of time, shall not be raised.

§48-5-404. Advance filing of divorce petition in actions alleging abandonment or voluntary separation.

1 (a) At any time after the parties to a marriage have lived
2 separate and apart in separate places of abode without any
3 cohabitation or after a party is abandoned or deserted, either
4 party living separate and apart or the party abandoned may
5 apply for temporary relief in accordance with the provisions of
6 part 5 of this article by instituting an action for divorce alleging
7 that the petitioner reasonably believes that the period of living
8 separate and apart or of abandonment will continue for the
9 periods prescribed by the applicable provisions of sections 5-
10 202 and 5-208.

11 (b) If the period of abandonment or living separate and
12 apart continues for the period prescribed by the applicable
13 provisions of sections 5-202 and 5-208, the divorce action may
14 proceed to a final hearing without a new petition being filed.

15 (c) The petitioner shall give the respondent at least twenty
16 days' notice of the time, place and purpose of the final hearing,
17 unless the respondent files a verified waiver of notice of further
18 proceedings. If the notice is required to be served, it must be
19 served in the same manner as original process under rule 4(d)
20 of the rules of civil procedure, regardless of whether the
21 respondent has appeared or answered.

§48-5-405. Amendments to pleadings.

1 Amendments to pleadings in an action for divorce are
2 permitted upon the same general considerations which govern
3 the practice in other proceedings, and are properly allowed for
4 the purpose of making the allegations of the pleading more
5 definite and certain, of asserting an essential allegation which
6 has been omitted, or of including allegations of misconduct
7 committed subsequent to the commencement of the action.

**PART 5. TEMPORARY RELIEF DURING
PENDENCY OF ACTION FOR DIVORCE.**

**§48-5-501. Relief that may be included in temporary order of
divorce.**

1 At the time of the filing of the complaint or at any time
2 after the commencement of an action for divorce under the
3 provisions of this article and upon motion for temporary relief,
4 notice of hearing and hearing, the court may order all or any
5 portion of the following temporary relief described in this part
6 5, to govern the marital rights and obligations of the parties
7 during the pendency of the action.

§48-5-502. Temporary spousal support.

1 The court may require either party to pay temporary spousal
2 support in the form of periodic installments, or a lump sum, or
3 both, for the maintenance of the other party.

§48-5-503. Temporary parenting order; child support.

1 (a) The court shall enter a temporary parenting order in
2 accordance with the provisions of sections 9-203 and 9-204 of
3 this chapter that incorporates a temporary parenting plan.

4 (b) When the action involves a minor child or children, the
5 court shall require either party to pay temporary child support
6 in the form of periodic installments for the maintenance of the
7 minor children of the parties.

8 (c) When the action involves a minor child or children, the
9 court shall provide for medical support for any minor children.

§48-5-504. Attorney's fees and court costs.

1 (a) The court may compel either party to pay attorney's fees
2 and court costs reasonably necessary to enable the other party
3 to prosecute or defend the action. The question of whether or
4 not a party is entitled to temporary spousal support is not
5 decisive of that party's right to a reasonable allowance of
6 attorney's fees and court costs.

7 (b) An order for temporary relief awarding attorney fees
8 and court costs may be modified at any time during the pen-
9 dency of the action, as the exigencies of the case or equity and
10 justice may require, including, but not limited to, a modification
11 which would require full or partial repayment of fees and costs
12 by a party to the action to whom or on whose behalf payment
13 of fees and costs was previously ordered. If an appeal is taken
14 or an intention to appeal is stated, the court may further order
15 either party to pay attorney fees and costs on appeal.

16 (c) If it appears to the court that a party has incurred
17 attorney fees and costs unnecessarily because the opposing
18 party has asserted unfounded claims or defenses for vexatious,
19 wanton or oppressive purposes, thereby delaying or diverting
20 attention from valid claims or defenses asserted in good faith,
21 the court may order the offending party, or his or her attorney,
22 or both, to pay reasonable attorney fees and costs to the other
23 party.

§48-5-505. Costs of health care and hospitalization.

1 As an incident to requiring the payment of temporary
2 spousal support, the court may order either party to continue in
3 effect existing policies of insurance covering the costs of health
4 care and hospitalization of the other party. If there is no such
5 existing policy or policies, the court may order that such health
6 care insurance coverage be paid for by a party if the court
7 determines that such health care coverage is available to that
8 party at a reasonable cost. Payments made to an insurer
9 pursuant to this subdivision, either directly or by a deduction
10 from wages, may be deemed to be temporary spousal support.

§48-5-506. Use and occupancy of the marital home.

1 (a) The court may grant the exclusive use and occupancy of
2 the marital home to one of the parties during the pendency of
3 the action, together with all or a portion of the household goods,
4 furniture and furnishings, reasonably necessary for such use and
5 occupancy.

6 (b) The court may require payments to third parties in the
7 form of home loan installments, land contract payments, rent,
8 payments for utility services, property taxes and insurance
9 coverage. If these third party payments are ordered, the court
10 may specify whether such payments or portions of payments
11 are temporary spousal support, temporary child support, a
12 partial distribution of marital property or an allocation of
13 marital debt.

14 (c) If the court does not set forth in the temporary order that
15 all or a portion of payments made to third parties pursuant to
16 this section are to be deemed temporary child support, then all
17 the payments made pursuant to this section are deemed to be
18 temporary spousal support. The court may order third party
19 payments to be made without denominating them as either
20 temporary spousal support or temporary child support, reserv-
21 ing such decision until the court determines the interests of the
22 parties in marital property and equitably divides the same. At
23 the time the court determines the interests of the parties in
24 marital property and equitably divides the same, the court may
25 consider the extent to which payments made to third parties
26 under the provisions of this subdivision have affected the rights
27 of the parties in marital property and may treat these payments
28 as a partial distribution of marital property notwithstanding the
29 fact that these payments were denominated temporary spousal
30 support or temporary child support or not so denominated under
31 the provisions of this section.

32 (d) If the payments are not designated in an order and the
33 parties have waived any right to receive spousal support, the
34 court may designate the payments upon motion by any party.

35 (e) Nothing contained in this section shall abrogate an
36 existing contract between either of the parties and a third party,
37 or affect the rights and liabilities of either party or a third party
38 under the terms of a contract.

§48-5-507. Use and possession of motor vehicles.

1 (a) As an incident to requiring the payment of temporary
2 alimony, the court may grant the exclusive use and possession
3 of one or more motor vehicles to either of the parties during the
4 pendency of the action.

5 (b) The court may require payments to third parties in the
6 form of automobile loan installments or insurance coverage,
7 and payments made to third parties pursuant to this section are
8 deemed to be temporary spousal support, subject to any
9 reservation provided for in subsection (c) of this section.

10 (c) The court may order that third party payments made
11 pursuant to this section be made without denominating them as
12 temporary spousal support, reserving that decision until the
13 court determines the interests of the parties in marital property
14 and equitably divides the same. At the time the court deter-
15 mines the interests of the parties in marital property and
16 equitably divides the same, the court may consider the extent to
17 which payments made to third parties under the provisions of
18 this section have affected the rights of the parties in marital
19 property and may treat such payments as a partial distribution
20 of marital property notwithstanding the fact that such payments
21 have been denominated temporary spousal support or not so
22 denominated under the provisions of this section.

23 (d) Nothing contained in this section will abrogate an
24 existing contract between either of the parties and a third party
25 or affect the rights and liabilities of either party or a third party
26 under the terms of a contract.

§48-5-508. Preservation of the properties of the parties.

1 (a) If the pleadings include a specific request for specific
2 property or raise issues concerning the equitable division of
3 marital property, the court may enter an order that is reasonably
4 necessary to preserve the estate of either or both of the parties.

5 (b) The court may impose a constructive trust, so that the
6 property is forthcoming to meet any order that is made in the
7 action, and may compel either party to give security to comply
8 with the order, or may require the property in question to be
9 delivered into the temporary custody of a third party.

10 (c) The court may order either or both of the parties to pay
11 the costs and expenses of maintaining and preserving the
12 property of the parties during the pendency of the action. At the
13 time the court determines the interests of the parties in marital
14 property and equitably divides the same, the court may consider
15 the extent to which payments made for the maintenance and
16 preservation of property under the provisions of this section
17 have affected the rights of the parties in marital property and
18 may treat such payments as a partial distribution of marital
19 property. The court may release all or any part of such protected
20 property for sale and substitute all or a portion of the proceeds
21 of the sale for such property.

§48-5-509. Enjoining abuse.

1 (a) The court may enjoin the offending party from molest-
2 ing or interfering with the other, or otherwise imposing any
3 restraint on the personal liberty of the other, or interfering with
4 the custodial or visitation rights of the other. This order may
5 permanently enjoin the offending party from:

6 (1) Entering the school, business or place of employment of
7 the other for the purpose of molesting or harassing the other;

8 (2) Contacting the other, in person or by telephone, for the
9 purpose of harassment or threats; or

10 (3) Verbally abusing the other in a public place.

11 (b) Any order entered by the court to protect a party from
12 abuse may grant any other relief that may be appropriate for
13 inclusion under the provisions of article 27 of this chapter.

§48-5-510. Consideration of financial factors in ordering temporary relief.

1 (a) In ordering temporary relief under the provisions of this
2 part 5, the court shall consider the financial needs of the parties,
3 the present income of each party from any source, their
4 income-earning abilities and the respective legal obligations of
5 each party to support himself or herself and to support any other
6 persons.

7 (b) Except in extraordinary cases supported by specific
8 findings set forth in the order granting relief, payments of
9 temporary spousal support and temporary child support are to
10 be made from a party's income and not from the corpus of a
11 party's separate estate, and an award of such relief shall not be
12 disproportionate to a party's ability to pay as disclosed by the
13 evidence before the court: *Provided*, That child support shall be
14 established in accordance with the child support guidelines set
15 forth in article 13 of this chapter.

§48-5-511. Disclosure of assets.

1 To facilitate the resolution of issues arising at a hearing for
2 temporary relief, the court may, or upon the motion of either
3 party shall, order the parties to comply with the disclosure
4 requirements set forth in article 7 of this chapter prior to the
5 hearing for temporary relief. The form for this disclosure shall
6 substantially comply with the form promulgated by the supreme
7 court of appeals, pursuant to said section. If either party fails to
8 timely file a complete disclosure as required by this section or
9 as ordered by the court, the court may accept the statement of
10 the other party as accurate.

§48-5-512. Ex parte orders granting temporary relief.

1 An ex parte order granting all or part of the relief provided
2 for in this part 5 may be granted without written or oral notice
3 to the adverse party if:

4 (1) It appears from specific facts shown by affidavit or by
5 the verified complaint that immediate and irreparable injury,
6 loss or damage will result to the applicant before the adverse
7 party or such party's attorney can be heard in opposition. The
8 potential injury, loss or damage may be anticipated when the
9 following conditions exist: *Provided*, That the following list of
10 conditions is not exclusive:

11 (A) There is a real and present threat of physical injury to
12 the applicant at the hands or direction of the adverse party;

13 (B) The adverse party is preparing to quit the state with a
14 minor child or children of the parties, thus depriving the court
15 of jurisdiction in the matter of child custody;

16 (C) The adverse party is preparing to remove property from
17 the state or is preparing to transfer, convey, alienate, encumber
18 or otherwise deal with property which could otherwise be
19 subject to the jurisdiction of the court and subject to judicial
20 order under the provisions of this section or part 5-601, et seq.;

21 and

22 (2) The moving party or his or her attorney certifies in
23 writing any effort that has been made to give the notice and the
24 reasons supporting his or her claim that notice should not be
25 required.

§48-5-513. Granting of ex parte relief.

1 (a) Every ex parte order granted without notice must:

2 (1) Be endorsed with the date and hour of issuance;

3 (2) Be filed forthwith in the circuit clerk's office and
4 entered of record; and

5 (3) Set forth the finding of the court that unless the order is
6 granted without notice there is probable cause to believe that
7 existing conditions will result in immediate and irreparable
8 injury, loss or damage to the moving party before the adverse
9 party or his or her attorney can be heard in opposition.

10 (b) The order granting ex parte relief must fix a time for a
11 hearing for temporary relief to be held within a reasonable time,
12 not to exceed twenty days, unless before the time fixed for
13 hearing, the hearing is continued for good cause shown or with
14 the consent of the party against whom the ex parte order is
15 directed. The reasons for the continuance must be entered of
16 record. Within the time limits described herein, when an ex
17 parte order is made, a motion for temporary relief must be set
18 down for hearing at the earliest possible time and takes prece-
19 dence over all matters except older matters of the same charac-
20 ter. If the party who obtained the ex parte order fails to proceed
21 with a motion for temporary relief, the court shall set aside the
22 ex parte order.

23 (c) At any time after ex parte relief is granted, and on two
24 days' notice to the party who obtained the relief or on such
25 shorter notice as the court may direct, the adverse party may
26 appear and move the court to set aside or modify the ex parte
27 order on the grounds that the effects of the order are onerous or
28 otherwise improper. In that event, the court shall proceed to
29 hear and determine such motion as expeditiously as the ends of
30 justice require.

§48-5-514. Temporary order not subject to appeal or review.

1 An order granting temporary relief may not be the subject
2 of an appeal or a petition for review.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-601. Relief that may be included in final order of divorce.

1 In ordering a divorce, the court may order additional relief,
2 including but not limited to, the relief described in the follow-
3 ing sections of this part 6.

§48-5-602. Court may require payment of spousal support.

1 The court, in ordering a divorce may require either party to
2 pay spousal support in accordance with the provisions of article
3 8-101, et seq., of this chapter:

§48-5-603. Relief regarding minor child or children.

1 (a) If the action involves a minor child or children, the court
2 may, if appropriate, order the allocation of custodial responsi-
3 bility and the allocation of decision-making responsibility in
4 accordance with the provisions of article 9-101, et seq., of this
5 chapter.

6 (b) If the action involves a minor child or children, the
7 court shall order either or both parties to pay child support in
8 accordance with the provisions of articles 11-101, et seq., and
9 13-101, et seq., of this chapter.

10 (c) If the action involves a minor child or children, the court
11 shall order medical support to be provided for the child or
12 children in accordance with the provisions of article 12-101, et
13 seq., of this chapter.

§48-5-604. Use and occupancy of marital home.

1 (a) A circuit court may award the exclusive use and
2 occupancy of the marital home to a party. An order granting use
3 and occupancy of the marital home shall include the use of any
4 necessary household goods, furniture and furnishings. The order
5 shall establish a definite period for the use and occupancy,
6 ending at a specific time set forth in the order, subject to
7 modification upon the petition of either party.

8 (b) Generally, an award of the exclusive use and occupancy
9 of the marital home is appropriate when necessary to accommo-
10 date rearing minor children of the parties. Otherwise, the court
11 may award exclusive use and occupancy only in extraordinary

12 cases supported by specific findings set forth in the order that
13 grants relief.

14 (c) An order awarding the exclusive use and occupancy of
15 the marital home may also require payments to third parties for
16 home loan installments, land contract payments, rent, property
17 taxes and insurance coverage. When requiring third-party
18 payments, the court shall reduce them to a fixed monetary
19 amount set forth in the order. The court shall specify whether
20 third-party payments or portions of payments are spousal
21 support, child support, a partial distribution of marital property
22 or an allocation of marital debt. Unless the court identifies third
23 party payments as child support payments or as installment
24 payments for the distribution of marital property, then such
25 payments are spousal support. If the court does not identify the
26 payments and the parties have waived any right to receive
27 spousal support, the court may identify the payments upon
28 motion by any party.

29 (d) This section is not intended to abrogate a contract
30 between either party and a third party or affect the rights and
31 liabilities of either party or a third party under the terms of a
32 contract.

§48-5-605. Use and possession of motor vehicles.

1 (a) A circuit court may award the exclusive use and
2 possession of a motor vehicle or vehicles to either of the
3 parties.

4 (b) The court may require payments to third parties in the
5 form of automobile loan installments or insurance coverage, if
6 coverage is available at reasonable rates. When requiring
7 third-party payments, the court shall reduce them to a fixed
8 monetary amount set forth in the order. The court shall specify
9 whether third-party payments or portions of payments are
10 spousal support or installment payments for the distribution of
11 marital property.

12 (c) This section is not intended to abrogate a contract
13 between either party and a third party or affect the rights and

14 liabilities of either party or a third party under the terms of a
15 contract.

**§48-5-606. Relief regarding costs of health care and hospitaliza-
tion.**

1 As an incident to requiring the payment of spousal support
2 or child support, the court may order either party to provide
3 medical support to the other party. Payments made to an insurer
4 pursuant to this subdivision, either directly or by a deduction
5 from wages, shall be deemed to be spousal support or install-
6 ment payments for the distribution of marital property, in such
7 proportion as the court shall direct: *Provided*, That if the court
8 does not set forth in the order that a portion of the payments is
9 to be deemed installment payments for the distribution of
10 marital property, then all payments made pursuant to this
11 section are spousal support. The designation of insurance
12 coverage as spousal support under the provisions of this
13 subdivision shall not, in and of itself, give rise to a subsequent
14 modification of the order to provide for spousal support other
15 than insurance for covering the costs of health care and hospi-
16 talization.

**§48-5-607. Court may order transfer of accounts for recurring
expenses.**

1 The court may order either party to take necessary steps to
2 transfer utility accounts and other accounts for recurring
3 expenses from the name of one party into the name of the other
4 party or from the joint names of the parties into the name of one
5 party. This section is not intended to affect the liability of the
6 parties for indebtedness on any account incurred before the
7 transfer of the account.

§48-5-608. Court may enjoin abuse.

1 When allegations of abuse have been proved, the court shall
2 enjoin the offending party from molesting or interfering with
3 the other, or otherwise imposing any restraint on the personal
4 liberty of the other or interfering with the custodial or visitation
5 rights of the other. The order may permanently enjoin the

6 offending party from entering the school, business or place of
7 employment of the other for the purpose of molesting or
8 harassing the other; or from contacting the other, in person or
9 by telephone, for the purpose of harassment or threats; or from
10 harassing or verbally abusing the other in a public place.

§48-5-609. Court may restore to either party his or her property.

1 Upon ordering a divorce, the court has the power to award
2 to either of the parties whatever of his or her property, real or
3 personal, may be in the possession, or under the control, or in
4 the name, of the other, and to compel a transfer or conveyance.

§48-5-610. Court may order just and equitable distribution of property.

1 (a) When the pleadings include a specific request for
2 specific property or raise issues concerning the equitable
3 division of marital property, the court shall order such relief as
4 may be required to effect a just and equitable distribution of the
5 property and to protect the equitable interests of the parties
6 therein.

7 (b) In addition to the disclosure requirements set forth in
8 part 7-201, et seq., of this chapter, the court may order accounts
9 to be taken as to all or any part of marital property or the
10 separate estates of the parties and may direct that the accounts
11 be taken as of the date of the marriage, the date upon which the
12 parties separated or any other time in assisting the court in the
13 determination and equitable division of property.

§48-5-611. Suit money, counsel fees and costs.

1 (a) Costs may be awarded to either party as justice requires,
2 and in all cases the court, in its discretion, may require payment
3 of costs at any time, and may suspend or withhold any order
4 until the costs are paid.

5 (b) The court may compel either party to pay attorney's
6 fees and court costs reasonably necessary to enable the other
7 party to prosecute or defend the action in the trial court. An

8 order for temporary relief awarding attorney fees and court
 9 costs may be modified at any time during the pendency of the
 10 action, as the exigencies of the case or equity and justice may
 11 require, including, but not limited to, a modification which
 12 would require full or partial repayment of fees and costs by a
 13 party to the action to whom or on whose behalf payment of
 14 such fees and costs was previously ordered. If an appeal be
 15 taken or an intention to appeal be stated, the court may further
 16 order either party to pay attorney fees and costs on appeal.

17 (c) When it appears to the court that a party has incurred
 18 attorney fees and costs unnecessarily because the opposing
 19 party has asserted unfounded claims or defenses for vexatious,
 20 wanton or oppressive purposes, thereby delaying or diverting
 21 attention from valid claims or defenses asserted in good faith,
 22 the court may order the offending party, or his or her attorney,
 23 or both, to pay reasonable attorney fees and costs to the other
 24 party.

§48-5-612. Court may order a party to deliver separate property.

1 Unless a contrary disposition is ordered pursuant to other
 2 provisions of this section, then upon the motion of either party,
 3 the court may compel the other party to deliver to the moving
 4 party any of his or her separate estate which may be in the
 5 possession or control of the respondent party and may make
 6 such further order as is necessary to prevent either party from
 7 interfering with the separate estate of the other.

§48-5-613. Former name of party; restoration.

1 The court, upon ordering a divorce, shall if requested to do
 2 so by either party, allow such party to resume the name used
 3 prior to his or her first marriage. The court shall, if requested to
 4 do so by either party, allow such party to resume the name of a
 5 former spouse if such party has any living child or children by
 6 marriage to such former spouse.

PART 7. MODIFICATION OF FINAL DIVORCE ORDER.

§48-5-701. Revision of order concerning spousal support.

1 After the entry of a final divorce order, the court may revise
2 the order concerning spousal support or the maintenance of the
3 parties and enter a new order concerning the same, as the
4 circumstances of the parties may require.

§48-5-702. Revision of order enjoining abuse.

1 After entering an order enjoining abuse in accordance with
2 the provisions of section 5-508, the court may from time to time
3 afterward, upon motion of either of the parties and upon proper
4 service, revise the order and enter a new order concerning the
5 same, as the circumstances of the parties and the benefit of
6 children may require.

**§48-5-703. Revision of order allocating custodial responsibility
and decision-making responsibility.**

1 After entering an order allocating custodial responsibility
2 and decision-making responsibility in accordance with the
3 provisions of sections 9-206 and 9-207, the court may also from
4 time to time afterward, upon the motion of either of the parties
5 or other proper person having actual or legal custody of the
6 minor child or children of the parties, revise or alter the order
7 concerning the allocation of custodial responsibility or alloca-
8 tion of decision-making responsibility in accordance with the
9 provisions of article 9 of this chapter, and make a new order
10 concerning the same, issuing it forthwith, as the circumstances
11 of the parents or other proper person or persons and the benefit
12 of the children may require.

§48-5-704. Revision of order establishing child support.

1 (a) After entering an order establishing child support in
2 accordance with the provisions of section 5-603, the court may
3 from time to time afterward, upon the motion of either of the
4 parties or other proper person having actual or legal custody of
5 the minor child or children of the parties, revise or alter the
6 order concerning the support of the children, and make a new
7 order concerning the same, issuing it forthwith, as the circum-

8 stances of the parents or other proper person or persons and the
9 benefit of the children may require.

10 (b) All orders modifying an award of child support must
11 conform to the provisions regarding child support guidelines
12 that are set forth in article 13 of this chapter.

13 (c) An order providing for child support payments may be
14 revised or altered for the reason, inter alia, that the existing
15 order provides for child support payments in an amount that is
16 less than eighty-five percent or more than one hundred fifteen
17 percent of the amount that would be required to be paid under
18 the provisions of the child support guidelines that are set forth
19 in article 13 of this chapter.

**§48-5-705. Bureau for child support enforcement may seek
revision of order establishing child support.**

1 The bureau for child support enforcement may review a
2 child support order and, if appropriate, file a motion with the
3 court for modification of the child support order.

**§48-5-706. Revision of order concerning distribution of marital
property.**

1 In modifying a final divorce order, the court may, when
2 other means are not conveniently available, alter any prior order
3 of the court with respect to the distribution of marital property,
4 if:

5 (1) The property is still held by the parties;

6 (2) The alteration of the prior order as it relates the distribu-
7 tion of marital property is necessary to give effect to a modifi-
8 cation of spousal support, child support or child custody; or

9 (3) The alteration of the prior order as it relates the distribu-
10 tion of marital property is necessary to avoid an inequitable or
11 unjust result which would be caused by the manner in which the
12 modification will affect the prior distribution of marital
13 property.

§48-5-707. Reduction or termination of spousal support because of de facto marriage.

1 (a)(1) In the discretion of the court, an award of spousal
2 support may be reduced or terminated upon specific written
3 findings by the court that since the granting of a divorce and the
4 award of spousal support a de facto marriage has existed
5 between the spousal support payee and another person.

6 (2) In determining whether an existing award of spousal
7 support should be reduced or terminated because of an alleged
8 de facto marriage between a payee and another person, the court
9 should elicit the nature and extent of the relationship in ques-
10 tion. The court should give consideration, without limitation, to
11 circumstances such as the following in determining the relation-
12 ship of an ex-spouse to another person:

13 (A) The extent to which the ex-spouse and the other person
14 have held themselves out as a married couple by engaging in
15 conduct such as using the same last name, using a common
16 mailing address, referring to each other in terms such as “my
17 husband” or “my wife”, or otherwise conducting themselves in
18 a manner that evidences a stable marriage-like relationship;

19 (B) The period of time that the ex-spouse has resided with
20 another person not related by consanguinity or affinity in a
21 permanent place of abode;

22 (C) The duration and circumstances under which the
23 ex-spouse has maintained a continuing conjugal relationship
24 with the other person;

25 (D) The extent to which the ex-spouse and the other person
26 have pooled their assets or income or otherwise exhibited
27 financial interdependence;

28 (E) The extent to which the ex-spouse or the other person
29 has supported the other, in whole or in part;

30 (F) The extent to which the ex-spouse or the other person
31 has performed valuable services for the other;

32 (G) The extent to which the ex-spouse or the other person
33 has performed valuable services for the other's company or
34 employer;

35 (H) Whether the ex-spouse and the other person have
36 worked together to create or enhance anything of value;

37 (I) Whether the ex-spouse and the other person have jointly
38 contributed to the purchase of any real or personal property;

39 (J) Evidence in support of a claim that the ex-spouse and
40 the other person have an express agreement regarding property
41 sharing or support; or

42 (K) Evidence in support of a claim that the ex-spouse and
43 the other person have an implied agreement regarding property
44 sharing or support.

45 (3) On the issue of whether spousal support should be
46 reduced or terminated under this subsection, the burden is on
47 the payor to prove by a preponderance of the evidence that a de
48 facto marriage exists. If the court finds that the payor has failed
49 to meet burden of proof on the issue, the court may award
50 reasonable attorney's fees to a payee who prevails in an action
51 that sought to reduce or terminate spousal support on the
52 ground that a de facto marriage exists.

53 (4) The court shall order that a reduction or termination of
54 spousal support is retroactive to the date of service of the
55 petition on the payee, unless the court finds that reimbursement
56 of amounts already paid would cause an undue hardship on the
57 payee.

58 (5) An award of rehabilitative spousal support shall not be
59 reduced or terminated because of the existence of a de facto
60 marriage between the spousal support payee and another
61 person.

62 (6) An award of spousal support in gross shall not be
63 reduced or terminated because of the existence of a de facto

64 marriage between the spousal support payee and another
65 person.

66 (7) An award of spousal support shall not be reduced or
67 terminated under the provisions of this subsection for conduct
68 by a spousal support payee that occurred before the first day of
69 October, one thousand nine hundred ninety-nine.

70 (b) Nothing in this subsection shall be construed to abrogate
71 the requirement that every marriage in this state be solemnized
72 under a license or construed to recognize a common law
73 marriage as valid.

ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION AGREEMENTS.

PART 1. DEFINITIONS.

§48-6-101. Property settlement or separation agreement defined.

1 (a) "Property settlement or separation agreement" means a
2 written agreement between a husband and wife whereby they
3 agree to live separate and apart from each other. A separation
4 agreement may also:

5 (1) settle the property rights of the parties;

6 (2) provide for child support;

7 (3) provide for the allocation of custodial responsibility and
8 the determination of decision-making responsibility for the
9 children of the parties;

10 (4) provide for the payment or waiver of spousal support by
11 either party; or

12 (5) otherwise settle and compromise issues arising from the
13 marital rights and obligations of the parties.

14 (b) To the extent that an antenuptial agreement affects the
15 property rights of the parties or the disposition of property after

16 an annulment of the marriage or after a divorce or separation of
17 the parties, the antenuptial agreement is a separation agreement.

PART 2. RELIEF BASED ON AGREEMENT.

§48-6-201. Effect of separation agreement.

1 (a) In cases where the parties to an action commenced
2 under the provisions of this chapter have executed a separation
3 agreement, if the court finds that the agreement is fair and
4 reasonable, and not obtained by fraud, duress or other uncon-
5 scionable conduct by one of the parties, and further finds that
6 the parties, through the separation agreement, have expressed
7 themselves in terms which, if incorporated into a judicial order,
8 would be enforceable by a court in future proceedings, then the
9 court shall conform the relief which it is authorized to order
10 under the provisions of parts 5 and 6, article 5 of this chapter to
11 the separation agreement of the parties. The separation agree-
12 ment may contractually fix the division of property between the
13 parties and may determine whether spousal support shall be
14 awarded, whether an award of spousal support, other than an
15 award of rehabilitative spousal support or spousal support in
16 gross, may be reduced or terminated because a de facto mar-
17 riage exists between the spousal support payee and another
18 person, whether a court shall have continuing jurisdiction over
19 the amount of a spousal support award so as to increase or
20 decrease the amount of spousal support to be paid, whether
21 spousal support shall be awarded as a lump sum settlement in
22 lieu of periodic payments, whether spousal support shall
23 continue beyond the death of the payor party or the remarriage
24 of the payee party, or whether the spousal support award shall
25 be enforceable by contempt proceedings or other judicial
26 remedies aside from contractual remedies.

27 (b) Any award of periodic payments of spousal support
28 shall be deemed to be judicially decreed and subject to subse-
29 quent modification unless there is some explicit, well ex-
30 pressed, clear, plain and unambiguous provision to the contrary
31 set forth in the court-approved separation agreement or the
32 order granting the divorce. Child support shall, under all

33 circumstances, always be subject to continuing judicial modifi-
34 cation.

§48-6-202. Agreement for spousal support beyond the death of the payor.

1 When a separation agreement is the basis for an award of
2 spousal support, the court, in approving the agreement, shall
3 examine the agreement to ascertain whether it clearly provides
4 for spousal support to continue beyond the death of the payor
5 or the payee or to cease in such event. When spousal support is
6 to be paid pursuant to the terms of a separation agreement
7 which does not state whether the payment of spousal support is
8 to continue beyond the death of the payor or payee or is to
9 cease, or when the parties have not entered into a separation
10 agreement and spousal support is awarded, the court shall have
11 the discretion to determine, as a part of its order, whether such
12 payments of spousal support are to be continued beyond the
13 death of the payor or payee or cease. In the event neither an
14 agreement nor an order makes provision for the death of the
15 payor or payee, spousal support other than rehabilitative
16 spousal support or spousal support in gross shall cease on the
17 death of the payor or payee. In the event neither an agreement
18 nor an order makes provision for the death of the payor,
19 rehabilitative spousal support continues beyond the payor's
20 death, in the absence of evidence that the payor's estate is likely
21 to be insufficient to meet other obligations or that other matters
22 would make continuation after death inequitable. Rehabilitative
23 spousal support ceases with the payee's death. In the event
24 neither an agreement nor an order makes provision for the death
25 of the payor or payee, spousal support in gross continues
26 beyond the payor's or payee's death.

§48-6-203. Agreement for spousal support beyond the remarriage of the payee.

1 When a separation agreement is the basis for an award of
2 spousal support, the court, in approving the agreement, shall
3 examine the agreement to ascertain whether it clearly provides
4 for spousal support to continue beyond the remarriage of the

5 payee or to cease in such event. When spousal support is to be
 6 paid pursuant to the terms of a separation agreement which does
 7 not state whether the payment of spousal support is to continue
 8 beyond the remarriage of the payee or is to cease, or when the
 9 parties have not entered into a separation agreement and
 10 spousal support is awarded, the court shall have the discretion
 11 to determine, as a part of its order, whether such payments of
 12 spousal support are to be continued beyond the remarriage of
 13 the payee. In the event neither an agreement nor an order makes
 14 provision for the remarriage of the payee, spousal support other
 15 than rehabilitative spousal support or spousal support in gross
 16 shall cease on the remarriage of the payee. Rehabilitative
 17 spousal support does not cease upon the remarriage of the payee
 18 during the first four years of a rehabilitative period. In the event
 19 neither an agreement nor an order makes provision for the
 20 remarriage of the payee, spousal support in gross continues
 21 beyond the payee's remarriage.

PART 3. RELIEF IN ABSENCE OF AGREEMENT.

§48-6-301. Factors considered in awarding spousal support, child support or separate maintenance.

1 (a) In cases where the parties to an action commenced
 2 under the provisions of this article have not executed a separa-
 3 tion agreement, or have executed an agreement which is
 4 incomplete or insufficient to resolve the outstanding issues
 5 between the parties, or where the court finds the separation
 6 agreement of the parties not to be fair and reasonable or clear
 7 and unambiguous, the court shall proceed to resolve the issues
 8 outstanding between the parties.

9 (b) The court shall consider the following factors in
 10 determining the amount of spousal support, child support or
 11 separate maintenance, if any, to be ordered under the provisions
 12 of parts 5 and 6, article five of this chapter, as a supplement to
 13 or in lieu of the separation agreement:

14 (1) The length of time the parties were married;

15 (2) The period of time during the marriage when the parties
16 actually lived together as husband and wife;

17 (3) The present employment income and other recurring
18 earnings of each party from any source;

19 (4) The income-earning abilities of each of the parties,
20 based upon such factors as educational background, training,
21 employment skills, work experience, length of absence from the
22 job market and custodial responsibilities for children;

23 (5) The distribution of marital property to be made under
24 the terms of a separation agreement or by the court under the
25 provisions of article seven of this chapter, insofar as the
26 distribution affects or will affect the earnings of the parties and
27 their ability to pay or their need to receive spousal support,
28 child support or separate maintenance: *Provided*, That for the
29 purposes of determining a spouse's ability to pay spousal
30 support, the court may not consider the income generated by
31 property allocated to the payor spouse in connection with the
32 division of marital property unless the court makes specific
33 findings that a failure to consider income from the allocated
34 property would result in substantial inequity;

35 (6) The ages and the physical, mental and emotional
36 condition of each party;

37 (7) The educational qualifications of each party;

38 (8) Whether either party has foregone or postponed
39 economic, education or employment opportunities during the
40 course of the marriage;

41 (9) The standard of living established during the marriage;

42 (10) The likelihood that the party seeking spousal support,
43 child support or separate maintenance can substantially increase
44 his or her income-earning abilities within a reasonable time by
45 acquiring additional education or training;

46 (11) Any financial or other contribution made by either
47 party to the education, training, vocational skills, career or
48 earning capacity of the other party;

49 (12) The anticipated expense of obtaining the education and
50 training described in subdivision (10) above;

51 (13) The costs of educating minor children;

52 (14) The costs of providing health care for each of the
53 parties and their minor children;

54 (15) The tax consequences to each party;

55 (16) The extent to which it would be inappropriate for a
56 party, because said party will be the custodian of a minor child
57 or children, to seek employment outside the home;

58 (17) The financial need of each party;

59 (18) The legal obligations of each party to support himself
60 or herself and to support any other person;

61 (19) Costs and care associated with a minor or adult child's
62 physical or mental disabilities; and

63 (20) Such other factors as the court deems necessary or
64 appropriate to consider in order to arrive at a fair and equitable
65 grant of spousal support, child support or separate maintenance.

ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.

PART 1. MARITAL PROPERTY DISPOSITION.

§48-7-101. Equal division of marital property.

1 Except as otherwise provided in this section, upon every
2 judgment of annulment, divorce or separation, the court shall
3 divide the marital property of the parties equally between the
4 parties.

§48-7-102. Division of marital property in accordance with a separation agreement.

1 In cases where the parties to an action commenced under
2 the provisions of this chapter have executed a separation
3 agreement, then the court shall divide the marital property in
4 accordance with the terms of the agreement, unless the court
5 finds:

6 (1) That the agreement was obtained by fraud, duress or
7 other unconscionable conduct by one of the parties; or

8 (2) That the parties, in the separation agreement, have not
9 expressed themselves in terms which, if incorporated into a
10 judicial order, would be enforceable by a court in future
11 proceedings; or

12 (3) That the agreement, viewed in the context of the actual
13 contributions of the respective parties to the net value of the
14 marital property of the parties, is so inequitable as to defeat the
15 purposes of this section, and such agreement was inequitable at
16 the time the same was executed.

§48-7-103. Division of marital property without a valid agreement.

1 In the absence of a valid agreement, the court shall presume
2 that all marital property is to be divided equally between the
3 parties, but may alter this distribution, without regard to any
4 attribution of fault to either party which may be alleged or
5 proved in the course of the action, after a consideration of the
6 following:

7 (1) The extent to which each party has contributed to the
8 acquisition, preservation and maintenance, or increase in value
9 of marital property by monetary contributions, including, but
10 not limited to:

11 (A) Employment income and other earnings; and

12 (B) Funds which are separate property.

13 (2) The extent to which each party has contributed to the
14 acquisition, preservation and maintenance or increase in value

15 of marital property by nonmonetary contributions, including,
16 but not limited to:

17 (A) Homemaker services;

18 (B) Child care services;

19 (C) Labor performed without compensation, or for less than
20 adequate compensation, in a family business or other business
21 entity in which one or both of the parties has an interest;

22 (D) Labor performed in the actual maintenance or improve-
23 ment of tangible marital property; and

24 (E) Labor performed in the management or investment of
25 assets which are marital property.

26 (3) The extent to which each party expended his or her
27 efforts during the marriage in a manner which limited or
28 decreased such party's income-earning ability or increased the
29 income-earning ability of the other party, including, but not
30 limited to:

31 (A) Direct or indirect contributions by either party to the
32 education or training of the other party which has increased the
33 income-earning ability of such other party; and

34 (B) Foregoing by either party of employment or other
35 income-earning activity through an understanding of the parties
36 or at the insistence of the other party.

37 (4) The extent to which each party, during the marriage,
38 may have conducted himself or herself so as to dissipate or
39 depreciate the value of the marital property of the parties:
40 *Provided*, That except for a consideration of the economic
41 consequences of conduct as provided for in this subdivision,
42 fault or marital misconduct shall not be considered by the court
43 in determining the proper distribution of marital property.

§48-7-104. Determination of worth of marital property.

1 After considering the factors set forth in section 7-103, the
2 court shall:

3 (1) Determine the net value of all marital property of the
4 parties as of the date of the separation of the parties or as of
5 such later date determined by the court to be more appropriate
6 for attaining an equitable result. Where the value of the marital
7 property portion of a spouse's entitlement to future payments
8 can be determined at the time of entering a final order in a
9 domestic relations action, the court may include it in reckoning
10 the worth of the marital property assigned to each spouse. In the
11 absence of an agreement between the parties, when the value of
12 the future payments is not known at the time of entering a final
13 order in a domestic relations action, if their receipt is contingent
14 on future events or not reasonably assured, or if for other
15 reasons it is not equitable under the circumstances to include
16 their value in the property assigned at the time of dissolution,
17 the court may decline to do so; and

18 (A) Fix the spouses' respective shares in such future
19 payments if and when received; or

20 (B) If it is not possible and practical to fix their share at the
21 time of entering a final order in a domestic relations action,
22 reserve jurisdiction to make an appropriate order at the earliest
23 practical date;

24 If a valuation is made after a contingent or other future fee
25 has been earned through the personal services or skills of a
26 spouse, the portion that is marital property shall be in the same
27 proportion to the total fee that the personal services or skills
28 expended before the separation of the parties bears to the total
29 personal skills or services expended. The provisions of this
30 subdivision apply to pending cases when the issues of contin-
31 gent fees or future earned fees have not been finally adjudi-
32 cated.

33 (2) Designate the property which constitutes marital
34 property, and define the interest therein to which each party is
35 entitled and the value of their respective interest therein. In the
36 case of an action wherein there is no agreement between the
37 parties and the relief demanded requires the court to consider
38 such factors as are described in subdivisions (1), (2), (3) and

39 (4), section 7-103, if a consideration of factors only under said
40 subdivisions (1) and (2) would result in an unequal division of
41 marital property, and if an examination of the factors described
42 in said subdivisions (3) and (4) produce a finding that a party:
43 (A) Expended his or her efforts during the marriage in a manner
44 which limited or decreased such party's income-earning ability
45 or increased the income-earning ability of the other party; or
46 (B) conducted himself or herself so as to dissipate or depreciate
47 the value of the marital property of the parties, then the court
48 may, in the absence of a fair and just spousal support award
49 under the provisions of section 5-602 which adequately takes
50 into account the facts which underlie the factors described in
51 subdivisions (3) and (4), section 7-103, equitably adjust the
52 definition of the parties' interest in marital property, increasing
53 the interest in marital property of a party adversely affected by
54 the factors considered under said subdivisions who would
55 otherwise be awarded less than one half of the marital property,
56 to an interest not to exceed one half of the marital property;

57 (3) Designate the property which constitutes separate
58 property of the respective parties or the separate property of
59 their children;

60 (4) Determine the extent to which marital property is
61 susceptible to division in accordance with the findings of the
62 court as to the respective interests of the parties therein;

63 (5) In the case of any property which is not susceptible to
64 division, ascertain the projected results of a sale of such
65 property;

66 (6) Ascertain the projected effect of a division or transfer of
67 ownership of income-producing property, in terms of the
68 possible pecuniary loss to the parties or other persons which
69 may result from an impairment of the property's capacity to
70 generate earnings; and

71 (7) Transfer title to such component parts of the marital
72 property as may be necessary to achieve an equitable distribu-

73 tion of the marital property. To make such equitable distribu-
74 tion, the court may:

75 (A) Direct either party to transfer their interest in specific
76 property to the other party;

77 (B) Permit either party to purchase from the other party
78 their interest in specific property;

79 (C) Direct either party to pay a sum of money to the other
80 party in lieu of transferring specific property or an interest
81 therein, if necessary to adjust the equities and rights of the
82 parties, which sum may be paid in installments or otherwise, as
83 the court may direct;

84 (D) Direct a party to transfer his or her property to the other
85 party in substitution for property of the other party of equal
86 value which the transferor is permitted to retain and assume
87 ownership of; or

88 (E) Order a sale of specific property and an appropriate
89 division of the net proceeds of such sale: *Provided*, That such
90 sale may be by private sale, or through an agent or by judicial
91 sale, whichever would facilitate a sale within a reasonable time
92 at a fair price.

**§48-7-105. Transfers of property to achieve equitable distribution
of marital property.**

1 In order to achieve the equitable distribution of marital
2 property, the court shall, unless the parties otherwise agree,
3 order, when necessary, the transfer of legal title to any property
4 of the parties, giving preference to effecting equitable distribu-
5 tion through periodic or lump sum payments: *Provided*, That
6 the court may order the transfer of legal title to motor vehicles,
7 household goods and the former marital domicile without
8 regard to such preference where the court determines it to be
9 necessary or convenient. In any case involving the equitable
10 distribution of: (1) Property acquired by bequest, devise,
11 descent, distribution or gift; or (2) ownership interests in a
12 business entity, the court shall, unless the parties otherwise

13 agree, give preference to the retention of the ownership interests
14 in such property. In the case of such business interests, the court
15 shall give preference to the party having the closer involvement,
16 larger ownership interest or greater dependency upon the
17 business entity for income or other resources required to meet
18 responsibilities imposed under this article, and shall also
19 consider the effects of transfer or retention in terms of which
20 alternative will best serve to preserve the value of the business
21 entity or protect the business entity from undue hardship or
22 from interference caused by one of the parties or by the divorce,
23 annulment or decree of separate maintenance: *Provided*,
24 *however*, That the court may, unless the parties otherwise agree,
25 sever the business relationship of the parties and order the
26 transfer of legal title to ownership interests in the business
27 entity from one party to the other, without regard to the
28 limitations on the transfer of title to such property otherwise
29 provided in this subsection, if such transfer is required to
30 achieve the other purposes of this article: *Provided further*, That
31 in all such cases the court shall order, or the agreement of the
32 parties shall provide for, equitable payment or transfer of legal
33 title to other property, of fair value in money or moneys' worth,
34 in lieu of any ownership interests in a business entity which are
35 ordered to be transferred under this subsection: *And provided*
36 *further*, That the court may order the transfer of such business
37 interests to a third party (such as the business entity itself or
38 another principal in the business entity) where the interests of
39 the parties under this article can be protected and at least one
40 party consents thereto.

§48-7-106. Findings; rationale for division of property.

1 In any order which divides or transfers the title to any
2 property, determines the ownership or value of any property,
3 designates the specific property to which any party is entitled
4 or grants any monetary award, the court shall set out in detail its
5 findings of fact and conclusions of law, and the reasons for
6 dividing the property in the manner adopted.

§48-7-107. Refusal to transfer property; appointment of special commissioner.

1 If an order entered in accordance with the provisions of this
2 article requires the transfer of title to property and a party fails
3 or refuses to execute a deed or other instrument necessary to
4 convey title to such property, the deed or other instrument shall
5 be executed by a special commissioner appointed by the court
6 for the purpose of effecting such transfer of title pursuant to
7 section seven, article twelve, chapter fifty-five of this code.

§48-7-108. Interest or title in property prior to judicial determination.

1 As to any third party, the doctrine of equitable distribution
2 of marital property and the provisions of this article shall be
3 construed as creating no interest or title in property until and
4 unless an order is entered under this article judicially defining
5 such interest or approving a separation agreement which defines
6 such interest. Neither this article nor the doctrine of equitable
7 distribution of marital property shall be construed to create
8 community property nor any other interest or estate in property
9 except those previously recognized in this state. A husband or
10 wife may alienate property at any time prior to the entry of an
11 order under the provisions of this article or prior to the
12 recordation of a notice of lis pendens in accordance with the
13 provisions of part 7-401, et seq., and at anytime and in any
14 manner not otherwise prohibited by an order under this chapter,
15 in like manner and with like effect as if this article and the
16 doctrine of equitable distribution had not been adopted:
17 *Provided*, That as to any transfer prior to the entry of an order
18 under the provisions of this article, a transfer other than to a
19 bona fide purchaser for value shall be voidable if the court finds
20 such transfer to have been effected to avoid the application of
21 the provisions of this article or to otherwise be a fraudulent
22 conveyance. Upon the entry of any order under this article or
23 the admission to record of any notice with respect to an action
24 under this article, restraining the alienation of property of a
25 party, a bona fide purchaser for value shall take such title or
26 interest as he or she might have taken prior to the effective date

27 of this section and no purchaser for value need see to the
 28 application of the proceeds of such purchase except to the
 29 extent he or she would have been required so to do prior to the
 30 effective date of this section: *Provided, however,* That as to
 31 third parties nothing in this section shall be construed to limit
 32 or otherwise defeat the interests or rights to property which any
 33 husband or wife would have had in property prior to the
 34 enactment of this section or prior to the adoption of the doctrine
 35 of equitable distribution by the supreme court of appeals on the
 36 twenty-fifth day of May, one thousand nine hundred eighty-
 37 three: *Provided further,* That no order entered under this article
 38 shall be construed to defeat the title of a third party transferee
 39 thereof except to the extent that the power to effect such a
 40 transfer of title or interest in such property is secured by a valid
 41 and duly perfected lien and, as to any personal property,
 42 secured by a duly perfected security interest.

§48-7-109. Tax consequences of transfer of interest or title.

1 Notwithstanding the provisions of chapter eleven of this
 2 code, no transfer of interest in or title to property under this
 3 article is taxable as a transfer of property without consideration
 4 nor, except as to spousal support, create liability for sales, use,
 5 inheritance and transfer or income taxes due the state or any
 6 political subdivision nor require the payment of the excise tax
 7 imposed under article twenty-two, chapter eleven of this code.

**§48-7-110. Requiring sums to be paid out of disposable retired or
 retainer pay.**

1 Whenever under the terms of this article a court enters an
 2 order requiring a division of property, if the court anticipates
 3 the division of property will be effected by requiring sums to be
 4 paid out of “disposable retired or retainer pay” as that term is
 5 defined in 10 U.S.C. §1408, relating to members or former
 6 members of the uniformed services of the United States, the
 7 court shall specifically provide for the payment of an amount,
 8 expressed in dollars or as a percentage of disposable retired or
 9 retainer pay, from the disposable retired or retainer pay of the
 10 payor party to the payee party.

§48-7-111. No equitable distribution of property between individuals not married to one another.

1 A court may not award spousal support or order equitable
2 distribution of property between individuals who are not
3 married to one another in accordance with the provisions of
4 article one of this chapter.

§48-7-112. Prospective effect of prior amendments.

1 The amendments to this section effected by the reenactment
2 of section 48-2-32 during the regular session of the Legislature,
3 1996, are to be applied prospectively and have no application
4 to any action for annulment, divorce or separate maintenance
5 that was commenced on or before June 7, 1996.

PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-201. Required disclosure and updates.

1 In all divorce actions and in any other action involving
2 child support, all parties shall fully disclose their assets and
3 liabilities within forty days after the service of summons or at
4 such earlier time as ordered by the court. The information
5 contained on these forms shall be updated on the record to the
6 date of the hearing.

§48-7-202. Assets that are required to be disclosed.

1 The disclosure required by this part 2 may be made by each
2 party individually or by the parties jointly. Assets required to be
3 disclosed shall include, but are not limited to, real property,
4 savings accounts, stocks and bonds, mortgages and notes, life
5 insurance, health insurance coverage, interest in a partnership
6 or corporation, tangible personal property, income from
7 employment, future interests whether vested or nonvested and
8 any other financial interest or source.

§48-7-203. Forms for disclosure of assets.

1 The supreme court of appeals shall make available to the
2 circuit courts a standard form for the disclosure of assets and
3 liabilities required by this part 2. The clerk of the circuit court

4 shall make these forms available to all parties in any divorce
5 action or action involving child support. All disclosure required
6 by this part 2 shall be on a form that substantially complies with
7 the form promulgated by the supreme court of appeals. The
8 form used shall contain a statement in conspicuous print that
9 complete disclosure of assets and liabilities is required by law
10 and deliberate failure to provide complete disclosure as ordered
11 by the court constitutes false swearing.

§48-7-204. Discovery under rules; optional disclosure of tax returns.

1 Nothing contained in this part 2 shall be construed to
2 prohibit the court from ordering discovery pursuant to rule
3 eighty-one of the rules of civil procedure. Additionally, the
4 court may on its own initiative and shall at the request of either
5 party require the parties to furnish copies of all state and federal
6 income tax returns filed by them for the past two years and may
7 require copies of such returns for prior years.

§48-7-205. Confidentiality of disclosed information.

1 Information disclosed under this part 2 is confidential and
2 may not be made available to any person for any purpose other
3 than the adjudication, appeal, modification or enforcement of
4 judgment of an action affecting the family of the disclosing
5 parties. The court shall include in any order compelling
6 disclosure of assets such provisions as the court considers
7 necessary to preserve the confidentiality of the information
8 ordered disclosed.

§48-7-206. Failure to disclose required financial information.

1 Any failure to timely or accurately disclose financial
2 information required by this part 2 may be considered as
3 follows:
4 (1) Upon the failure by either party timely to file a complete
5 disclosure statement as required by this part 2 or as ordered by

6 the court, the court may accept the statement of the other party
7 as accurate.

8 (2) If any party deliberately or negligently fails to disclose
9 information which is required by this part 2 and in consequence
10 thereof any asset or assets with a fair market value of five
11 hundred dollars or more is omitted from the final distribution of
12 property, the party aggrieved by the nondisclosure may at any
13 time petition a court of competent jurisdiction to declare the
14 creation of a constructive trust as to all undisclosed assets, for
15 the benefit of the parties and their minor or dependent children,
16 if any, with the party in whose name the assets are held de-
17 clared the constructive trustee, such trust to include such terms
18 and conditions as the court may determine. The court shall
19 impose the trust upon a finding of a failure to disclose such
20 assets as required under this part 2.

21 (3) Any assets with a fair market value of five hundred
22 dollars or more which would be considered part of the estate of
23 either or both of the parties if owned by either or both of them
24 at the time of the action, but which was transferred for inade-
25 quate consideration, wasted, given away or otherwise unac-
26 counted for by one of the parties, within five years prior to the
27 filing of the petition or length of the marriage, whichever is
28 shorter, shall be presumed to be part of the estate and shall be
29 subject to the disclosure requirement contained in this part 2 .
30 With respect to such transfers the spouse shall have the same
31 right and remedies as a creditor whose debt was contracted at
32 the time the transfer was made under article one-a, chapter forty
33 of this code. Transfers which resulted in an exchange of assets
34 of substantially equivalent value need not be specifically
35 disclosed when such assets are otherwise identified in the
36 statement of net worth.

37 (4) A person who knowingly provides incorrect information
38 or who deliberately fails to disclose information pursuant to the
39 provisions of this part 2 is guilty of false swearing.

PART 3. INJUNCTION; SETTING ASIDE CERTAIN TRANSFERS.

§48-7-301. Injunction to prevent removal or disposition of property.

1 Where it appears to the court that a party is about to remove
2 himself or herself or his or her property from the jurisdiction of
3 the court or is about to dispose of, alienate or encumber
4 property in order to defeat a fair distribution of marital prop-
5 erty, or the payment of alimony, child support or separate
6 maintenance, an injunction may issue to prevent the removal or
7 disposition and the property may be attached as provided by
8 this code. The court may issue such injunction or attachment
9 without bond.

§48-7-302. Notice of hearing for injunction; temporary injunction.

1 Any such injunction may be granted upon proper hearing
2 after notice. For good cause shown, a temporary injunction may
3 be issued after an ex parte proceeding with notice and proper
4 hearing for a permanent injunction to be held forthwith thereaf-
5 ter.

§48-7-303. Applicability of injunction procedures to sale of goods or disposition of major business assets.

1 The procedures of this part 3 are not intended to apply to
2 the sale of goods in the ordinary course of operating a business
3 but shall apply to the disposition of the major assets of a
4 business.

§48-7-304. Setting aside encumbrance or disposition of property to third persons.

1 Any encumbrance or disposition of property to third
2 persons, except to bona fide purchasers without notice for full
3 and adequate consideration, may be set aside by the court.

PART 4. LIS PENDENS.

§48-7-401. Lis pendens.

1 Upon the commencement of an action under the provisions
2 of this article, any party claiming an interest in real property in
3 which the other party has an interest, may cause a notice of lis

4 pendens to be recorded in the office of the clerk of the county
5 commission of the county wherein the property is located.

§48-7-402. Notice of lis pendens.

1 The notice shall contain the names of the parties, the nature
2 of the complaint, the court having jurisdiction, the date the
3 complaint was filed, and a description of the real property. Such
4 notice shall, from the time of the recording only, be notice to
5 any person thereafter acquiring any interest in such property of
6 the pendency of the complaint. Each person whose conveyance
7 or encumbrance is subsequently executed or subsequently
8 recorded or whose interest is thereafter acquired by descent, or
9 otherwise, shall be deemed to be a subsequent purchaser or
10 encumbrancer, and shall be bound by all proceedings taken
11 after the recording of the notice, to the same extent as if he were
12 made a party to the complaint. A notice of lis pendens recorded
13 in accordance with this section may be discharged by the court
14 upon substitution of a bond with surety in an amount estab-
15 lished by the court, if the court finds that the claim against the
16 property subject to the notice of lis pendens can be satisfied by
17 a monetary award. In cases in which the sale of property is
18 already in process when the notice of lis pendens is filed, and
19 upon application, proper notice and hearing, the court may
20 substitute a lien on the net proceeds of the sale.

**PART 5. MISCELLANEOUS PROVISIONS
RELATING TO EQUITABLE DISTRIBUTION.**

§48-7-501. Retroactive effect of amendments.

1 Amendments made to the provisions of former article two
2 of this chapter during the regular session of the Legislature in
3 the year one thousand nine hundred eighty-four, shall be of
4 retroactive effect to the extent that such amended provisions
5 shall apply to the distribution of marital property, but not an
6 award of spousal support, in all actions filed under the provi-
7 sions of former article two of this chapter after the twenty-fifth
8 day of May, one thousand nine hundred eighty-three, or actions
9 pending on that date in which a claim for equitable distribution

10 of marital property had been pleaded: *Provided*, That the
 11 amendments are not applicable to actions where, prior to the
 12 effective date of the amendments, there has been a final decree
 13 entered or the taking of evidence has been completed and the
 14 case has been submitted for decision.

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-101. General provisions regarding spousal support.

1 (a) An obligation that compels a person to pay spousal
 2 support may arise from the terms of a court order, an antenu-
 3 tial agreement or a separation agreement. In an order or
 4 agreement, a provision that has the support of a spouse or
 5 former spouse as its sole purpose is to be regarded as an
 6 allowance for spousal support whether expressly designated as
 7 such or not, unless the provisions of this chapter specifically
 8 require the particular type of allowance to be treated as child
 9 support or a division of marital property. Spousal support may
 10 be paid as a lump sum or as periodic installments without
 11 affecting its character as spousal support.

12 (b) Spousal support is divided into four classes which are:
 13 (1) Permanent spousal support; (2) temporary spousal support,
 14 otherwise known as spousal support pendente lite; (3) rehabili-
 15 tative spousal support; and (4) spousal support in gross.

16 (c) An award of spousal support cannot be ordered unless
 17 the parties are actually living separate and apart from each
 18 other.

§48-8-102. Jurisdiction to award spousal support.

1 Jurisdiction to make a judicial award of spousal support is
 2 vested in the circuit courts of this state. A circuit court has
 3 jurisdiction to provide for the maintenance of a spouse during
 4 the pendency of an appeal to the supreme court of appeals.

§48-8-103. Payment of spousal support.

1 Upon ordering a divorce or granting a decree of separate
 2 maintenance, the court may require either party to pay spousal
 3 support in the form of periodic installments, or a lump sum, or

4 both, for the maintenance of the other party. Payments of
5 spousal support are to be ordinarily made from a party's
6 income, but when the income is not sufficient to adequately
7 provide for those payments, the court may, upon specific
8 findings set forth in the order, order the party required to make
9 those payments to make them from the corpus of his or her
10 separate estate. An award of spousal support shall not be
11 disproportionate to a party's ability to pay as disclosed by the
12 evidence before the court.

§48-8-104. Effect of fault or misconduct on award of spousal support.

1 (a) In determining whether spousal support is to be
2 awarded, or in determining the amount of spousal support, if
3 any, to be awarded, the court shall consider and compare the
4 fault or misconduct of either or both of the parties and the effect
5 of such fault or misconduct as a contributing factor to the
6 deterioration of the marital relationship. However, spousal
7 support shall not be awarded when both parties prove grounds
8 for divorce and are denied a divorce, nor shall an award of
9 spousal support under the provisions of this section be ordered
10 which directs the payment of spousal support to a party
11 determined to be at fault, when, as a grounds granting the
12 divorce, such party is determined by the court:

13 (1) To have committed adultery; or

14 (2) To have been convicted for the commission of a crime
15 which is a felony, subsequent to the marriage if such conviction
16 has become final; or

17 (3) To have actually abandoned or deserted his or her
18 spouse for six months.

19 (b) At any time after the entry of an order pursuant to the
20 provisions of this section, the court may, upon motion of either
21 party, revise or alter the order concerning the maintenance of
22 the parties, or either of them, and make a new order concerning
23 the same, issuing it forthwith, as the altered circumstances or

24 needs of the parties may render necessary to meet the ends of
25 justice.

§48-8-105. Rehabilitative spousal support.

1 (a) A circuit court may award rehabilitative spousal support
2 for a limited period of time to allow the recipient spouse,
3 through reasonable efforts, to become gainfully employed.
4 When awarding rehabilitative spousal support, the court shall
5 make specific findings of fact to explain the basis for the award,
6 giving due consideration to the factors set forth in section 8-103
7 of this article. An award of rehabilitative spousal support is
8 appropriate when the dependent spouse evidences a potential
9 for self-support that could be developed through rehabilitation,
10 training or academic study.

11 (b) A circuit court may modify an award of rehabilitative
12 spousal support if a substantial change in the circumstances
13 under which rehabilitative spousal support was granted war-
14 rants terminating, extending or modifying the award or replac-
15 ing it with an award of permanent spousal support. In determin-
16 ing whether a substantial change of circumstances exists which
17 would warrant a modification of a rehabilitative spousal support
18 award, the trial court may consider a reassessment of the
19 dependent spouse's potential work skills and the availability of
20 a relevant job market, the dependent spouse's age, health and
21 skills, the dependent spouse's ability or inability to meet the
22 terms of the rehabilitative plan, and other relevant factors as
23 provided for in section 8-103 of this article.

§48-8-106. Payments out of disposable retired or retainer pay.

1 Whenever the court enters an order requiring the payment
2 of spousal support, if the court anticipates the payment or any
3 portion thereof is to be paid out of "disposable retired or
4 retainer pay" as that term is defined in 10 U. S. C. §1408,
5 relating to members or former members of the uniformed
6 services of the United States, the court shall specifically
7 provide for the payment of an amount, expressed in dollars or

8 as a percentage of disposable retired or retainer pay, from the
9 disposable retired or retainer pay of the payor party to the payee
10 party.

ARTICLE 9. CUSTODY OF CHILDREN.

**PART 1. SCOPE; OBJECTIVES;
PARTIES AND PARENT EDUCATION CLASSES.**

§48-9-101. Scope of article; legislative findings and declarations.

1 (a) This article sets forth principles governing the allocation
2 of custodial and decision-making responsibility for a minor
3 child when the parents do not live together.

4 (b) The Legislature finds and declares that it is the public
5 policy of this state to assure that the best interest of children is
6 the court's primary concern in allocating custodial and deci-
7 sion-making responsibilities between parents who do not live
8 together. In furtherance of this policy, the Legislature declares
9 that a child's best interest will be served by assuring that minor
10 children have frequent and continuing contact with parents who
11 have shown the ability to act in the best interest of their
12 children, to educate parents on their rights and responsibilities
13 and the effect their separation may have on children, to encour-
14 age mediation of disputes, and to encourage parents to share in
15 the rights and responsibilities of rearing their children after the
16 parents have separated or divorced.

§48-9-102. Objectives; best interests of the child.

1 (a) The primary objective of this article is to serve the
2 child's best interests, by facilitating:

3 (1) Stability of the child;

4 (2) Parental planning and agreement about the child's
5 custodial arrangements and upbringing;

6 (3) Continuity of existing parent-child attachments;

7 (4) Meaningful contact between a child and each parent;

8 (5) Caretaking relationships by adults who love the child,
9 know how to provide for the child's needs, and who place a
10 high priority on doing so;

11 (6) Security from exposure to physical or emotional harm;
12 and

13 (7) Expedient, predictable decision-making and avoidance
14 of prolonged uncertainty respecting arrangements for the
15 child's care and control.

16 (b) A secondary objective of article is to achieve fairness
17 between the parents.

§48-9-103. Parties to an action under this article.

1 (a) Persons who have a right to be notified of and partici-
2 pate as a party in an action filed by another are:

3 (1) A legal parent of the child, as defined in section 1-232
4 of this chapter;

5 (2) An adult allocated custodial responsibility or deci-
6 sion-making responsibility under a parenting plan regarding the
7 child that is then in effect; or

8 (3) Persons who were parties to a prior order establishing
9 custody and visitation, or who, under a parenting plan, were
10 allocated custodial responsibility or decision-making responsi-
11 bility.

12 (b) In exceptional cases the court may, in its discretion,
13 grant permission to intervene to other persons or public
14 agencies whose participation in the proceedings under this
15 article it determines is likely to serve the child's best interests.
16 The court may place limitations on participation by the inter-
17 vening party as the court determines to be appropriate. Such
18 persons or public agencies do not have standing to initiate an
19 action under this article.

§48-9-104. Parent education classes.

1 (a) A circuit court shall, by administrative rule or order, and
2 with the approval of the supreme court of appeals, designate an
3 organization or agency to establish and operate education
4 programs designed for parents who have filed an action for
5 divorce, paternity, support, separate maintenance or other
6 custody proceeding and who have minor children. The educa-
7 tion programs shall be designed to instruct and educate parents
8 about the effects of divorce and custody disputes on their
9 children and to teach parents ways to help their children and
10 minimize their trauma.

11 (b) The circuit court shall issue an order requiring parties to
12 an action for divorce involving a minor child or children to
13 attend parent education classes established pursuant to subsec-
14 tion (a) of this section unless the court determines that atten-
15 dance is not appropriate or necessary based on the conduct or
16 circumstances of the parties. The court may, by order, establish
17 sanctions for failure to attend. The court may also order parties
18 to an action involving paternity, separate maintenance or
19 modification of a divorce decree to attend such classes.

20 (c) The circuit court may require that each person attending
21 a parent education class pay a fee, not to exceed twenty-five
22 dollars, to the clerk of such court to defray the cost of materials
23 and of hiring teachers: *Provided*, That where it is determined
24 that a party is indigent and unable to pay for such classes, the
25 court shall waive the payment of the fee for such party. The
26 clerk of the circuit court shall, on or before the tenth day of
27 each month, transmit all fees collected under this subsection to
28 the state treasurer for deposit in the state treasury to the credit
29 of special revenue fund to be known as the "parent education
30 fund", which is hereby created. All moneys collected and
31 received under this subsection and paid into the state treasury
32 and credited to the parent education fund shall be used by the
33 administrative office of the supreme court of appeals solely for
34 reimbursing the provider of parent education classes for the
35 costs of materials and of providing such classes. Such moneys

36 shall not be treated by the auditor and treasurer as part of the
37 general revenue of the state.

38 (d) The administrative office of the supreme court of
39 appeals shall submit a report to the joint committee on govern-
40 ment and finance summarizing the effectiveness of any program
41 of parent education no later than two years from the initiation
42 of the program.

PART 2. PARENTING PLANS.

§48-9-201. Parenting agreements.

1 (a) If the parents agree to one or more provisions of a
2 parenting plan, the court shall so order, unless it makes specific
3 findings that:

4 (1) The agreement is not knowing or voluntary; or

5 (2) The plan would be harmful to the child.

6 (b) The court, at its discretion and on any basis it deems
7 sufficient, may conduct an evidentiary hearing to determine
8 whether there is a factual basis for a finding under subdivision
9 (1) or (2), subsection (a) of this section. When there is credible
10 information that child abuse as defined by section 49-1-3 of this
11 code or domestic violence as defined by section 27-202 of this
12 code has occurred, a hearing is mandatory and if the court
13 determines that abuse has occurred, appropriate protective
14 measures shall be ordered.

15 (c) If an agreement, in whole or in part, is not accepted by
16 the court under the standards set forth in subsection (a) of this
17 section, the court shall allow the parents the opportunity to
18 negotiate another agreement.

§48-9-202. Court-ordered services.

1 (a)(1) The court shall inform the parents, or require them to
2 be informed, about:

3 (A) How to prepare a parenting plan;

4 (B) The impact of family dissolution on children and how
5 the needs of children facing family dissolution can best be
6 addressed;

7 (C) The impact of domestic abuse on children, and re-
8 sources for addressing domestic abuse; and

9 (D) Mediation or other nonjudicial procedures designed to
10 help them achieve an agreement.

11 (2) The court shall require the parents to attend parent
12 education classes.

13 (3) If parents are unable to resolve issues and agree to a
14 parenting plan, the court shall require mediation, unless
15 application of the procedural rules promulgated pursuant to the
16 provisions of subsection (b) of this section indicates that
17 mediation is inappropriate in the particular case.

18 (b) The supreme court of appeals shall make and promul-
19 gate rules that will provide for premediation screening proce-
20 dures to determine whether domestic violence, child abuse or
21 neglect, acts or threats of duress or coercion, substance abuse,
22 mental illness or other such elements would adversely affect the
23 safety of a party, the ability of a party to meaningfully partici-
24 pate in the mediation, or the capacity of a party to freely and
25 voluntarily consent to any proposed agreement reached as a
26 result of the mediation. Such rules shall authorize a family law
27 master or judge to consider alternatives to mediation which may
28 aid the parties in establishing a parenting plan. Such rules shall
29 not establish a per se bar to mediation if domestic violence,
30 child abuse or neglect, acts or threats of duress or coercion,
31 substance abuse, mental illness or other such elements exist, but
32 may be the basis for the court, in its discretion, not to order
33 services under subsection (a) of this section, or not to require a
34 parent to have face-to-face meetings with the other parent.

35 (c) A mediator shall not make a recommendation to the
36 court and may not reveal information that either parent has
37 disclosed during mediation under a reasonable expectation of
38 confidentiality, except that a mediator may reveal to the court
39 credible information that he or she has received concerning
40 domestic violence or child abuse.

41 (d) Mediation services authorized under subsection (a) of
42 this section shall be ordered at an hourly cost that is reasonable
43 in light of the financial circumstances of each parent, assessed
44 on a uniform sliding scale. Where one parent's ability to pay for
45 such services is significantly greater than the other, the court
46 may order that parent to pay some or all of the expenses of the
47 other. State revenues shall not be used to defray the costs for
48 the services of a mediator: *Provided*, That the supreme court of
49 appeals may use a portion of its budget to pay administrative
50 costs associated with establishing and operating mediation
51 programs: *Provided, however*, That grants and gifts to the state
52 that may be used to fund mediation are not to be considered as
53 state revenues for purposes of this subsection.

54 (e) The supreme court of appeals shall establish standards
55 for the qualification and training of mediators.

**§48-9-203. Proposed temporary parenting plan; temporary
order; amendment; vacation of order.**

1 (a) A parent seeking a temporary order relating to parenting
2 shall file and serve a proposed temporary parenting plan by
3 motion. The other parent, if contesting the proposed temporary
4 parenting plan, shall file and serve a responsive proposed
5 parenting plan. Either parent may move to have a proposed
6 temporary parenting plan entered as part of a temporary order.
7 The parents may enter an agreed temporary parenting plan at
8 any time as part of a temporary order. The proposed temporary
9 parenting plan may be supported by relevant evidence and shall
10 be verified and shall state at a minimum the following:

11 (1) The name, address and length of residence with the
12 person or persons with whom the child has lived for the
13 preceding twelve months;

14 (2) The performance by each parent during the last twelve
15 months of the parenting functions relating to the daily needs of
16 the child;

17 (3) The parents' work and child-care schedules for the
18 preceding twelve months;

19 (4) The parents' current work and child-care schedules; and

20 (5) Any of the circumstances set forth in section 9-209 that
21 are likely to pose a serious risk to the child and that warrant
22 limitation on the award to a parent of temporary residence or
23 time with the child pending entry of a permanent parenting
24 plan.

25 (b) At the hearing, the court shall enter a temporary
26 parenting order incorporating a temporary parenting plan which
27 includes:

28 (1) A schedule for the child's time with each parent when
29 appropriate;

30 (2) Designation of a temporary residence for the child;

31 (3) Allocation of decision-making authority, if any. Absent
32 allocation of decision-making authority consistent with section
33 two hundred seven of this article, neither party shall make any
34 decision for the child other than those relating to day-to-day or
35 emergency care of the child, which shall be made by the party
36 who is present with the child;

37 (4) Provisions for temporary support for the child; and

38 (5) Restraining orders, if applicable.

39 (c) A parent may make a motion for an order to show cause
40 and the court may enter a temporary order, including a tempo-
41 rary parenting plan, upon a showing of necessity.

42 (d) A parent may move for amendment of a temporary
43 parenting plan, and the court may order amendment to the
44 temporary parenting plan, if the amendment conforms to the
45 limitations of section 9-209 and is in the best interest of the
46 child.

§48-9-204. Criteria for temporary parenting plan.

1 (a) After considering the proposed temporary parenting
2 plan filed pursuant to section 9-203 and other relevant evidence
3 presented, the court shall make a temporary parenting plan that
4 is in the best interest of the child. In making this determination,
5 the court shall give particular consideration to:

6 (1) Which parent has taken greater responsibility during the
7 last twelve months for performing caretaking functions relating
8 to the daily needs of the child; and

9 (2) Which parenting arrangements will cause the least
10 disruption to the child's emotional stability while the action is
11 pending.

12 (b) The court shall also consider the factors used to deter-
13 mine residential provisions in the permanent parenting plan.

14 (c) Upon credible evidence of one or more of the circum-
15 stances set forth in subsection 9-209(a), the court shall issue a
16 temporary order limiting or denying access to the child as
17 required by that section, in order to protect the child or the other
18 party, pending adjudication of the underlying facts.

19 (d) Expedited procedures shall be instituted to facilitate the
20 prompt issuance of a parenting plan.

§48-9-205. Permanent parenting plan.

1 (a) A party seeking a judicial allocation of custodial
2 responsibility or decision-making responsibility under this
3 article shall file a proposed parenting plan with the court.
4 Parties may file a joint plan. A proposed plan shall be verified

5 and shall state, to the extent known or reasonably discoverable
6 by the filing party or parties:

7 (1) The name, address and length of residence of any adults
8 with whom the child has lived for one year or more, or in the
9 case of a child less than one year old, any adults with whom the
10 child has lived since the child's birth;

11 (2) The name and address of each of the child's parents and
12 any other individuals with standing to participate in the action
13 under section 9-103;

14 (3) A description of the allocation of caretaking and other
15 parenting responsibilities performed by each person named in
16 subdivisions (1) and (2) of this subsection during the
17 twenty-four months preceding the filing of an action under this
18 article;

19 (4) A description of the work and child-care schedules of
20 any person seeking an allocation of custodial responsibility, and
21 any expected changes to these schedules in the near future;

22 (5) A description of the child's school and extracurricular
23 activities;

24 (6) A description of any of the limiting factors as described
25 in section 9-209 that are present, including any restraining
26 orders against either parent to prevent domestic or family
27 violence, by case number and jurisdiction;

28 (7) Required financial information; and

29 (8) A description of the known areas of agreement and
30 disagreement with any other parenting plan submitted in the
31 case.

32 The court shall maintain the confidentiality of any informa-
33 tion required to be filed under this section when the person
34 giving that information has a reasonable fear of domestic abuse
35 and disclosure of the information would increase that fear.

36 (b) The court shall develop a process to identify cases in
37 which there is credible information that child abuse or neglect,
38 as defined in section 49-1-3 of this code, or domestic violence
39 as defined in section 27-202 has occurred. The process shall
40 include assistance for possible victims of domestic abuse in
41 complying with subdivision (6), subsection (a) of this section,
42 and referral to appropriate resources for safe shelter, counsel-
43 ing, safety planning, information regarding the potential impact
44 of domestic abuse on children, and information regarding civil
45 and criminal remedies for domestic abuse. The process shall
46 also include a system for ensuring that jointly submitted
47 parenting plans that are filed in cases in which there is credible
48 information that child abuse or domestic abuse has occurred
49 receive the court review that is mandated by subsection 9-
50 201(b).

51 (c) Upon motion of a party and after consideration of the
52 evidence, the court shall order a parenting plan consistent with
53 the provisions of sections 9-206 through 9-209 of this article,
54 containing:

55 (1) A provision for the child's living arrangements and each
56 parent's custodial responsibility, which shall include either:

57 (A) A custodial schedule that designates in which parent's
58 home each minor child will reside on given days of the year; or

59 (B) A formula or method for determining such a schedule
60 in sufficient detail that, if necessary, the schedule can be
61 enforced in subsequent proceedings by the court;

62 (2) An allocation of decision-making responsibility as to
63 significant matters reasonably likely to arise with respect to the
64 child; and

65 (3) A provision consistent with section 9-202 for resolution
66 of disputes that arise under the plan, and remedies for violations
67 of the plan.

68 (d) A parenting plan may, at the court's discretion, contain
69 provisions that address matters that are expected to arise in the
70 event of a party's relocation, or provide for future modifications
71 in the parenting plan if specified contingencies occur.

§48-9-206. Allocation of custodial responsibility.

1 (a) Unless otherwise resolved by agreement of the parents
2 under section 9-201 or unless manifestly harmful to the child,
3 the court shall allocate custodial responsibility so that the
4 proportion of custodial time the child spends with each parent
5 approximates the proportion of time each parent spent perform-
6 ing caretaking functions for the child prior to the parents'
7 separation or, if the parents never lived together, before the
8 filing of the action, except to the extent required under section
9 9-209 or necessary to achieve any of the following objectives:

10 (1) To permit the child to have a relationship with each
11 parent who has performed a reasonable share of parenting
12 functions;

13 (2) To accommodate the firm and reasonable preferences of
14 a child who is fourteen years of age or older, and with regard to
15 a child under fourteen years of age, but sufficiently matured
16 that he or she can intelligently express a voluntary preference
17 for one parent, to give that preference such weight as circum-
18 stances warrant;

19 (3) To keep siblings together when the court finds that
20 doing so is necessary to their welfare;

21 (4) To protect the child's welfare when, under an otherwise
22 appropriate allocation, the child would be harmed because of a
23 gross disparity in the quality of the emotional attachments
24 between each parent and the child or in each parent's demon-
25 strated ability or availability to meet a child's needs;

26 (5) To take into account any prior agreement of the parents
27 that, under the circumstances as a whole including the reason-

28 able expectations of the parents in the interest of the child,
29 would be appropriate to consider;

30 (6) To avoid an allocation of custodial responsibility that
31 would be extremely impractical or that would interfere substan-
32 tially with the child's need for stability in light of economic,
33 physical or other circumstances, including the distance between
34 the parents' residences, the cost and difficulty of transporting
35 the child, the parents' and child's daily schedules, and the
36 ability of the parents to cooperate in the arrangement;

37 (7) To apply the principles set forth in 9-403(d) of this
38 article if one parent relocates or proposes to relocate at a
39 distance that will impair the ability of a parent to exercise the
40 amount of custodial responsibility that would otherwise be
41 ordered under this section; and

42 (8) To consider the stage of a child's development.

43 (b) In determining the proportion of caretaking functions
44 each parent previously performed for the child under subsection
45 (a) of this section, the court shall not consider the divisions of
46 functions arising from temporary arrangements after separation,
47 whether those arrangements are consensual or by court order.
48 The court may take into account information relating to the
49 temporary arrangements in determining other issues under this
50 section.

51 (c) If the court is unable to allocate custodial responsibility
52 under subsection (a) of this section because the allocation under
53 that subsection would be manifestly harmful to the child, or
54 because there is no history of past performance of caretaking
55 functions, as in the case of a newborn, or because the history
56 does not establish a pattern of caretaking sufficiently
57 dispositive of the issues of the case, the court shall allocate
58 custodial responsibility based on the child's best interest, taking
59 into account the factors in considerations that are set forth in
60 this section and in section two hundred nine and 9-403(d) of
61 this article and preserving to the extent possible this section's

62 priority on the share of past caretaking functions each parent
63 performed.

64 (d) In determining how to schedule the custodial time
65 allocated to each parent, the court shall take account of the
66 economic, physical and other practical circumstances such as
67 those listed in subdivision (6), subsection (a) of this section.

§48-9-207. Allocation of significant decision-making responsibility.

1 (a) Unless otherwise resolved by agreement of the parents
2 under section 9-201, the court shall allocate responsibility for
3 making significant life decisions on behalf of the child, includ-
4 ing the child's education and health care, to one parent or to
5 two parents jointly, in accordance with the child's best interest,
6 in light of:

7 (1) The allocation of custodial responsibility under section
8 9-206 of this article;

9 (2) The level of each parent's participation in past decision-
10 making on behalf of the child;

11 (3) The wishes of the parents;

12 (4) The level of ability and cooperation the parents have
13 demonstrated in decision-making on behalf of the child;

14 (5) Prior agreements of the parties; and

15 (6) The existence of any limiting factors, as set forth in
16 section 9-209 of this article.

17 (b) If each of the child's legal parents has been exercising
18 a reasonable share of parenting functions for the child, the court
19 shall presume that an allocation of decision-making responsibil-
20 ity to both parents jointly is in the child's best interests. The
21 presumption is overcome if there is a history of domestic abuse,
22 or by a showing that joint allocation of decision-making
23 responsibility is not in the child's best interest.

24 (c) Unless otherwise provided or agreed by the parents,
25 each parent who is exercising custodial responsibility shall be
26 given sole responsibility for day-to-day decisions for the child,
27 while the child is in that parent's care and control, including
28 emergency decisions affecting the health and safety of the child.

§48-9-208. Criteria for parenting plan; dispute resolution.

1 (a) If provisions for resolving parental disputes are not
2 ordered by the court pursuant to parenting agreement under
3 section 9-201, the court shall order a method of resolving
4 disputes that serves the child's best interest in light of:

5 (1) The parents' wishes and the stability of the child;

6 (2) Circumstances, including, but not limited to, financial
7 circumstances, that may affect the parents ability to participate
8 in a prescribed dispute resolution process; and

9 (3) The existence of any limiting factor, as set forth in
10 section 9-209 of this article.

11 (b) The court may order a nonjudicial process of dispute
12 resolution by designating with particularity the person or
13 agency to conduct the process or the method for selecting such
14 a person or agency. The disposition of a dispute through a
15 nonjudicial method of dispute resolution that has been ordered
16 by the court without prior parental agreement is subject to de
17 novo judicial review. If the parents have agreed in a parenting
18 plan or by agreement thereafter to a binding resolution of their
19 dispute by nonjudicial means, a decision by such means is
20 binding upon the parents and must be enforced by the court,
21 unless it is shown to be contrary to the best interests of the
22 child, beyond the scope of the parents' agreement, or the result
23 of fraud, misconduct, corruption or other serious irregularity.

24 (c) This section is subject to the limitations imposed by
25 section two hundred two of this article.

§48-9-209. Parenting plan; limiting factors.

1 (a) If either of the parents so requests, or upon receipt of
2 credible information thereof, the court shall determine whether

3 a parent who would otherwise be allocated responsibility under
4 a parenting plan:

5 (1) Has abused, neglected or abandoned a child, as defined
6 by state law;

7 (2) Has sexually assaulted or sexually abused a child as
8 those terms are defined in articles eight-b and eight-d, chapter
9 sixty-one of this code;

10 (3) Has committed domestic violence, as defined in section
11 27-202;

12 (4) Has interfered persistently with the other parent's access
13 to the child, except in the case of actions taken for the purpose
14 of protecting the safety of the child or the interfering parent or
15 another family member, pending adjudication of the facts
16 underlying that belief; or

17 (5) Has repeatedly made fraudulent reports of domestic
18 violence or child abuse.

19 (b) If a parent is found to have engaged in any activity
20 specified by subsection (a) of this section, the court shall
21 impose limits that are reasonably calculated to protect the child
22 or child's parent from harm. The limitations that the court shall
23 consider include, but are not limited to:

24 (1) An adjustment of the custodial responsibility of the
25 parents, including the allocation of exclusive custodial respon-
26 sibility to one of them;

27 (2) Supervision of the custodial time between a parent and
28 the child;

29 (3) Exchange of the child between parents through an
30 intermediary, or in a protected setting;

31 (4) Restraints on the parent from communication with or
32 proximity to the other parent or the child;

33 (5) A requirement that the parent abstain from possession
34 or consumption of alcohol or nonprescribed drugs while
35 exercising custodial responsibility and in the twenty-four hour
36 period immediately preceding such exercise;

37 (6) Denial of overnight custodial responsibility;

38 (7) Restrictions on the presence of specific persons while
39 the parent is with the child;

40 (8) A requirement that the parent post a bond to secure
41 return of the child following a period in which the parent is
42 exercising custodial responsibility or to secure other perfor-
43 mance required by the court;

44 (9) A requirement that the parent complete a program of
45 intervention for perpetrators of domestic violence, for drug or
46 alcohol abuse, or a program designed to correct another factor;
47 or

48 (10) Any other constraints or conditions that the court
49 deems necessary to provide for the safety of the child, a child's
50 parent or any person whose safety immediately affects the
51 child's welfare.

52 (c) If a parent is found to have engaged in any activity
53 specified in subsection (a) of this section, the court may not
54 allocate custodial responsibility or decision-making responsibil-
55 ity to that parent without making special written findings that
56 the child and other parent can be adequately protected from
57 harm by such limits as it may impose under subsection (b) of
58 this section. The parent found to have engaged in the behavior
59 specified in subsection (a) of this section has the burden of
60 proving that an allocation of custodial responsibility or deci-
61 sion-making responsibility to that parent will not endanger the
62 child or the other parent.

PART 3. FACT FINDING.

§48-9-301. Court-ordered investigation.

1 (a) In its discretion, the court may order a written investiga-
2 tion and report to assist it in determining any issue relevant to
3 proceedings under this article. The investigation and report may
4 be made by the guardian ad litem, the staff of the court or other
5 professional social service organization experienced in counsel-
6 ing children and families. The court shall specify the scope of
7 the investigation or evaluation and the authority of the investi-
8 gator.

9 (b) In preparing the report concerning a child, the investiga-
10 tor may consult any person who may have information about
11 the child and the potential parenting or custodian arrangements.
12 Upon order of the court, the investigator may refer the child to
13 professional personnel for diagnosis. The investigator may
14 consult with and obtain information from medical, psychiatric
15 or other expert persons who have served the child in the past
16 without obtaining the consent of the parent or the child's
17 custodian; but the child's consent must be obtained if the child
18 has reached the age of twelve, unless the court finds that the
19 child lacks mental capacity to consent. If the requirements of
20 subsection (c) of this section are fulfilled, the investigator's
21 report may be received in evidence at the hearing.

22 (c) The investigator shall deliver the investigator's report to
23 counsel and to any party not represented by counsel at least ten
24 days prior to the hearing unless a shorter time is ordered by the
25 court for good cause shown. The investigator shall make
26 available to counsel and to any party not represented by counsel
27 the investigator's file of underlying data and reports, complete
28 texts of diagnostic reports made to the investigator pursuant to
29 the provisions of subsection (b) of this section, and the names
30 and addresses of all persons whom the investigator has con-
31 sulted. Any party to the proceeding may call the investigator
32 and any person whom the investigator has consulted for
33 cross-examination. A party may not waive the right of
34 cross-examination prior to the hearing.

35 (d) Services and tests ordered under this section shall be
36 ordered only if at no cost to the individuals involved, or at a

37 cost that is reasonable in light of the available financial
38 resources.

§48-9-302. Appointment of guardian.

1 (a) In its discretion, the court may appoint a guardian ad
2 litem to represent the child's best interests. The court shall
3 specify the terms of the appointment, including the guardian's
4 role, duties and scope of authority.

5 (b) In its discretion, the court may appoint a lawyer to
6 represent the child, if the child is competent to direct the terms
7 of the representation and court has a reasonable basis for
8 finding that the appointment would be helpful in resolving the
9 issues of the case. The court shall specify the terms of the
10 appointment, including the lawyer's role, duties and scope of
11 authority.

12 (c) When substantial allegations of domestic abuse have
13 been made, the court shall order an investigation under section
14 9-301 or make an appointment under subsection (a) or (b) of
15 this section, unless the court is satisfied that the information
16 necessary to evaluate the allegations will be adequately
17 presented to the court without such order or appointment.

18 (d) Subject to whatever restrictions the court may impose
19 or that may be imposed by the attorney-client privilege or by
20 subsection 9-202(d), the court may require the child or parent
21 to provide information to an individual or agency appointed by
22 the court under section 9-301 or subsection (a) or (b) of this
23 section, and it may require any person having information about
24 the child or parent to provide that information, even in the
25 absence of consent by a parent or by the child, except if the
26 information is otherwise protected by law.

27 (e) The investigator who submits a report or evidence to the
28 court that has been requested under section 9-301 and a
29 guardian ad litem appointed under subsection (a) of this section
30 who submits information or recommendations to the court are
31 subject to cross-examination by the parties. A lawyer appointed

32 under subsection (b) of this section may not be a witness in the
33 proceedings, except as allowed under standards applicable in
34 other civil proceedings.

35 (f) Services and tests ordered under this section shall be
36 ordered only if at no cost to the individuals involved, or at a
37 cost that is reasonable in light of the available financial
38 resources.

§48-9-303. Interview of the child by the court.

1 The court, in its discretion, may interview the child in
2 chambers or direct another person to interview the child, in
3 order to obtain information relating to the issues of the case.
4 The interview shall be conducted in accordance with rule 16 of
5 the rules of practice and procedure for family law, as promul-
6 gated by the supreme court of appeals.

PART 4. MODIFICATION OF PARENTING PLAN.

**§48-9-401. Modification upon showing of changed circumstances
or harm.**

1 (a) Except as provided in section 9-402 or 9-403, a court
2 shall modify a parenting plan order if it finds, on the basis of
3 facts that were not known or have arisen since the entry of the
4 prior order and were not anticipated therein, that a substantial
5 change has occurred in the circumstances of the child or of one
6 or both parents and a modification is necessary to serve the best
7 interests of the child.

8 (b) In exceptional circumstances, a court may modify a
9 parenting plan if it finds that the plan is not working as contem-
10 plated and in some specific way is manifestly harmful to the
11 child, even if a substantial change of circumstances has not
12 occurred.

13 (c) Unless the parents have agreed otherwise, the following
14 circumstances do not justify a significant modification of a
15 parenting plan except where harm to the child is shown:

16 (1) Circumstances resulting in an involuntary loss of
17 income, by loss of employment or otherwise, affecting the
18 parent's economic status;

19 (2) A parent's remarriage or cohabitation; and

20 (3) Choice of reasonable caretaking arrangements for the
21 child by a legal parent, including the child's placement in day
22 care.

23 (d) For purposes of subsection (a) of this section, the
24 occurrence or worsening of a limiting factor, as defined in
25 subsection (a), section 9-209, after a parenting plan has been
26 ordered by the court, constitutes a substantial change of
27 circumstances and measures shall be ordered pursuant to
28 section 9-209 to protect the child or the child's parent.

**§48-9-402. Modification without showing of changed circum-
stances.**

1 (a) The court shall modify a parenting plan in accordance
2 with a parenting agreement, unless it finds that the agreement
3 is not knowing and voluntary or that it would be harmful to the
4 child.

5 (b) The court may modify any provisions of the parenting
6 plan without the showing of change circumstances required by
7 subsection 9-401(a) if the modification is in the child's best
8 interests, and the modification:

9 (1) Reflects the de facto arrangements under which the
10 child has been receiving care from the petitioner, without
11 objection, in substantial deviation from the parenting plan, for
12 the preceding six months before the petition for modification is
13 filed, provided the arrangement is not the result of a parent's
14 acquiescence resulting from the other parent's domestic abuse;

15 (2) Constitutes a minor modification in the plan; or

16 (3) Is necessary to accommodate the reasonable and firm
17 preferences of a child who has attained the age of fourteen.

18 (c) Evidence of repeated filings of fraudulent reports of
19 domestic violence or child abuse is admissible in a domestic
20 relations action between the involved parties when the alloca-
21 tion of custodial responsibilities is in issue, and the fraudulent
22 accusations may be a factor considered by the court in making
23 the allocation of custodial responsibilities.

§48-9-403. Relocation of a parent.

1 (a) The relocation of a parent constitutes a substantial
2 change in the circumstances under subsection 9-401(a) of the
3 child only when it significantly impairs either parent's ability
4 to exercise responsibilities that the parent has been exercising.

5 (b) Unless otherwise ordered by the court, a parent who has
6 responsibility under a parenting plan who changes, or intends
7 to change, residences for more than ninety days must give a
8 minimum of sixty days' advance notice, or the most notice
9 practicable under the circumstances, to any other parent with
10 responsibility under the same parenting plan. Notice shall
11 include:

12 (1) The relocation date;

13 (2) The address of the intended new residence;

14 (3) The specific reasons for the proposed relocation;

15 (4) A proposal for how custodial responsibility shall be
16 modified, in light of the intended move; and

17 (5) Information for the other parent as to how he or she may
18 respond to the proposed relocation or modification of custodial
19 responsibility.

20 Failure to comply with the notice requirements of this
21 section without good cause may be a factor in the determination
22 of whether the relocation is in good faith under subsection (d)

23 of this section, and is a basis for an award of reasonable
24 expenses and reasonable attorneys fees to another parent that
25 are attributable to such failure.

26 The supreme court of appeals shall make available through
27 the offices of the circuit clerks and the family law masters a
28 form notice that complies with the provisions of this subsection.
29 The supreme court of appeals shall promulgate procedural rules
30 that provide for an expedited hearing process to resolve issues
31 arising from a relocation or proposed relocation.

32 (c) When changed circumstances are shown under subsec-
33 tion (a) of this section, the court shall, if practical, revise the
34 parenting plan so as to both accommodate the relocation and
35 maintain the same proportion of custodial responsibility being
36 exercised by each of the parents. In making such revision, the
37 court may consider the additional costs that a relocation
38 imposes upon the respective parties for transportation and
39 communication, and may equitably allocate such costs between
40 the parties.

41 (d) When the relocation constituting changed circumstances
42 under subsection (a) of this section renders it impractical to
43 maintain the same proportion of custodial responsibility as that
44 being exercised by each parent, the court shall modify the
45 parenting plan in accordance with the child's best interests and
46 in accordance with the following principles:

47 (1) A parent who has been exercising a significant majority
48 of the custodial responsibility for the child should be allowed
49 to relocate with the child so long as that parent shows that the
50 relocation is in good faith for a legitimate purpose and to a
51 location that is reasonable in light of the purpose. The percent-
52 age of custodial responsibility that constitutes a significant
53 majority of custodial responsibility is seventy percent or more.
54 A relocation is for a legitimate purpose if it is to be close to
55 significant family or other support networks, for significant
56 health reasons, to protect the safety of the child or another
57 member of the child's household from significant risk of harm,
58 to pursue a significant employment or educational opportunity,

59 or to be with one's spouse who is established, or who is
60 pursuing a significant employment or educational opportunity,
61 in another location. The relocating parent has the burden of
62 proving of the legitimacy of any other purpose. A move with a
63 legitimate purpose is reasonable unless its purpose is shown to
64 be substantially achievable without moving, or by moving to a
65 location that is substantially less disruptive of the other parent's
66 relationship to the child.

67 (2) If a relocation of the parent is in good faith for legiti-
68 mate purpose and to a location that is reasonable in light of the
69 purpose, and if neither has been exercising a significant
70 majority of custodial responsibility for the child, the court shall
71 reallocate custodial responsibility based on the best interest of
72 the child, taking into account all relevant factors including the
73 effects of the relocation on the child.

74 (3) If a parent does not establish that the purpose for that
75 parent's relocation is in good faith for a legitimate purpose into
76 a location that is reasonable in light of the purpose, the court
77 may modify the parenting plan in accordance with the child's
78 best interests and the effects of the relocation on the child.
79 Among the modifications the court may consider is a realloca-
80 tion of primary custodial responsibility, effective if and when
81 the relocation occurs, but such a reallocation shall not be
82 ordered if the relocating parent demonstrates that the child's
83 best interests would be served by the relocation.

84 (4) The court shall attempt to minimize impairment to a
85 parent-child relationship caused by a parent's relocation
86 through alternative arrangements for the exercise of custodial
87 responsibility appropriate to the parents' resources and circum-
88 stances and the developmental level of the child.

89 (e) In determining the proportion of caretaking functions
90 each parent previously performed for the child under the
91 parenting plan before relocation, the court may not consider a
92 division of functions arising from any arrangements made after
93 a relocation but before a modification hearing on the issues
94 related to relocation.

95 (f) In determining the effect of the relocation or proposed
96 relocation on a child, any interviewing or questioning of the
97 child shall be conducted in accordance with the provisions of
98 rule 17 of the rules of practice and procedure for family law, as
99 promulgated by the supreme court of appeals.

PART 5. ENFORCEMENT OF PARENTING PLANS.

§48-9-501. Enforcement of parenting plans.

1 (a) If, upon a parental complaint, the court finds a parent
2 intentionally and without good cause violated a provision of the
3 court-ordered parenting plan, it shall enforce the remedy
4 specified in the plan or, if no remedies are specified or they are
5 clearly inadequate, it shall find the plan has been violated and
6 order an appropriate remedy, which may include:

7 (1) In the case of interference with the exercise of custodial
8 responsibility for a child by the other parent, substitute time for
9 that parent to make up for time missed with the child;

10 (2) In the case of missed time by a parent, costs in recogni-
11 tion of lost opportunities by the other parent, in child care costs
12 and other reasonable expenses in connection with the missed
13 time;

14 (3) A modification of the plan, if the requirements for a
15 modification are met under section 9-209, section 9-401, 402 or
16 403 of this article, including an adjustment of the custodial
17 responsibility of the parents or an allocation of exclusive
18 custodial responsibility to one of them;

19 (4) An order that the parent who violated the plan obtain
20 appropriate counseling;

21 (5) A civil penalty, in an amount of not more than one
22 hundred dollars for a first offense, not more than five hundred
23 dollars for a second offense, or not more than one thousand
24 dollars for a third or subsequent offense, to be paid to the parent
25 education fund as established under section 9-104;

26 (6) Court costs, reasonable attorney's fees and any other
27 reasonable expenses in enforcing the plan; and

28 (7) Any other appropriate remedy.

29 (b) Except as provided in a jointly submitted plan that has
30 been ordered by the court, obligations established in a parenting
31 plan are independent obligations, and it is not a defense to an
32 action under this section by one parent that the other parent
33 failed to meet obligations under a parenting plan or child
34 support order.

35 (c) An agreement between the parents to depart from the
36 parenting plan can be a defense to a claim that the plan has been
37 violated, even though the agreement was not made part of a
38 court order, but only as to acts or omissions consistent with the
39 agreement that occur before the agreement is disaffirmed by
40 either parent.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-601. Access to a child's records.

1 (a)(1) Each parent has full and equal access to a child's
2 educational records absent a court order to the contrary. Neither
3 parent may veto the access requested by the other parent.
4 Educational records are academic, attendance and disciplinary
5 records of public and private schools in all grades kindergarten
6 through twelve and any form of alternative school. Educational
7 records are any and all school records concerning the child that
8 would otherwise be properly released to the primary custodial
9 parent, including, but not limited to, report cards and progress
10 reports, attendance records, disciplinary reports, results of the
11 child's performance on standardized tests and statewide tests
12 and information on the performance of the school that the child
13 attends on standardized statewide tests; curriculum materials of
14 the class or classes in which the child is enrolled; names of the
15 appropriate school personnel to contact if problems arise with
16 the child; information concerning the academic performance
17 standards, proficiencies, or skills the child is expected to

18 accomplish; school rules, attendance policies, dress codes and
19 procedures for visiting the school; and information about any
20 psychological testing the school does involving the child.

21 (2) In addition to the right to receive school records, the
22 nonresidential parent has the right to participate as a member of
23 a parent advisory committee or any other organization com-
24 prised of parents of children at the school that the child attends.

25 (3) The nonresidential parent or noncustodial parent has the
26 right to question anything in the child's record that the parent
27 feels is inaccurate or misleading or is an invasion of privacy
28 and to receive a response from the school.

29 (4) Each parent has a right to arrange appointments for
30 parent-teacher conferences absent a court order to the contrary.
31 Neither parent can be compelled against their will to exercise
32 this right by attending conferences jointly with the other parent.

33 (b)(1) Each parent has full and equal access to a child's
34 medical records absent a court order to the contrary. Neither
35 parent may veto the access requested by the other parent. If
36 necessary, either parent is required to authorize medical
37 providers to release to the other parent copies of any and all
38 information concerning medical care provided to the child
39 which would otherwise be properly released to either parent.

40 (2) If the child is in the actual physical custody of one
41 parent, that parent is required to promptly inform the other
42 parent of any illness of the child which requires medical
43 attention.

44 (3) Each parent is required to consult with the other parent
45 prior to any elective surgery being performed on the child, and
46 in the event emergency medical procedures are undertaken for
47 the child which require the parental consent of either parent, if
48 time permits, the other parent shall be consulted, or if time does
49 not permit such consultation, the other parent shall be promptly
50 informed of the emergency medical procedures: *Provided*, That
51 nothing contained herein alters or amends the law of this state

52 as it otherwise pertains to physicians or health care facilities
53 obtaining parental consent prior to providing medical care or
54 performing medical procedures.

55 (c) Each parent has full and equal access to a child's
56 juvenile court records, process and pleadings, absent a court
57 order to the contrary. Neither parent may veto any access
58 requested by the other parent. Juvenile court records are limited
59 to those records which are normally available to a parent of a
60 child who is a subject of the juvenile justice system.

**§48-9-602. Designation of custody for the purpose of other state
and federal statutes.**

1 Solely for the purposes of all other state and federal statutes
2 which require a designation or determination of custody, a
3 parenting plan shall designate the parent with whom the child
4 is scheduled to reside the majority of the time as the custodian
5 of the child. However, this designation shall not affect either
6 parent's rights and responsibilities under a parenting plan. In
7 the absence of such a designation, the parent with whom the
8 child is scheduled to reside the majority of the time is deemed
9 to be the custodian of the child for the purposes of such federal
10 and state statutes.

§48-9-603. Effect of enactment; operative dates.

1 (a) The enactment of this article, formerly enacted as article
2 eleven of this chapter during the second extraordinary session
3 of the Legislature, one thousand nine hundred ninety-nine, is
4 prospective in operation unless otherwise expressly indicated.

5 (b) The provisions of section 9-202, insofar as they provide
6 for parent education and mediation, become operative on the
7 first day of January, two thousand. Until that date, parent
8 education and mediation with regard to custody issues are
9 discretionary unless made mandatory under a particular
10 program or pilot project by rule or direction of the supreme
11 court of appeals or a circuit court.

12 (c) The provisions of this article that authorize a circuit
13 court in the absence of an agreement of the parents to order an
14 allocation of custodial responsibility and an allocation of
15 significant decision-making responsibility, became operative on
16 the first day of January, two thousand, at which time the
17 primary caretaker doctrine was replaced with a system that
18 allocates custodial and decision-making responsibility to the
19 parents in accordance with this article. Any order entered prior
20 to the first day of January, two thousand, based on the primary
21 caretaker doctrine remains in full force and effect until modi-
22 fied by a court of competent jurisdiction.

ARTICLE 10. GRANDPARENT VISITATION.

PART 1. GENERAL PROVISIONS.

§48-10-101. Legislative findings.

1 The Legislature finds that circumstances arise where it is
2 appropriate for circuit courts of this state to order that grandpar-
3 ents of minor children may exercise visitation with their
4 grandchildren. The Legislature further finds that in such
5 situations, as in all situations involving children, the best
6 interests of the child or children are the paramount consider-
7 ation.

§48-10-102. Legislative intent.

1 It is the express intent of the Legislature that the provisions
2 for grandparent visitation that are set forth in this article are
3 exclusive.

PART 2. DEFINITIONS.

§48-10-201. Applicability of definitions.

1 For the purposes of this article the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in

4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

§48-10-202. Child defined.

1 “Child” means a person under the age of eighteen years
2 who has not been married or otherwise emancipated.

§48-10-203. Grandparent defined.

1 “Grandparent” means a biological grandparent, a person
2 married or previously married to a biological grandparent, or a
3 person who has previously been granted custody of the parent
4 of a minor child with whom visitation is sought.

**PART 3. APPLICATION TO THE CIRCUIT COURT
FOR GRANDPARENT VISITATION.**

**§48-10-301. Persons who may apply for grandparent visitation;
venue.**

1 A grandparent of a child residing in this state may, by
2 motion or petition, make application to the circuit court of the
3 county in which that child resides for an order granting visita-
4 tion with his or her grandchild.

PART 4. PROCEEDINGS FOR VISITATION FOR GRANDPARENTS.

**§48-10-401. Motion for grandparent visitation when action for
divorce, custody, legal separation, annulment or
establishment of paternity is pending.**

1 (a) The provisions of this section apply to any pending
2 actions for divorce, custody, legal separation, annulment or
3 establishment of paternity.

4 (b) After the commencement of the action, a grandparent
5 seeking visitation with his or her grandchild may, by motion,
6 apply to the circuit court for an order granting visitation. A
7 grandparent moving for an order of visitation will not be

8 afforded party status, but may be called as a witness by the
9 court, and will be subject to cross-examination by the parties.

**§48-10-402. Petition for grandparent visitation when action for
divorce, custody, legal separation, annulment or
establishment of paternity is not pending.**

1 (a) The provisions of this section apply when no proceeding
2 for divorce, custody, legal separation, annulment or establish-
3 ment of paternity is pending.

4 (b) A grandparent may petition the circuit court for an order
5 granting visitation with his or her grandchild, regardless of
6 whether the parents of the child are married. If the grandparent
7 filed a motion for visitation in a previous proceeding for
8 divorce, custody, legal separation, annulment or establishment
9 of paternity, and a decree or final order has issued in that earlier
10 action, the grandparent may petition for visitation if the
11 circumstances have materially changed since the entry of the
12 earlier order or decree.

13 (c) When a petition under this section is filed, the matter
14 shall be styled "In re grandparent visitation of [petitioner's(s')
15 name(s)]."

§48-10-403. Appointment of guardian ad litem for the child.

1 When a motion or petition is filed seeking grandparent
2 visitation, the court, on its own motion or upon the motion of a
3 party or grandparent, may appoint a guardian ad litem for the
4 child to assist the court in determining the best interests of the
5 child regarding grandparent visitation.

**PART 5. FACTORS AFFECTING A DECISION
TO GRANT VISITATION FOR GRANDPARENTS.**

**§48-10-501. Necessary findings for grant of reasonable visitation
to a grandparent.**

1 The circuit court shall grant reasonable visitation to a
2 grandparent upon a finding that visitation would be in the best

3 interests of the child and would not substantially interfere with
4 the parent-child relationship.

**§48-10-502. Factors to be considered in making a determination
as to a grant of visitation to a grandparent.**

1 In making a determination on a motion or petition the court
2 shall consider the following factors:

3 (1) The age of the child;

4 (2) The relationship between the child and the grandparent;

5 (3) The relationship between each of the child's parents or
6 the person with whom the child is residing and the grandparent;

7 (4) The time which has elapsed since the child last had
8 contact with the grandparent;

9 (5) The effect that such visitation will have on the relation-
10 ship between the child and the child's parents or the person
11 with whom the child is residing;

12 (6) If the parents are divorced or separated, the custody and
13 visitation arrangement which exists between the parents with
14 regard to the child;

15 (7) The time available to the child and his or her parents,
16 giving consideration to such matters as each parent's employ-
17 ment schedule, the child's schedule for home, school and
18 community activities, and the child's and parents' holiday and
19 vacation schedule;

20 (8) The good faith of the grandparent in filing the motion or
21 petition;

22 (9) Any history of physical, emotional or sexual abuse or
23 neglect being performed, procured, assisted or condoned by the
24 grandparent;

25 (10) Whether the child has, in the past, resided with the
26 grandparent for a significant period or periods of time, with or
27 without the child's parent or parents;

28 (11) Whether the grandparent has, in the past, been a
29 significant caretaker for the child, regardless of whether the
30 child resided inside or outside of the grandparent's residence;

31 (12) The preference of the parents with regard to the
32 requested visitation; and

33 (13) Any other factor relevant to the best interests of the
34 child.

PART 6. INTERVIEW OF CHILD BY JUDGE.

§48-10-601. Interview of child in chambers.

1 In considering the factors listed in section 10-502 for
2 purposes of determining whether to grant visitation, establish-
3 ing a specific visitation schedule, and resolving any issues
4 related to the making of any determination with respect to
5 visitation or the establishment of any specific visitation
6 schedule, the court, in its discretion, may interview in chambers
7 any or all involved children regarding their wishes and con-
8 cerns. No person shall be present other than the court, the child,
9 the child's attorney or guardian ad litem, if any, and any
10 necessary court personnel.

**§48-10-602. Prohibitions on use of child's written or recorded
statement or affidavit; child not to be called as a
witness.**

1 (a) No person shall obtain or attempt to obtain from a child
2 a written or recorded statement or affidavit setting forth the
3 wishes and concerns of the child regarding grandparent
4 visitation matters, and the court, in considering the factors listed
5 in section 10-502 of this article for purposes of determining
6 whether to grant any visitation, establishing a visitation
7 schedule, or resolving any issues related to the making of any

8 determination with respect to visitation or the establishment of
9 any specific visitation schedule, shall not accept or consider
10 such a written or recorded statement or affidavit.

11 (b) A child shall not be called as a witness in any proceed-
12 ing to determine whether grandparent visitation should be
13 awarded.

**PART 7. PROOF REQUIRED FOR GRANT OF
GRANDPARENT VISITATION.**

**§48-10-701. Proof required when action is pending for divorce,
custody, legal separation, annulment or estab-
lishment of paternity.**

1 If a motion for grandparent visitation is filed in a pending
2 action for divorce, custody, legal separation, annulment or
3 establishment of paternity pursuant to, section 21-401 the
4 grandparent shall be granted visitation if a preponderance of the
5 evidence shows that visitation is in the best interest of the child
6 and that:

7 (1) The party to the divorce through which the grandparent
8 is related to the minor child has failed to answer or otherwise
9 appear and defend the cause of action; or

10 (2) The whereabouts of the party through which the
11 grandparent is related to the minor child are unknown to the
12 party bringing the action and to the grandparent who filed the
13 motion for visitation.

**§48-10-702. Proof required when action is not pending for di-
vorce, custody, legal separation, annulment or
establishment of paternity.**

1 (a) If a petition is filed pursuant to section 10-402 when the
2 parent through whom the grandparent is related to the grand-
3 child does not: (1) Have custody of the child; (2) share custody
4 of the child; or (3) exercise visitation privileges with the child
5 that would allow participation in the visitation by the grandpar-

6 ent if the parent so chose, the grandparent shall be granted
7 visitation if a preponderance of the evidence shows that
8 visitation is in the best interest of the child.

9 (b) If a petition is filed pursuant to section 10-402, there is
10 a presumption that visitation privileges need not be extended to
11 the grandparent if the parent through whom the grandparent is
12 related to the grandchild has custody of the child, shares
13 custody of the child, or exercises visitation privileges with the
14 child that would allow participation in the visitation by the
15 grandparent if the parent so chose. This presumption may be
16 rebutted by clear and convincing evidence that an award of
17 grandparent visitation is in the best interest of the child.

**PART 8. ORDERS GRANTING OR REFUSING
GRANDPARENT VISITATION.**

**§48-10-801. Order granting or refusing grandparent visitation
must state findings of fact and conclusions of law.**

1 An order granting or refusing the grandparent's motion or
2 petition for visitation must state in writing the court's findings
3 of fact and conclusions of law.

§48-10-802. Supervised visitation; conditions on visitation.

1 In the court's discretion, an order granting visitation
2 privileges to a grandparent may require supervised visitation or
3 may place such conditions on visitation that it finds are in the
4 best interests of the child, including, but not limited to, the
5 following:

6 (1) That the grandparent not attempt to influence any
7 religious beliefs or practices of the children in a manner
8 contrary to the preferences of the child's parents;

9 (2) That the grandparent not engage in, permit or encourage
10 activities, or expose the grandchild to conditions or circum-
11 stances, that are contrary to the preferences of the child's
12 parents; or

13 (3) That the grandparent not otherwise act in a manner to
14 contradict or interfere with child-rearing decisions made by the
15 child's parents.

**PART 9. EFFECT OF REMARRIAGE OR ADOPTION
ON GRANDPARENT VISITATION.**

§48-10-901. Effect of remarriage of the custodial parent.

1 The remarriage of the custodial parent of a child does not
2 affect the authority of a circuit court to grant reasonable
3 visitation to any grandparent.

§48-10-902. Effect of adoption of the child.

1 If a child who is subject to a grandparent visitation order
2 under this article is later adopted, the order for grandparent
3 visitation is automatically vacated when the order for adoption
4 is entered, unless the adopting parent is a stepparent, grandpar-
5 ent or other relative of the child.

**PART 10. MODIFICATION OR TERMINATION
OF GRANDPARENT VISITATION.**

§48-10-1001. Continuing jurisdiction of circuit court.

1 Any circuit court that grants visitation rights to a grandpar-
2 ent shall retain jurisdiction throughout the minority of the minor
3 child with whom visitation is granted to modify or terminate
4 such rights as dictated by the best interests of the minor child.

§48-10-1002. Termination of grandparent visitation.

1 A circuit court shall, based upon a petition brought by an
2 interested person, terminate any grant of the right of grandpar-
3 ent visitation upon presentation of a preponderance of the
4 evidence that a grandparent granted visitation has materially
5 violated the terms and conditions of the order of visitation.

PART 11. ATTORNEY'S FEES AND COSTS.

§48-10-1101. Attorney's fees; reasonable costs.

1 In an action brought under the provisions of this article, a
2 circuit court may order payment of reasonable attorney's fees
3 and costs based upon the equities of the positions asserted by
4 the parties to pay such fees and costs.

PART 12. OFFENSES.

**§48-10-1201. Misdemeanor offense for allowing contact between
child and person who has been precluded visita-
tion rights; penalties.**

1 Any grandparent who knowingly allows contact between a
2 minor grandchild and a parent or other person who has been
3 precluded visitation rights with the child by court order is guilty
4 of a misdemeanor and, upon conviction thereof, shall be
5 confined in the county or regional jail not more than thirty days
6 or fined not less than one hundred dollars nor more than one
7 thousand dollars.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-101. General provisions relating to child support.

1 (a) It is one of the purposes of the Legislature in enacting
2 this chapter to improve and facilitate support enforcement
3 efforts in this state, with the primary goal being to establish and
4 enforce reasonable child support orders and thereby improve
5 opportunities for children. It is the intent of the Legislature that
6 to the extent practicable, the laws of this state should encourage
7 and require a child's parents to meet the obligation of providing
8 that child with adequate food, shelter, clothing, education, and
9 health and child care.

10 (b) When the domestic relations action involves a minor
11 child or children, the court shall require either party to pay child
12 support in the form of periodic installments for the maintenance
13 of the minor children of the parties in accordance with support
14 guidelines promulgated pursuant to article 13-101, et seq., of

15 this chapter. Payments of child support are to be ordinarily
16 made from a party's income, but in cases when the income is
17 not sufficient to adequately provide for those payments, the
18 court may, upon specific findings set forth in the order, order
19 the party required to make those payments to make them from
20 the corpus of his or her separate estate.

§48-11-102. Required information in support orders.

1 (a) Any order which provides for the custody or support of
2 a minor child shall include:

3 (1) The name of the custodian;

4 (2) The amount of the support payments;

5 (3) The date the first payment is due;

6 (4) The frequency of the support payments;

7 (5) The event or events which trigger termination of the
8 support obligation;

9 (6) A provision regarding wage withholding;

10 (7) The address where payments shall be sent;

11 (8) A provision for medical support;

12 (9) When child support guidelines are not followed, a
13 specific written finding pursuant to section 13-702.

14 (b) Effective the first day of October, one thousand nine
15 hundred ninety-nine, any order entered that provides for the
16 payment of child support shall also include a statement that
17 requires both parties to report any changes in gross income,
18 either in source of employment or in the amount of gross
19 income, to the bureau for child support enforcement and to the
20 other party. The notice shall not be required if the change in
21 gross income is less than a fifteen percent change in gross
22 income.

23 (c) All child support orders shall contain a notice which
24 contains language substantially similar to the following: "The
25 amount of the monthly child support can be modified as
26 provided by law based upon a change in the financial or other
27 circumstances of the parties if those circumstances are among
28 those considered in the child support formula. In order to make
29 the modification a party must file a motion to modify the child
30 support amount. Unless a motion to modify is filed, the child
31 support amount will continue to be due and cannot later be
32 changed retroactively even though there has been a change of
33 circumstances since the entry of the order. Self help forms for
34 modification can be found at the circuit clerk's office." The
35 failure of an order to have such a provision does not alter the
36 effectiveness of the order.

§48-11-103. Child support beyond age eighteen.

1 (a) Upon a specific finding of good cause shown and upon
2 findings of fact and conclusions of law in support thereof, an
3 order for child support may provide that payments of such
4 support continue beyond the date when the child reaches the
5 age of eighteen, so long as the child is unmarried and residing
6 with a parent and is enrolled as a full-time student in a second-
7 ary educational or vocational program and making substantial
8 progress towards a diploma: *Provided*, That such payments may
9 not extend past the date that the child reaches the age of twenty.

10 (b) Nothing herein shall be construed to abrogate or modify
11 existing case law regarding the eligibility of handicapped or
12 disabled children to receive child support beyond the age of
13 eighteen.

14 (c) The reenactment of this section during the regular
15 session of the Legislature in the year one thousand nine hundred
16 ninety-four shall not, by operation of law, have any effect upon
17 or vacate any order or portion thereof entered under the prior
18 enactment of this section which awarded educational and
19 related expenses for an adult child accepted or enrolled and
20 making satisfactory progress in an educational program at a

21 certified or accredited college. Any such order or portion
22 thereof shall continue in full force and effect until the court,
23 upon motion of a party, modifies or vacates the order upon a
24 finding that:

25 (1) The facts and circumstances which supported the entry
26 of the original order have changed, in which case the order may
27 be modified;

28 (2) The facts and circumstances which supported the entry
29 of the original order no longer exist because the child has not
30 been accepted or is not enrolled in and making satisfactory
31 progress in an educational program at a certified or accredited
32 college, or the parent ordered to pay such educational and
33 related expenses is no longer able to make such payments, in
34 which case the order shall be vacated;

35 (3) The child, at the time the order was entered, was under
36 the age of sixteen years, in which case the order shall be
37 vacated;

38 (4) The amount ordered to be paid was determined by an
39 application of child support guidelines in accordance with the
40 provisions of article 13-101, et seq., or legislative rules promul-
41 gated thereunder, in which case the order may be modified or
42 vacated; or

43 (5) The order was entered after the fourteenth day of
44 March, one thousand nine hundred ninety-four, in which case
45 the order shall be vacated.

§48-11-104. Payments out of disposable retired or retainer pay.

1 Whenever under the terms of article 5-601, et seq., or
2 article 5-501, et seq., a court enters an order requiring the
3 payment of child support, if the court anticipates the payment
4 of such child support or any portion thereof to be paid out of
5 “disposable retired or retainer pay” as that term is defined in 10
6 U.S.C. §1408, relating to members or former members of the
7 uniformed services of the United States, the court shall specifi-

8 cally provide for the payment of an amount, expressed in
9 dollars or as a percentage of disposable retired or retainer pay,
10 from the disposable retired or retainer pay of the payor party to
11 the payee party.

§48-11-105. Modification of child support order.

1 (a) A circuit court may modify a child support order, for the
2 benefit of the child, when a motion is made that alleges a
3 change in the circumstances of a parent or another proper
4 person or persons. A motion for modification of a child support
5 order may be brought by a custodial parent or any other lawful
6 custodian or guardian of the child, by a parent or other person
7 obligated to pay child support for the child, or by the bureau for
8 child support enforcement of the department of health and
9 human resources of this state.

10 (b) The provisions of the order may be modified if there is
11 a substantial change in circumstances. If application of the
12 guideline would result in a new order that is more than fifteen
13 percent different, then the circumstances are considered a
14 substantial change.

15 (c) An order that modifies the amount of child support to be
16 paid shall conform to the support guidelines set forth in article
17 13-101, et seq., of this chapter unless the court disregards the
18 guidelines or adjusts the award as provided for in section 13-
19 702.

20 (d) The supreme court of appeals shall make available to
21 the courts a standard form for a petition for modification of an
22 order for support, which form will allege that the existing order
23 should be altered or revised because of a loss or change of
24 employment or other substantial change affecting income, or
25 that the amount of support required to be paid is not within
26 fifteen percent of the child support guidelines. The clerk of the
27 circuit shall make the forms available to persons desiring to file
28 a motion pro se for a modification of the support award.

§48-11-106. Expedited process for modification.

1 (a) An expedited process for modification of a child support
2 order may be utilized if:

3 (1) Either parent experiences a substantial change of
4 circumstances resulting in a decrease in income due to loss of
5 employment or other involuntary cause;

6 (2) An increase in income due to promotion, change in
7 employment, reemployment; or

8 (3) Other such change in employment status.

9 (b) The party seeking the recalculation of support and
10 modification of the support order shall file a description of the
11 decrease or increase in income and an explanation of the cause
12 of the decrease or increase on a standardized form to be
13 provided by the secretary-clerk or other employee of the family
14 court. The standardized form shall be verified by the filing
15 party. Any available documentary evidence shall be filed with
16 the standardized form. Based upon the filing and information
17 available in the case record, the amount of support shall be
18 tentatively recalculated.

19 (c) The secretary-clerk shall serve a notice of the filing, a
20 copy of the standardized form, and the support calculations
21 upon the other party by certified mail, return receipt requested,
22 with delivery restricted to the addressee, in accordance with
23 rule 4(d)(1)(D) of the West Virginia rules of civil procedure.
24 The secretary-clerk shall also mail a copy, by first-class mail,
25 to the local office of the bureau for child support enforcement
26 for the county in which the circuit court is located in the same
27 manner as original process under rule 4(d) of the rules of civil
28 procedure.

29 (d) The notice shall fix a date fourteen days from the date
30 of mailing, and inform the party that unless the recalculation is
31 contested and a hearing request is made on or before the date
32 fixed, the proposed modification will be made effective. If the

33 filing is contested, the proposed modification shall be set for
 34 hearing; otherwise, the family law master shall prepare a
 35 recommended default order for entry by the circuit judge. Either
 36 party may move to set aside a default entered by the circuit
 37 clerk or a judgment by default entered by the clerk or the court,
 38 pursuant to the provisions of rule 55 or rule 60(b) of the rules
 39 of civil procedure.

40 (e) If an obligor uses the provisions of this section to
 41 expeditiously reduce his or her child support obligation, the
 42 order that effected the reduction shall also require the obligor
 43 to notify the obligee of reemployment, new employment or
 44 other such change in employment status that results in an
 45 increase in income. If an obligee uses the provisions of this
 46 section to expeditiously increase his or her child support
 47 obligation, the order that effected the increase shall also require
 48 the obligee to notify the obligor of reemployment, new employ-
 49 ment or other such change in employment status that results in
 50 an increase in income of the obligee.

51 (f) The supreme court of appeals shall develop the standard-
 52 ized form required by this section.

**§48-11-107. Modification resulting in reduction and overpayment
 of support.**

1 In any proceeding filed after the first day of January, two
 2 thousand one, where a petition to modify child support is
 3 granted which results in a reduction of child support owed so
 4 that the obligor has overpaid child support, the court shall grant
 5 a decretal judgment to the obligor for the amount of the
 6 overpayment. The court shall inquire as to whether a support
 7 arrearage was owed by the obligor for support due prior to the
 8 filing of the petition for modification. If an arrearage exists, the
 9 court shall order an offset of the overpayment against the child
 10 support arrearages. If no prior arrearage exists or if the arrear-
 11 age is not sufficient to offset the overpayment, then the court
 12 may direct the bureau for child support enforcement to collect
 13 the overpayment through income withholding, if the person has,

14 in the court's opinion, sufficient income other than the child
15 support received. The income withholding shall be in all
16 respects as provided for in part 14-401, et seq., except that in no
17 circumstances may the amount withheld exceed thirty-five
18 percent of the disposable earnings for the period, regardless of
19 the length of time that the overpayment has been owed.

ARTICLE 12. MEDICAL SUPPORT.

**§48-12-101. Definitions applicable to medical support enforce-
ment.**

1 For the purposes of this article:

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by court
4 order as custodian of a child or children for whom child support
5 is ordered.

6 (2) "Obligated parent" means a natural or adoptive parent
7 who is required by agreement or order to pay for insurance
8 coverage and medical care, or some portion thereof, for his or
9 her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological, psychiat-
12 ric or other health care service.

13 (4) "Child" means a child to whom a duty of child support
14 is owed.

15 (5) "Medical care" means medical, dental, optical, psycho-
16 logical, psychiatric or other health care service for children in
17 need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer welfare
20 arrangement, hospital or medical services corporation, trust,
21 group health plan, as defined in 29 U.S.C. § 1167, Section
22 607(1) of the Employee Retirement Income Security Act of

23 1974 or other entity which provides insurance coverage or
24 offers a service benefit plan.

§48-12-102. Court-ordered medical support.

1 In every action to establish or modify an order which
2 requires the payment of child support, the court shall ascertain
3 the ability of each parent to provide medical care for the
4 children of the parties. In any temporary or final order estab-
5 lishing an award of child support or any temporary or final
6 order modifying a prior order establishing an award of child
7 support, the court shall order one or more of the following:

8 (1) The court shall order either parent or both parents to
9 provide insurance coverage for a child, if such insurance
10 coverage is available to that parent on a group basis through an
11 employer, multiemployer trust or through an employee's union.
12 If similar insurance coverage is available to both parents, the
13 court shall order the child to be insured under the insurance
14 coverage which provides more comprehensive benefits. If such
15 insurance coverage is not available at the time of the entry of
16 the order, the order shall require that if such coverage thereafter
17 becomes available to either party, that party shall promptly
18 notify the other party of the availability of insurance coverage
19 for the child.

20 (2) If the court finds that insurance coverage is not avail-
21 able to either parent on a group basis through an employer,
22 multiemployer trust or employees' union, or that the group
23 insurer is not accessible to the parties, the court may order
24 either parent or both parents to obtain insurance coverage which
25 is otherwise available at a reasonable cost.

26 (3) Based upon the respective ability of the parents to pay,
27 the court may order either parent or both parents to be liable for
28 reasonable and necessary medical care for a child. The court
29 shall specify the proportion of the medical care for which each
30 party shall be responsible. If the amount of the award of child
31 support in the order is determined using the child support

32 guidelines, the court shall order that nonrecurring or subse-
33 quently occurring uninsured medical expenses in excess of two
34 hundred fifty dollars per year per child shall be separately
35 divided between the parties in proportion to their adjusted gross
36 incomes.

37 (4) If insurance coverage is available, the court shall also
38 determine the amount of the annual deductible on insurance
39 coverage which is attributable to the children and designate the
40 proportion of the deductible which each party shall pay.

41 (5) The order shall require the obligor to continue to
42 provide the bureau for child support enforcement with informa-
43 tion as to his or her employer's name and address and informa-
44 tion as to the availability of employer-related insurance
45 programs providing medical care coverage so long as the child
46 continues to be eligible to receive support.

§48-12-103. Cost of medical support considered in applying support guidelines.

1 The cost of insurance coverage shall be considered by the
2 court in applying the child support guidelines provided for in
3 article. 13-101, et seq.

§48-12-104. Proof of insurance coverage.

1 Within thirty days after the entry of an order requiring the
2 obligated parent to provide insurance coverage for the children,
3 that parent shall submit to the custodian for the child written
4 proof that the insurance has been obtained or that an application
5 for insurance has been made. Such proof of insurance coverage
6 shall consist of, at a minimum:

- 7 (1) The name of the insurer;
- 8 (2) The policy number;
- 9 (3) An insurance card;

- 10 (4) The address to which all claims should be mailed;
- 11 (5) A description of any restrictions on usage, such as prior
12 approval for hospital admission, and the manner in which to
13 obtain such approval;
- 14 (6) A description of all deductibles; and
- 15 (7) Five copies of claim forms.

§48-12-105. Notice to insurer or employer.

1 The custodian for the child shall send the insurer or the
2 obligated parent's employer the children's address and notice
3 that the custodian will be submitting claims on behalf of the
4 children. Upon receipt of such notice, or an order for insurance
5 coverage under this section, the obligated parent's employer,
6 multiemployer trust or union shall, upon the request of the
7 custodian for the child, release information on the coverage for
8 the children, including the name of the insurer.

§48-12-106. Copy of court order for medical support.

1 A copy of the court order for insurance coverage shall not
2 be provided to the obligated parent's employer or union or the
3 insurer unless ordered by the court, or unless:

4 (1) The obligated parent, within thirty days of receiving
5 effective notice of the court order, fails to provide to the
6 custodian for the child written proof that the insurance has been
7 obtained or that an application for insurance has been made;

8 (2) The custodian for the child serves written notice by mail
9 at the obligated parent's last known address of intention to
10 enforce the order requiring insurance coverage for the child;
11 and

12 (3) The obligated parent fails within fifteen days after the
13 mailing of the notice to provide written proof to the custodian
14 for the child that the child has insurance coverage.

§48-12-107. Enrollment of child in insurance plan.

1 (1) Upon service of the order requiring insurance coverage
2 for the children, the employer, multiemployer trust or union
3 shall enroll the child as a beneficiary in the group insurance
4 plan and withhold any required premium from the obligated
5 parent's income or wages.

6 (2) If more than one plan is offered by the employer,
7 multiemployer trust or union, the child shall be enrolled in the
8 same plan as the obligated parent at a reasonable cost.

9 (3) Insurance coverage for the child which is ordered
10 pursuant to the provisions of this section shall not be terminated
11 except as provided in section 12-111.

§48-12-108. Requirements placed on employer.

1 Where a parent is required by a court or administrative
2 order to provide health coverage, which is available through an
3 employer doing business in this state, the employer is required:

4 (1) To permit the parent to enroll under family coverage
5 any child who is otherwise eligible for coverage without regard
6 to any enrollment season restrictions;

7 (2) If the parent is enrolled but fails to make application to
8 obtain coverage of the child, to enroll the child under family
9 coverage upon application by the child's other parent, by the
10 state agency administering the medicaid program or by the
11 bureau for child support enforcement;

12 (3) Not to disenroll or eliminate coverage of any such child
13 unless the employer is provided satisfactory written evidence
14 that:

15 (A) The court or administrative order is no longer in effect;
16 or

17 (B) The child is or will be enrolled in comparable coverage
18 which will take effect no later than the effective date of
19 disenrollment; or

20 (C) The employer has eliminated family health coverage for
21 all of its employees;

22 (4) To withhold from the employee's compensation the
23 employee's share, if any, of premiums for health coverage and
24 to pay this amount to the insurer: *Provided*, That the amount so
25 withheld may not exceed the maximum amount permitted to be
26 withheld under 15 U.S.C. § 1673, Section 303(b) of the
27 Consumer Credit Protection Act.

§48-12-109. Processing of claims.

1 (1) The signature of the custodian for the child shall
2 constitute a valid authorization to the insurer for the purposes
3 of processing an insurance payment to the provider of medical
4 care for the child.

5 (2) No insurer, employer or multiemployer trust in this state
6 may refuse to honor a claim for a covered service when the
7 custodian for the child or the obligated parent submits proof of
8 payment for medical bills for the child.

9 (3) The insurer shall reimburse the custodian for the child
10 or the obligated parent who submits copies of medical bills for
11 the child with proof of payment.

12 (4) All insurers in this state shall comply with the provi-
13 sions of section sixteen, article fifteen, chapter thirty-three of
14 this code and section eleven, article sixteen of said chapter and
15 shall provide insurance coverage for the child of a covered
16 employee notwithstanding the amount of support otherwise
17 ordered by the court and regardless of the fact that the child
18 may not be living in the home of the covered employee.

§48-12-110. Change of employment.

1 Where an obligated parent changes employment, and the
2 new employer provides the obligated parent's health care
3 coverage, the bureau for child support enforcement shall
4 transfer to the new employer notice of the obligated parent's

5 duty to provide health care coverage. Unless contested by the
6 obligated parent in writing and in accordance with section 14-
7 801, the notice shall operate to enroll the child in the new
8 employer's health care plan.

§48-12-111. Termination of employment; change in insurance coverage.

1 When an order for insurance coverage for a child pursuant
2 to this section is in effect and the obligated parent's employ-
3 ment is terminated, or the insurance coverage for the child is
4 denied, modified or terminated, the insurer shall in addition to
5 complying with the requirements of article sixteen-a, chapter
6 thirty-three of this code, within ten days after the notice of
7 change in coverage is sent to the covered employee, notify the
8 custodian for the child and provide an explanation of any
9 conversion privileges available from the insurer.

§48-12-112. Length of coverage.

1 A child of an obligated parent shall remain eligible for
2 insurance coverage until the child is emancipated or until the
3 insurer under the terms of the applicable insurance policy
4 terminates said child from coverage, whichever is later in time,
5 or until further order of the court.

§48-12-113. Failure to comply with order for court-ordered medical support.

1 If the obligated parent fails to comply with the order to
2 provide insurance coverage for the child, the court shall:

3 (1) Hold the obligated parent in contempt for failing or
4 refusing to provide the insurance coverage or for failing or
5 refusing to provide the information required in section 12-104;

6 (2) Enter an order for a sum certain against the obligated
7 parent for the cost of medical care for the child and any
8 insurance premiums paid or provided for the child by the
9 bureau for child support enforcement during any period in

10 which the obligated parent failed to provide the required
11 coverage, and directing that such judgment be collected through
12 income withholding;

13 (3) In the alternative, other enforcement remedies available
14 under part 14-201, et seq., and part 14-401, et seq., of this code,
15 or otherwise available under law, may be used to recover from
16 the obligated parent the cost of medical care or insurance
17 coverage for the child;

18 (4) In addition to other remedies available under law, the
19 bureau for child support enforcement may initiate an income
20 withholding against the wages, salary or other employment
21 income of, and withhold amounts from state tax refunds to any
22 person who:

23 (A) Is required by court or administrative order to provide
24 coverage of the cost of health services to a child; and

25 (B) Has received payment from a third party for the costs
26 of such services but has not used the payments to reimburse
27 either the other parent or guardian of the child or the provider
28 of the services, to the extent necessary to reimburse the state
29 medicaid agency for its costs: *Provided*, That claims for current
30 and past due child support shall take priority over these claims.

§48-12-114. Effect of failure to maintain court-ordered medical support.

1 Proof of failure to maintain court ordered insurance
2 coverage for the child constitutes a showing of substantial
3 change in circumstances or increased need and provides a basis
4 for modification of the child support order.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

PART 1. GENERAL PROVISIONS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.

1 This article establishes guidelines for child support award
2 amounts so as to ensure greater uniformity by those persons
3 who make child support recommendations and enter child
4 support orders and to increase predictability for parents,
5 children and other persons who are directly affected by child
6 support orders. There is a rebuttable presumption, in any
7 proceeding before a family law master or circuit court judge for
8 the award of child support, that the amount of the award which
9 would result from the application of these guidelines is the
10 correct amount of child support to be awarded.

§48-13-102. Right of children to share in parents' level of living.

1 The Legislature recognizes that children have a right to
2 share in their natural parents' level of living. Expenditures in
3 families are not made in accordance with subsistence level
4 standards, but are made in proportion to household income, and
5 as parental incomes increase or decrease, the actual dollar
6 expenditures for children also increase or decrease correspond-
7 ingly. In order to ensure that children properly share in their
8 parents' resources, regardless of family structure, these guide-
9 lines are structured so as to provide that after a consideration of
10 respective parental incomes, child support will be related, to the
11 extent practicable, to the standard of living that children would
12 enjoy if they were living in a household with both parents
13 present.

**§48-13-103. Financial contributions of both parents to be consid-
ered.**

1 The guidelines promulgated under the provisions of this
2 article take into consideration the financial contributions of
3 both parents. The Legislature recognizes that expenditures in
4 households are made in aggregate form and that total family
5 income is pooled to determine the level at which the family can
6 live. These guidelines consider the financial contributions of
7 both parents in relationship to total income, so as to establish
8 and equitably apportion the child support obligation.

PART 2. CALCULATION OF CHILD SUPPORT ORDER.

§48-13-201. Use of both parents' income in determining child support.

1 A child support order is determined by dividing the total
2 child support obligation between the parents in proportion to
3 their income. Both parents' adjusted gross income is used to
4 determine the amount of child support.

§48-13-202. Application of expenses and credits in determining child support.

1 In determining the total child support obligation, the judge
2 or master shall:

3 (1) Add to the basic child support obligation any
4 unreimbursed child health care expenses, work-related child
5 care expenses and any other extraordinary expenses agreed to
6 by the parents or ordered by the judge or master, and

7 (2) Subtract any extraordinary credits agreed to by the
8 parents or ordered by the court or master.

§48-13-203. Amount determined by guidelines presumed to be correct.

1 The amount of support resulting from the application of the
2 guidelines is presumed to be the correct amount, unless the
3 court, in a written finding or a specific finding on the record,
4 disregards the guidelines or adjusts the award as provided for
5 in section 13-702.

§48-13-204. Use of worksheets.

1 The calculation of the amount awarded by the support
2 order requires the use of one of two worksheets which must be
3 completed for each case. Worksheet A is used for a sole
4 physical custody arrangement. Worksheet B is used for a shared
5 physical custody arrangement.

§48-13-205. Present income as monthly amounts.

1 To the extent practicable, all information relating to income
 2 shall be presented to the court or master based on monthly
 3 amounts. For example, when a party is paid wages weekly, the
 4 pay should be multiplied by fifty-two and divided by twelve to
 5 arrive at a correct monthly amount. If the court or master deems
 6 appropriate, such information may be presented in such other
 7 forms as the court or master directs.

PART 3. BASIC CHILD SUPPORT ORDER.

§48-13-301. Determining the basic child support obligation.

1 The basic child support obligation is determined from the
 2 following table of monthly basic child support obligations:

West Virginia						
Monthly Basic Child Support Obligations						
(Adjusted for West Virginia's Income Relative to U.S. Averages)						
COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHIL- DREN	CHIL- DREN	CHIL- DREN	CHIL- DREN	CHIL- DREN
INCOME						
550	127	185	219	242	263	281
600	137	200	237	262	284	304
650	147	214	253	280	303	325
700	156	227	268	296	321	344
750	163	238	282	311	337	361
800	171	249	295	326	353	378
850	179	261	309	341	370	395
900	188	273	323	357	387	414
950	197	286	338	374	405	433
1000	205	299	353	390	423	452
1050	214	311	368	406	440	471
1100	223	324	382	423	458	490
1150	231	336	397	439	476	509
1200	240	349	412	455	493	528

24	1250	248	361	426	471	511	547
25	1300	257	373	441	487	528	565
26	1350	265	386	456	503	546	584
27	1400	274	398	470	519	563	602
28	1450	282	410	484	534	579	620
29	1500	291	422	498	550	596	638
30	1550	299	434	512	565	613	656
31	1600	307	446	526	581	630	674
32	1650	316	458	540	596	646	692
33	1700	324	470	554	612	663	709
34	1750	332	482	568	627	680	727
35	1800	341	494	581	643	697	745
36	1850	349	506	595	658	713	763
37	1900	357	517	609	673	730	781
38	1950	366	529	623	689	747	799
39	2000	373	540	636	703	762	816
40	2050	381	551	649	717	778	832
41	2100	388	562	662	731	793	848
42	2150	395	573	674	745	808	864
43	2200	403	583	687	759	823	881
44	2250	410	594	700	773	838	897
45	2300	417	605	712	787	853	913
46	2350	425	616	725	801	869	929
47	2400	432	626	738	815	884	946
48	2450	440	637	750	829	899	962
49	2500	447	648	763	843	914	978
50	2550	454	658	776	857	929	994
51	2600	460	667	786	868	941	1007
52	2650	465	674	794	877	951	1018
53	2700	471	682	803	887	962	1029
54	2750	475	688	810	895	970	1038
55	2800	479	694	816	902	978	1046
56	2850	484	700	823	909	986	1055
57	2900	488	705	830	917	994	1063
58	2950	492	711	836	924	1002	1072
59	3000	496	717	843	931	1010	1080
60	3050	500	723	850	939	1018	1089

61	3100	504	729	856	946	1026	1097
62	3150	509	735	863	953	1033	1106
63	3200	513	740	869	961	1041	1114
64	3250	517	746	876	968	1049	1123
65	3300	521	752	882	975	1057	1131
66	3350	524	757	888	981	1064	1138
67	3400	527	761	893	987	1070	1145
68	3450	531	766	899	993	1077	1152
69	3500	534	771	904	999	1083	1159
70	3550	537	775	910	1006	1090	1166
71	3600	541	780	916	1012	1097	1173
72	3650	544	785	921	1018	1103	1180
73	3700	547	790	927	1024	1110	1187
74	3750	550	794	932	1030	1116	1194
75	3800	554	799	937	1036	1123	1201
76	3850	557	803	943	1041	1129	1208
77	3900	560	808	948	1047	1135	1215
78	3950	563	812	953	1053	1142	1222
79	4000	566	817	959	1059	1148	1229
80	4050	570	822	964	1065	1155	1236
81	4100	574	828	972	1074	1164	1245
82	4150	579	834	979	1082	1172	1254
83	4200	583	841	986	1090	1181	1264
84	4250	588	847	993	1098	1190	1273
85	4300	592	853	1001	1106	1199	1283
86	4350	597	860	1008	1114	1207	1292
87	4400	601	866	1015	1122	1216	1301
88	4450	606	873	1023	1130	1225	1311
89	4500	610	879	1030	1138	1234	1320
90	4550	615	885	1037	1146	1242	1329
91	4600	619	892	1044	1154	1251	1339
92	4650	624	898	1052	1162	1260	1348
93	4700	628	904	1059	1170	1269	1357
94	4750	633	911	1066	1178	1277	1367
95	4800	637	917	1074	1186	1286	1376
96	4850	642	924	1082	1195	1296	1386
97	4900	647	931	1090	1204	1305	1397

98	4950	651	938	1098	1213	1315	1407
99	5000	656	945	1106	1222	1325	1418
100	5050	661	951	1114	1231	1335	1428
101	5100	666	958	1123	1240	1345	1439
102	5150	670	965	1131	1249	1354	1449
103	5200	675	972	1139	1259	1364	1460
104	5250	680	979	1147	1268	1374	1470
105	5300	685	986	1155	1277	1384	1481
106	5350	689	993	1163	1285	1393	1491
107	5400	694	999	1171	1294	1403	1501
108	5450	698	1006	1179	1302	1412	1511
109	5500	703	1012	1186	1311	1421	1521
110	5550	707	1019	1194	1319	1430	1530
111	5600	712	1025	1201	1328	1439	1540
112	5650	716	1031	1208	1335	1447	1548
113	5700	719	1036	1214	1341	1454	1556
114	5750	723	1042	1220	1348	1462	1564
115	5800	727	1047	1226	1355	1469	1572
116	5850	731	1052	1233	1362	1477	1580
117	5900	735	1058	1239	1369	1484	1588
118	5950	739	1063	1245	1376	1492	1596
119	6000	743	1069	1251	1383	1499	1604
120	6050	747	1074	1258	1390	1506	1612
121	6100	751	1080	1265	1397	1515	1621
122	6150	755	1086	1272	1405	1523	1630
123	6200	760	1093	1279	1413	1531	1639
124	6250	764	1099	1286	1420	1540	1648
125	6300	768	1105	1292	1428	1548	1657
126	6350	773	1111	1299	1436	1556	1665
127	6400	777	1117	1306	1444	1565	1674
128	6450	781	1123	1313	1451	1573	1683
129	6500	785	1129	1320	1459	1582	1692
130	6550	789	1135	1327	1467	1590	1701
131	6600	793	1140	1334	1474	1598	1710
132	6650	797	1146	1341	1482	1607	1719
133	6700	801	1152	1348	1490	1615	1728
134	6750	806	1158	1355	1498	1623	1737

135	6800	810	1164	1362	1505	1632	1746
136	6850	814	1170	1369	1513	1640	1755
137	6900	818	1176	1376	1521	1649	1764
138	6950	822	1182	1383	1529	1657	1773
139	7000	826	1188	1390	1536	1665	1782
140	7050	830	1194	1397	1544	1674	1791
141	7100	834	1200	1404	1552	1682	1800
142	7150	838	1206	1411	1560	1691	1809
143	7200	842	1212	1418	1567	1699	1818
144	7250	847	1218	1425	1575	1707	1827
145	7300	851	1224	1432	1583	1716	1836
146	7350	855	1230	1439	1591	1724	1845
147	7400	859	1236	1446	1598	1733	1854
148	7450	863	1242	1453	1606	1741	1863
149	7500	867	1248	1460	1614	1749	1872
150	7550	871	1253	1468	1622	1758	1881
151	7600	875	1259	1475	1629	1766	1890
152	7650	879	1265	1482	1637	1775	1899
153	7700	883	1271	1489	1645	1783	1908
154	7750	887	1277	1496	1653	1792	1917
155	7800	891	1283	1503	1661	1800	1926
156	7850	895	1289	1510	1669	1809	1935
157	7900	899	1295	1517	1676	1817	1944
158	7950	903	1300	1524	1684	1826	1954
159	8000	907	1306	1531	1692	1834	1963
160	8050	911	1312	1538	1700	1843	1972
161	8100	915	1318	1545	1708	1851	1981
162	8150	919	1324	1553	1716	1860	1990
163	8200	923	1330	1560	1723	1868	1999
164	8250	927	1336	1567	1731	1877	2008
165	8300	931	1342	1574	1739	1885	2017
166	8350	935	1348	1581	1747	1894	2026
167	8400	939	1353	1588	1755	1902	2035
168	8450	943	1359	1595	1763	1911	2044
169	8500	947	1365	1602	1770	1919	2053
170	8550	951	1371	1609	1778	1928	2062
171	8600	954	1377	1616	1786	1936	2072

172	8650	958	1383	1623	1794	1944	2081
173	8700	962	1389	1630	1802	1953	2090
174	8750	966	1395	1638	1809	1961	2099
175	8800	970	1401	1645	1817	1970	2108
176	8850	974	1406	1652	1825	1978	2117
177	8900	978	1412	1659	1833	1987	2126
178	8950	982	1418	1666	1840	1995	2135
179	9000	985	1423	1672	1847	2002	2142
180	9050	989	1428	1678	1854	2010	2150
181	9100	992	1433	1684	1861	2017	2158
182	9150	996	1438	1690	1867	2024	2166
183	9200	999	1443	1696	1874	2032	2174
184	9250	1003	1448	1702	1881	2039	2182
185	9300	1006	1453	1708	1888	2046	2189
186	9350	1010	1458	1714	1894	2053	2197
187	9400	1013	1463	1720	1901	2061	2205
188	9450	1016	1469	1727	1908	2068	2213
189	9500	1020	1474	1733	1915	2075	2221
190	9550	1023	1479	1739	1921	2083	2228
191	9600	1027	1484	1745	1928	2090	2236
192	9650	1030	1489	1751	1935	2097	2244
193	9700	1034	1494	1757	1942	2105	2252
194	9750	1037	1499	1763	1948	2112	2260
195	9800	1041	1504	1769	1955	2119	2268
196	9850	1044	1509	1775	1962	2127	2275
197	9900	1047	1514	1781	1969	2134	2283
198	9950	1051	1519	1788	1975	2141	2291
199	10000	1054	1524	1794	1982	2148	2299
200	10050	1058	1529	1800	1989	2156	2307
201	10100	1061	1534	1806	1995	2163	2315
202	10150	1065	1539	1812	2002	2170	2322
203	10200	1068	1545	1818	2009	2178	2330
204	10250	1072	1550	1824	2016	2185	2338
205	10300	1075	1555	1830	2022	2192	2346
206	10350	1078	1560	1836	2029	2200	2354
207	10400	1082	1565	1842	2036	2207	2361
208	10450	1086	1570	1849	2043	2215	2370

209	10500	1089	1576	1855	2050	2222	2378
210	10550	1093	1581	1861	2057	2230	2386
211	10600	1097	1586	1868	2064	2237	2394
212	10650	1101	1592	1874	2071	2245	2402
213	10700	1104	1597	1880	2078	2252	2410
214	10750	1108	1602	1887	2085	2260	2418
215	10800	1112	1608	1893	2092	2268	2426
216	10850	1115	1613	1899	2099	2275	2434
217	10900	1119	1619	1906	2106	2283	2443
218	10950	1123	1624	1912	2113	2290	2451
219	11000	1127	1629	1918	2120	2298	2459
220	11050	1130	1635	1925	2127	2306	2467
221	11100	1134	1640	1931	2134	2313	2475
222	11150	1138	1645	1937	2141	2321	2483
223	11200	1142	1651	1944	2148	2328	2491
224	11250	1145	1656	1950	2155	2336	2499
225	11300	1149	1662	1956	2162	2343	2507
226	11350	1153	1667	1963	2169	2351	2516
227	11400	1156	1672	1969	2176	2359	2524
228	11450	1160	1678	1975	2183	2366	2532
229	11500	1163	1682	1981	2189	2373	2539
230	11550	1167	1687	1987	2196	2380	2547
231	11600	1170	1692	1993	2202	2387	2554
232	11650	1174	1697	1999	2208	2394	2561
233	11700	1177	1702	2004	2215	2401	2569
234	11750	1180	1707	2010	2221	2408	2576
235	11800	1184	1712	2016	2228	2415	2584
236	11850	1187	1717	2022	2234	2422	2591
237	11900	1191	1722	2027	2240	2428	2598
238	11950	1193	1725	2031	2245	2433	2604
239	12000	1195	1729	2035	2249	2438	2609
240	12050	1198	1732	2039	2254	2443	2614
241	12100	1200	1735	2043	2258	2448	2619
242	12150	1202	1739	2047	2262	2452	2624
243	12200	1205	1742	2051	2267	2457	2629
244	12250	1207	1746	2055	2271	2462	2634
245	12300	1210	1749	2059	2276	2467	2640

246	12350	1212	1752	2063	2280	2472	2645
247	12400	1214	1756	2067	2285	2476	2650
248	12450	1217	1759	2071	2289	2481	2655
249	12500	1219	1763	2075	2293	2486	2660
250	12550	1221	1766	2079	2298	2491	2665
251	12600	1224	1770	2083	2302	2496	2670
252	12650	1226	1773	2088	2307	2500	2675
253	12700	1228	1776	2092	2311	2505	2681
254	12750	1231	1780	2096	2316	2510	2686
255	12800	1233	1783	2100	2320	2515	2691
256	12850	1236	1787	2104	2324	2520	2696
257	12900	1238	1790	2108	2329	2524	2701
258	12950	1240	1793	2112	2333	2529	2706
259	13000	1243	1797	2116	2338	2534	2711
260	13050	1245	1800	2120	2342	2539	2717
261	13100	1247	1804	2124	2347	2544	2722
262	13150	1250	1807	2128	2351	2548	2727
263	13200	1252	1811	2132	2355	2553	2732
264	13250	1255	1814	2136	2360	2558	2737
265	13300	1257	1817	2140	2364	2563	2742
266	13350	1259	1821	2144	2369	2568	2747
267	13400	1262	1824	2148	2373	2572	2753
268	13450	1264	1828	2152	2378	2577	2758
269	13500	1266	1831	2156	2382	2582	2763
270	13550	1269	1834	2160	2386	2587	2768
271	13600	1271	1838	2164	2391	2592	2773
272	13650	1274	1841	2168	2395	2596	2778
273	13700	1276	1845	2172	2400	2601	2783
274	13750	1278	1848	2176	2404	2606	2789
275	13800	1281	1852	2180	2409	2611	2794
276	13850	1283	1855	2184	2413	2616	2799
277	13900	1285	1858	2188	2417	2620	2804
278	13950	1288	1862	2192	2422	2625	2809
279	14000	1290	1865	2196	2426	2630	2814
280	14050	1292	1869	2200	2431	2635	2819
281	14100	1295	1872	2204	2435	2640	2824
282	14150	1297	1875	2208	2440	2645	2830

283	14200	1300	1879	2212	2444	2649	2835
284	14250	1302	1882	2216	2448	2654	2840
285	14300	1304	1886	2220	2453	2659	2845
286	14350	1307	1889	2224	2457	2664	2850
287	14400	1309	1893	2228	2462	2669	2855
288	14450	1311	1896	2232	2466	2673	2860
289	14500	1314	1899	2236	2471	2678	2866
290	14550	1316	1903	2240	2475	2683	2871
291	14600	1319	1906	2244	2479	2688	2876
292	14650	1321	1910	2248	2484	2693	2881
293	14700	1323	1913	2252	2488	2697	2886
294	14750	1326	1916	2256	2493	2702	2891
295	14800	1328	1920	2260	2497	2707	2896
296	14850	1330	1923	2264	2502	2712	2902
297	14900	1333	1927	2268	2506	2717	2907
298	14950	1335	1930	2272	2510	2721	2912
299	15000	1338	1934	2276	2515	2726	2917

§48-13-302. Incomes below the table for determining basic child support obligations.

1 If combined adjusted gross income is below five hundred
 2 fifty dollars per month, which is the lowest amount of income
 3 considered in the table of monthly basic child support obliga-
 4 tions set forth in subsection (a) of this section, the basic child
 5 support obligation shall be set at fifty dollars per month or a
 6 discretionary amount determined by the court based on the
 7 resources and living expenses of the parents and the number of
 8 children due support.

§48-13-303. Incomes above the table for determining basic child support obligations.

1 If combined adjusted gross income is above fifteen
 2 thousand dollars per month, which is the highest amount of
 3 income considered in the table of monthly basic child support
 4 obligations set forth in subsection (a) of this section, the basic
 5 child support obligation shall not be less than it would be based

6 on a combined adjusted gross income of fifteen thousand
7 dollars. The court may also compute the basic child support
8 obligation for combined adjusted gross incomes above fifteen
9 thousand dollars by the following:

10 (1) One child — $\$1,338 + 0.088 \times$ combined adjusted gross
11 income above fifteen thousand dollars per month;

12 (2) Two children — $\$1,934 + 0.129 \times$ combined adjusted
13 gross income above fifteen thousand dollars per month;

14 (3) Three children — $\$2,276 + 0.153 \times$ combined adjusted
15 gross income above fifteen thousand dollars per month;

16 (4) Four children — $\$2,515 + 0.169 \times$ combined adjusted
17 gross income above fifteen thousand dollars per month;

18 (5) Five children — $\$2,726 + 0.183 \times$ combined adjusted
19 gross income above fifteen thousand dollars per month; and

20 (6) Six children — $\$2,917 + 0.196 \times$ combined adjusted
21 gross income above fifteen thousand dollars per month.

PART 4. SUPPORT IN SOLE CUSTODY CASES.

§48-13-401. Basic child support obligation in sole custody cases.

1 For sole custody cases, the total child support obligation
2 consists of the basic child support obligation plus the child's
3 share of any unreimbursed health care expenses, work-related
4 child care expenses and any other extraordinary expenses
5 agreed to by the parents or ordered by the court less any
6 extraordinary credits agreed to by the parents or ordered by the
7 court.

§48-13-402. Division of basic child support obligation in sole custody cases.

1 In a sole custody case, the total basic child support obliga-
2 tion is divided between the parents in proportion to their
3 income. From this amount is subtracted the obligor's direct
4 expenditures of any items which were added to the basic child
5 support obligation to arrive at the total child support obligation.

§48-13-403. Worksheet for calculating basic child support obligation in sole custody cases.

- 1 Child support for sole custody cases shall be calculated
 2 using the following worksheet:

WORKSHEET A: SOLE PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____ Primary Custodial parent? Yes No

Father: _____ SS No.: _____ Primary Custodial parent? Yes No

Children	SSN	Date of Birth	Children	SSN	Date of Birth

PART I. CHILD SUPPORT ORDER	Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)	\$	\$	
a. Minus preexisting child support payment	-	-	
b. Minus maintenance paid	-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)	0	+	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)	%	%	100%
4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)			\$

5. ADJUSTMENTS (Expenses paid directly by each parent)			
a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court.)	\$	\$	
d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.)			
e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.)	\$	\$	\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)			\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)	\$	\$	
8. NONCUSTODIAL PARENT ADJUSTMENT (Enter noncustodial parent's line 5e.)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)	\$	\$	
PART II. ABILITY TO PAY CALCULATION (Complete if the noncustodial parent's adjusted monthly gross income is below \$1,550.)			
10. Spendable Income (0.80 x line 2 for noncustodial parent only.)			
11. Self Support Reserve	\$500	\$500	
12. Income Available for Support (Line 10 - line 11. If less than \$50, then \$50)			
13. Adjusted Child Support Order (Lessor of Line 9 and Line 12.)			

Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.	
PREPARED BY:	Date:

§48-13-404. Additional calculation to be made in sole custody cases.

1 In cases where the noncustodial parent's adjusted gross
2 income is below one thousand five hundred fifty dollars per
3 month, an additional calculation in Worksheet A, Part II shall
4 be made. This additional calculation sets the child support order
5 at whichever is lower:

6 (1) Child support at the amount determined in Part I; or

7 (2) The difference between eighty percent of the
8 noncustodial parent's adjusted gross income and five hundred
9 dollars, or fifty dollars, whichever is more.

**PART 5. SUPPORT IN SHARED PHYSICAL
CUSTODY OR SPLIT PHYSICAL CUSTODY CASES.**

§48-13-501. Shared physical custody adjustment.

1 Child support for cases with shared physical custody is
2 calculated using Worksheet B. The following method is used
3 only for shared physical custody: That is, in cases where each
4 parent has the child for more than one hundred twenty-seven
5 days per year (thirty-five percent).

6 (1) The basic child support obligation is multiplied by 1.5
7 to arrive at a shared custody basic child support obligation. The
8 shared custody basic child support obligation is apportioned to
9 each parent according to his or her income. In turn, a child
10 support obligation is computed for each parent by multiplying
11 that parent's portion of the shared custody child support
12 obligation by the percentage of time the child spends with the
13 other parent. The respective basic child support obligations are
14 then offset, with the parent owing more basic child support
15 paying the difference between the two amounts. The transfer for

16 the basic obligation for the parent owing less basic child
17 support shall be set at zero dollars.

18 (2) Adjustments for each parent's additional direct expenses
19 on the child are made by apportioning the sum of the parent's
20 direct expenditures on the child's share of any unreimbursed
21 child health care expenses, work-related child care expenses
22 and any other extraordinary expenses agreed to by the parents
23 or ordered by the court or master less any extraordinary credits
24 agreed to by the parents or ordered by the court or master to
25 each parent according to their income share. In turn each
26 parent's net share of additional direct expenses is determined by
27 subtracting the parent's actual direct expenses on the child's
28 share of any unreimbursed child health care expenses, work-
29 related child care expenses and any other extraordinary ex-
30 penses agreed to by the parents or by the court or master less
31 any extraordinary credits agreed to by the parents or ordered by
32 the court or master from their share. The parent with a positive
33 net share of additional direct expenses owes the other parent the
34 amount of his or her net share of additional direct expenses. The
35 parent with zero or a negative net share of additional direct
36 expenses owes zero dollars for additional direct expenses.

37 (3) The final amount of the child support order is deter-
38 mined by summing what each parent owes for the basic support
39 obligation and additional direct expenses as defined in subdivi-
40 sions (1) and (2) of this section. The respective sums are then
41 offset, with the parent owing more paying the other parent the
42 difference between the two amounts.

§48-13-502. Shared physical custody worksheet.

1 Child support for shared physical custody cases shall be
2 calculated using the following worksheet:

WORKSHEET B: SHARED PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____ Primary Custodial parent? Yes No

Father: _____ SS No.: _____ Primary Custodial parent? Yes No

Chil- dren	SSN	Date of Birth	Chil- dren	SSN	Date of Birth

PART I. BASIC OBLIGATION	Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)	\$	\$	
a. Minus preexisting child support payment	-	-	
b. Minus maintenance paid	-	-	
c. Plus overtime compensation, if not ex- cluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)	0	+	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 di- vided by Combined Income)	%	%	100%
4. BASIC OBLIGATION (Use line 2 Com- bined to find amount from Child Support Schedule.)			\$
PART II. SHARED CUSTODY ADJUSTMENT			
5. Shared Custody Basic Obligation (line 4 x 1.50)			\$
6. Each Parent's Share (Line 5 x each parent's line 3)	\$	\$	
7. Overnights with Each Parent (must total 365)			365
8. Percentage with Each Parent (Line 7 divided by 365)	%	%	100%

9. Amount Retained (Line 6 x line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other par- ent the difference. Enter \$0 for other parent.)	\$	\$	
PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)			
12a. Work-Related Child Care Costs Ad- justed for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (Un- insured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court or master.)	\$	\$	
12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court or master.)	\$	\$	
12e. Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent's totals together for Combined amount.)	\$	\$	\$
13. Each Parent's Share of Additional Expenses (Line 3 x line 12e Com- bined.)	\$	\$	
14. Each Parent's Net Share of Additional Direct Expenses (Each parent's line 13-line 12e. If negative number, enter \$0)	\$	\$	
15. AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other par- ent the difference. Enter \$0 for other parent.)	\$	\$	
PART IV. RECOMMENDED CHILD SUPPORT ORDER			

16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)	\$	\$	
17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.	\$	\$	

Comments, calculations, or rebuttals to schedule or adjustments	
PREPARED BY:	Date:

§48-13-503. Split physical custody adjustment.

1 In cases with split physical custody, the court or master
 2 shall use Worksheet A (Sole-Parenting) as set forth in section
 3 13-403 to calculate a separate child support order for each
 4 parent based on the number of children in that parent’s custody.
 5 Instead of transferring the calculated orders between parents,
 6 the two orders are offset. The difference of the two orders is the
 7 child support order to be paid by the parent with the higher
 8 sole-parenting order.

PART 6. ADJUSTMENT OF SHARES OF SUPPORT OBLIGATIONS.

§48-13-601. Adjustment for child care tax credit.

1 (a) The amount of the federal tax credit for child care
 2 expenses that can be realized by the custodial parent shall be
 3 approximated by deducting twenty-five percent from
 4 work-related child care costs, except that no such deduction
 5 shall be made for custodial parents with monthly gross incomes
 6 below the following amounts:

- 7 (1) One child—\$1,150;
- 8 (2) Two children—\$1,550;
- 9 (3) Three children—\$1,750;

10 (4) Four children—\$1,950;

11 (5) Five children—\$2,150; and

12 (6) Six or more children—\$2,350.

13 (b) Work-related child care costs net of any adjustment for
14 the child care tax credit shall be added to the basic child support
15 obligation and shall be divided between the parents in propor-
16 tion to their adjusted gross income.

§48-13-602. Adjustment for child health care.

1 (a) A child support order shall provide for the child's
2 current and future medical needs by providing relief in accor-
3 dance with the provisions of article 12-101, et seq., of this
4 chapter.

5 (b) The payment of a premium to provide health insurance
6 coverage on behalf of the children subject to the order is added
7 to the basic child support obligation and divided between the
8 parents in proportion to their adjusted gross income. The
9 amount added to the basic child support obligation is the actual
10 amount of the total insurance premium that is attributable to the
11 number of children due support. If this amount is not available
12 or cannot be verified, the total cost of the premium should be
13 divided by the total number of persons covered by the policy.
14 The cost per person derived from this calculation is multiplied
15 by the number of children who are the subject of the order and
16 who are covered under the policy.

17 (c) After the total child support obligation is calculated and
18 divided between the parents in proportion to their adjusted
19 gross income, the amount of the health insurance premium
20 added to the basic child support obligation is deducted from the
21 support obligor's share of the total child support obligation if
22 the support obligor is actually paying the premium.

23 (d) Extraordinary medical expenses shall be added to the
24 basic child support obligation and shall be divided between the
25 parents in proportion to their adjusted gross income.

**§48-13-603. Adjustment for obligor's social security benefits sent
directly to the child; receipt by child of supple-
mental security income.**

1 (a) If a proportion of the obligor's social security benefit is
2 paid directly to the custodian of his or her dependents who are
3 the subject of the child support order, the following adjustment
4 shall be made. The total amount of the social security benefit
5 which includes the amounts paid to the obligor and the obligee
6 shall be counted as gross income to the obligor. In turn, the
7 child support order will be calculated as described in sections
8 13-401 through 13-404. To arrive at the final child support
9 amount, however, the amount of the social security benefits
10 sent directly to the child's household will be subtracted from
11 the child support order. If the child support order amount results
12 in a negative amount it shall be set at zero.

13 (b) If a child is a recipient of disability payments as
14 supplemental security income for aged, blind and disabled,
15 under the provisions of 42 U.S.C. § 1382, et seq., and if support
16 furnished by an obligor would be considered unearned income
17 that renders the child ineligible for disability payments or
18 medical benefits, no child support order shall be entered for that
19 child. If a support order is entered for the child's siblings or
20 other persons in the household, the child shall be excluded from
21 the calculation of support, and the amount of support for the
22 child shall be set at zero.

PART 7. APPLICATION OF CHILD SUPPORT GUIDELINES.

**§48-13-701. Rebuttable presumption that child support award is
correct.**

1 The guidelines in child support awards apply as a rebuttable
2 presumption to all child support orders established or modified

3 in West Virginia. The guidelines must be applied to all actions
4 in which child support is being determined including temporary
5 orders, interstate (URESAs and UIFSAs), domestic violence,
6 foster care, divorce, nondissolution, public assistance,
7 nonpublic assistance and support decrees arising despite
8 nonmarriage of the parties. The guidelines must be used by the
9 court or master as the basis for reviewing adequacy of child
10 support levels in uncontested cases as well as contested
11 hearings.

§48-13-702. Disregard of formula.

1 (a) If the court finds that the guidelines are inappropriate in
2 a specific case, the court may either disregard the guidelines or
3 adjust the guidelines-based award to accommodate the needs of
4 the child or children or the circumstances of the parent or
5 parents. In either case, the reason for the deviation and the
6 amount of the calculated guidelines award must be stated on the
7 record (preferably in writing on the worksheet or in the order).
8 Such findings clarify the basis of the order if appealed or
9 modified in the future.

10 (b) These guidelines do not take into account the economic
11 impact of the following factors that may be possible reasons for
12 deviation:

13 (1) Special needs of the child or support obligor, including,
14 but not limited to, the special needs of a minor or adult child
15 who is physically or mentally disabled;

16 (2) Educational expenses for the child or the parent (i.e.
17 those incurred for private, parochial, or trade schools, other
18 secondary schools, or post-secondary education where there is
19 tuition or costs beyond state and local tax contributions);

20 (3) Families with more than six children;

21 (4) Long distance visitation costs;

22 (5) The child resides with third party;

23 (6) The needs of another child or children to whom the
24 obligor owes a duty of support;

25 (7) The extent to which the obligor's income depends on
26 nonrecurring or nonguaranteed income; or

27 (8) Whether the total of spousal support, child support and
28 child care costs subtracted from an obligor's income reduces
29 that income to less than the federal poverty level and con-
30 versely, whether deviation from child support guidelines would
31 reduce the income of the child's household to less than the
32 federal poverty level.

**PART 8. MISCELLANEOUS PROVISIONS RELATING
TO CHILD SUPPORT ORDERS.**

§48-13-801. Tax exemption for child due support.

1 Unless otherwise agreed to by the parties, the court shall
2 allocate the right to claim dependent children for income tax
3 purposes to the custodial parent except in cases of shared
4 custody. In shared custody cases, these rights shall be allocated
5 between the parties in proportion to their adjusted gross
6 incomes for child support calculations. In a situation where
7 allocation would be of no tax benefit to a party, the court or
8 master need make no allocation to that party. However, the tax
9 exemptions for the minor child or children should be granted to
10 the noncustodial parent only if the total of the custodial parent's
11 income and child support is greater when the exemption is
12 awarded to the noncustodial parent.

§48-13-802. Investment of child support.

1 (a) A circuit judge has the discretion, in appropriate cases,
2 to direct that a portion of child support be placed in trust and
3 invested for future educational or other needs of the child. The
4 family law master may recommend and the circuit judge may
5 order such investment when all of the child's day-to-day needs
6 are being met such that, with due consideration of the age of the
7 child, the child is living as well as his or her parents.

8 (b) If the amount of child support ordered per child exceeds
9 the sum of two thousand dollars per month, the court is required
10 to make a finding, in writing, as to whether investments shall be
11 made as provided for in subsection (a) of this section.

12 (c) A trustee named by the court shall use the judgment and
13 care under the circumstances then prevailing that persons of
14 prudence, discretion and intelligence exercise in the manage-
15 ment of their own affairs, not in regard to speculation but in
16 regard to the permanent disposition of their funds, considering
17 the probable income as well as the probable safety of their
18 capital. A trustee shall be governed by the provisions of the
19 uniform prudent investor act as set forth in article six-c, chapter
20 forty-four of this code. The court may prescribe the powers of
21 the trustee and provide for the management and control of the
22 trust. Upon petition of a party or the child's guardian or next
23 friend and upon a showing of good cause, the court may order
24 the release of funds in the trust from time to time.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS.**

**PART 1. ACTION TO OBTAIN AN ORDER FOR
SUPPORT OF MINOR CHILD.**

§48-14-101. When action may be brought for child support order.

1 An action may be brought in circuit court to obtain an
2 order for the support of a minor child when:

3 (1) The child has a parent and child relationship with an
4 obligor;

5 (2) The obligor is not meeting an obligation to support the
6 child;

7 (3) An enforceable order for the support of the child by the
8 obligor has not been entered by a court of competent jurisdic-
9 tion; and

10 (4) There is no pending action for divorce, separate
11 maintenance or annulment in which the obligation of support
12 owing from the obligor to the child is at issue.

§48-14-102. Who may bring action for child support order.

1 An action may be brought under the provisions of section
2 14-101 by:

3 (1) A custodial parent of a child, when the divorce order or
4 other order which granted custody did not make provision for
5 the support of the child by the obligor;

6 (2) A primary caretaker of a child;

7 (3) A guardian of the property of a child or the committee
8 for a child; or

9 (4) The bureau for child support enforcement, on behalf of
10 the state, when the department of health and human resources
11 is providing assistance on behalf of the child in the form of
12 temporary assistance to needy families, and any right to support
13 has been assigned to the department or in any other case
14 wherein a party has applied for child support enforcement
15 services from the bureau for child support enforcement.

§48-14-103. Venue for action for child support order.

1 An action under the provisions of this section may be
2 brought in the county where the obligee, the obligor or the child
3 resides.

§48-14-104. Obligee may seek spousal support in addition to child support.

1 When an action for child support is brought under the
2 provisions of this section by an obligee against his or her
3 spouse, such obligee may also seek spousal support from the
4 obligor, unless such support has been previously waived by
5 agreement or otherwise.

§48-14-105. Mandatory provision for wage withholding.

1 Every order of support heretofore or hereafter entered or
2 modified under the provisions of this section shall include a
3 provision for the income withholding in accordance with the
4 provisions of 12-101, et seq., and 14-401, et seq.

**PART 2. LIENS AGAINST PERSONAL PROPERTY
FOR OVERDUE SUPPORT.**

**§48-14-201. Arrearages stand by operation of law as judgment
against support obligor.**

1 When an obligor is in arrears in the payment of support
2 which is required to be paid by the terms of an order for support
3 of a child, an obligee or the bureau for child support enforce-
4 ment may file an abstract of the order giving rise to the support
5 obligation and an "affidavit of accrued support," setting forth
6 the particulars of such arrearage and requesting a writ of
7 execution, suggestion or suggestee execution. The filing of the
8 abstract and affidavit shall give rise, by operation of law, to a
9 lien against personal property of an obligor who resides within
10 this state or who owns property within this state for overdue
11 support.

§48-14-202. Registration of foreign order.

1 If the duty of support is based upon an order from another
2 jurisdiction, the obligee shall first register the order in accor-
3 dance with the provisions of part 16-601, et seq., of this
4 chapter: *Provided*, That nothing in this subsection shall prevent
5 the bureau for child support enforcement from enforcing
6 foreign orders for support without registration of the order in
7 accordance with the provisions of part 16-501, et seq., of this
8 chapter.

§48-14-203. Affidavit of accrued support.

1 (a) The affidavit of accrued support may be filed with the
2 clerk of the circuit court in the county in which the obligee or

3 the obligor resides, or where the obligor's source of income is
4 located.

5 (b) The affidavit may be filed when a payment required by
6 such order has been delinquent, in whole or in part, for a period
7 of fourteen days.

8 (c) The affidavit shall:

9 (1) Identify the obligee and obligor by name and address,
10 and shall list the obligor's social security number or numbers,
11 if known;

12 (2) Name the court which entered the support order and set
13 forth the date of such entry;

14 (3) State the total amount of accrued support which has not
15 been paid by the obligor;

16 (4) List the date or dates when support payments should
17 have been paid but were not, and the amount of each such
18 delinquent payment; and

19 (5) State the name and address of the obligor's source of
20 income, if known.

§48-14-204. Execution and notice.

1 (a) Upon receipt of the affidavit, the clerk shall issue a writ
2 of execution, suggestion or suggestee execution, and shall mail
3 a copy of the affidavit and a notice of the filing of the affidavit
4 to the obligor, at his last known address. If the bureau for child
5 support enforcement is not acting on behalf of the obligee in
6 filing the affidavit, the clerk shall forward a copy of the
7 affidavit and the notice of the filing to the bureau for child
8 support enforcement.

9 (b) The notice provided for in subsection (a) of this section
10 must inform the obligor that if he or she desires to contest the
11 affidavit on the grounds that the amount claimed to be in arrears
12 is incorrect or that a writ of execution, suggestion or suggestee

13 execution is not proper because of mistakes of fact, he or she
14 must, within fourteen days of the date of the notice: (1) Inform
15 the bureau for child support enforcement in writing of the
16 reasons why the affidavit is contested and request a meeting
17 with the bureau for child support enforcement; or (2) where a
18 court of this state has jurisdiction over the parties, obtain a date
19 for a hearing before the circuit court or the family law master
20 and mail written notice of such hearing to the obligee and to the
21 bureau for child support enforcement on a form prescribed by
22 the administrative office of the supreme court of appeals and
23 made available through the office of the clerk of the circuit
24 court.

25 (c) Upon being informed by an obligor that he or she
26 desires to contest the affidavit, the bureau for child support
27 enforcement shall inform the circuit court of such fact, and the
28 circuit court shall require the obligor to give security, post a
29 bond, or give some other guarantee to secure payment of
30 overdue support.

§48-14-205. Circuit clerk to provide form affidavits.

1 The clerk of the circuit court shall make available form
2 affidavits for use under the provisions of this article. Such form
3 affidavits shall be provided to the clerk by the bureau for child
4 support enforcement. The notice of the filing of an affidavit
5 shall be in a form prescribed by the bureau for child support
6 enforcement.

§48-14-206. Priority over other legal process.

1 Writs of execution, suggestions or suggestee executions
2 issued pursuant to the provisions of this article shall have
3 priority over any other legal process under the laws of this state
4 against the same income, except for withholding from income
5 of amounts payable as support in accordance with the provi-
6 sions of section 14-401 of this chapter, and shall be effective
7 notwithstanding any exemption that might otherwise be
8 applicable to the same income.

§48-14-207. Amount to be withheld from income.

1 Notwithstanding any other provision of this code to the
2 contrary, the amount to be withheld from the disposable
3 earnings of an obligor pursuant to a suggestee execution in
4 accordance with the provisions of this article shall be the same
5 amount which could properly be withheld in the case of a
6 withholding order under the provisions of 14-401, et seq.

§48-14-208. Filing of false affidavit constitutes false swearing.

1 A person who files a false affidavit is guilty of false
2 swearing and, upon conviction thereof, shall be punished as
3 provided by law for such offense.

§48-14-209. Application to support orders of another state.

1 The provisions of this article apply to support orders issued
2 by a court of competent jurisdiction of any other state.

§48-14-210. Application to income withholding.

1 The provisions of this article do not apply to income
2 withholding, as provided in section 14-401 of this chapter.

§48-14-211. Release of lien.

1 Upon satisfaction of the overdue support obligation, the
2 obligee shall issue a release to the obligor and file a copy
3 thereof with the clerk of the county commission in the county
4 in which the lien arose pursuant to this section. The bureau for
5 child support enforcement shall issue a release in the same
6 manner and with the same effect as liens taken by the tax
7 commissioner pursuant to section twelve, article ten, chapter
8 eleven of this code.

**PART 3. LIENS AGAINST REAL PROPERTY
FOR OVERDUE SUPPORT.**

§48-14-301. Liens against real property by operation of law.

1 An order for support entered by a court of competent
2 jurisdiction will give rise, by operation of law, to a lien against
3 real property of an obligor who resides or owns property within
4 this state for overdue support upon the filing by the obligee, or,
5 when appropriate, the bureau for child support enforcement, an
6 abstract of the order giving rise to the support obligation and an
7 "Affidavit of Accrued Support" setting forth the particulars of
8 the arrearage.

§48-14-302. Affidavit of accrued support.

1 The affidavit and abstract shall be filed with the clerk of
2 the county commission in which the real property is located.
3 The affidavit shall:

4 (1) Identify the obligee and obligor by name and address,
5 and shall list the obligor's social security number or numbers,
6 if known;

7 (2) Name the court which entered the support order and set
8 forth the date of such entry;

9 (3) Allege that the support obligor is at least thirty days in
10 arrears in the payment of child support;

11 (4) State the total amount of accrued support which has not
12 been paid by the obligor; and

13 (5) List the date or dates when support payments should
14 have been paid but were not, and the amount of each such
15 delinquent payment.

§48-14-303. Registration of foreign order.

1 If the duty of support is based upon a foreign order the
2 obligee shall first register the order in accordance with the
3 provisions of article 16 of this chapter: *Provided*, That nothing
4 in this subsection shall prevent the bureau for child support
5 enforcement from enforcing foreign orders for support without

6 registration of the order in accordance with the provisions of
7 article 16 of this chapter.

§48-14-304. Full faith and credit to liens arising in another state.

1 This state will accord full faith and credit to liens described
2 in section 301 of this article arising in another state, when the
3 out-of-state agency, party, or other entity seeking to enforce
4 such a lien complies with the procedural rules relating to
5 recording or serving liens that arise within the other state.

§48-14-305. Release of lien.

1 Upon satisfaction of the overdue support obligation, the
2 obligee shall issue a release to the obligor and file a copy
3 thereof with the clerk of the county commission in the county
4 in which the lien arose pursuant to this section. The bureau for
5 child support enforcement shall issue a release in the same
6 manner and with the same effect as liens taken by the tax
7 commissioner pursuant to section twelve, article ten, chapter
8 eleven of this code.

§48-14-306. Filing of false affidavit constitutes false swearing.

1 Any person who files a false affidavit shall be guilty of
2 false swearing and, upon conviction thereof, shall be punished
3 as provided by law for such offense.

§48-14-307. Application to support orders of another state.

1 The provisions of this part 14-301, et seq., shall apply to
2 support orders issued by a court of competent jurisdiction of
3 any other state.

§48-14-308. Enforcement by the bureau for child support enforcement of lien on real property.

1 The bureau for child support enforcement may enforce a
2 lien upon real property pursuant to the provisions of article
3 three, chapter thirty-eight of this code.

**PART 4. WITHHOLDING FROM INCOME OF
AMOUNTS PAYABLE AS SUPPORT.**

§48-14-401. Support orders to provide for withholding from income.

1 (a) Every order entered or modified under the provisions of
2 this article that requires the payment of child support or spousal
3 support must include a provision for automatic withholding
4 from income of the obligor, in order to facilitate income
5 withholding as a means of collecting support.

6 (b) Every support order heretofore or hereafter entered by
7 a court of competent jurisdiction is considered to provide for an
8 order of income withholding, notwithstanding the fact that the
9 support order does not in fact provide for an order of withhold-
10 ing. Income withholding may be instituted under this part 4 for
11 any arrearage without the necessity of additional judicial or
12 legal action.

§48-14-402. Commencement of withholding from income without further court action.

1 (a) Except as otherwise provided in section 14-403, a
2 support order as described in section 14-401 must contain or
3 must be deemed to contain language requiring automatic
4 income withholding for both current support and for any
5 arrearages to commence without further court action on the date
6 the support order is entered.

7 (b) The supreme court of appeals shall make available to
8 the circuit courts standard language to be included in all such
9 orders, so as to conform such orders to the applicable require-
10 ments of state and federal law regarding the withholding from
11 income of amounts payable as support.

§48-14-403. Exception to requirement for automatic withholding from income.

1 If one of the parties demonstrates, and the court finds, that
2 there is good cause not to require immediate income withhold-

3 ing, or in any case where there is filed with the court a written
4 agreement between the parties which provides for an alternative
5 arrangement, the support order may not provide for income
6 withholding to begin immediately.

7 (1) The order must provide that income withholding will
8 begin immediately upon the occurrence of any of the following:

9 (A) When the payments which the obligor has failed to
10 make under the order are at least equal to the support payable
11 for one month, if the order requires support to be paid in
12 monthly installments;

13 (B) When the payments which the obligor has failed to
14 make under the order are at least equal to the support payable
15 for four weeks, if the order requires support to be paid in
16 weekly or bi-weekly installments;

17 (C) When the obligor requests the bureau for child support
18 enforcement to commence income withholding; or

19 (D) When the obligee requests that such withholding begin,
20 if the request is approved by the court in accordance with
21 procedures and standards established by rules promulgated by
22 the commission pursuant to this section and to chapter
23 twenty-nine-a of this code.

24 (2) The court shall consider the best interests of the child in
25 determining whether "good cause" exists under this section.
26 The court may also consider the obligor's payment record in
27 determining whether "good cause" has been demonstrated.

28 (3) When immediate income withholding is not required
29 due to the findings required by this section, the bureau for child
30 support enforcement shall mail a notice to the obligor pursuant
31 to section 14-405 of this article upon the occurrence of any of
32 the conditions provided for in subdivision (1) of this section.

§48-14-404. Enforcement of withholding by bureau for child support enforcement.

1 The withholding from an obligor's income of amounts
2 payable as spousal or child support shall be enforced by the
3 bureau for child support enforcement in accordance with the
4 provisions of this part 4.

§48-14-405. Information required in notice to obligor.

1 When income withholding is required, the bureau for child
2 support enforcement shall send by first class mail or electronic
3 means to the obligor notice that withholding has commenced.
4 The notice shall inform the obligor of the following:

5 (1) The amount owed;

6 (2) That a withholding from the obligor's income of
7 amounts payable as support has commenced;

8 (3) That the amount withheld will be equal to the amount
9 required under the terms of the current support order, plus
10 amounts for any outstanding arrearage;

11 (4) The definition of "gross income" as defined in section
12 1-228 of this chapter;

13 (5) That the withholding will apply to the obligor's present
14 source of income, and to any future source of income and,
15 therefore, no other notice of withholding will be sent to the
16 obligor. A copy of any new or modified withholding notice will
17 be sent to the obligor at approximately the same time the
18 original is sent to the source of income;

19 (6) That any action by the obligor to purposefully minimize
20 his or her income will result in the enforcement of support
21 being based upon potential and not just actual earnings;

22 (7) That payment of the arrearage after the date of the
23 notice is not a bar to such withholding;

24 (8) That the obligor may request a review of the withhold-
25 ing by written request to the bureau for child support enforce-
26 ment when the obligor has information showing an error in the
27 current or overdue support amount or a mistake as to the
28 identity of the obligor;

29 (9) That a mistake of fact exists only when there is an error
30 in the amount of current or overdue support claimed in the
31 notice, or there is a mistake as to the identity of the obligor;

32 (10) That matters such as lack of visitation, inappropriate-
33 ness of the support award, or changed financial circumstances
34 of the obligee or the obligor will not be considered at any
35 hearing held pursuant to the withholding, but may be raised by
36 the filing of a separate petition in circuit court;

37 (11) That if the obligor desires to contest the withholding,
38 the obligor may petition the circuit court for a resolution; and

39 (12) That while the withholding is being contested through
40 the court, the income withholding may not be stayed, but may
41 be modified.

**§48-14-406. Notice to source of income; withholding in compli-
ance with order.**

1 (a) Withholding shall occur and the notice to withhold shall
2 be sent to the source of income when the support order provides
3 for immediate income withholding, or if immediate income
4 withholding is not so provided, when the support payments are
5 in arrears in the amount specified in section 403 of this article.

6 (b) The source of income shall withhold so much of the
7 obligor's income as is necessary to comply with the order
8 authorizing such withholding, up to the maximum amount

9 permitted under applicable law for both current support and for
10 any arrearages which are due. Such withholding, unless
11 otherwise terminated under the provisions of this part 4 of this
12 article, shall apply to any subsequent source of income or any
13 subsequent period of time during which income is received by
14 the obligor.

15 (c) In addition to any amounts payable as support withheld
16 from the obligor's income, the source of income may deduct a
17 fee, not to exceed one dollar, for administrative costs incurred
18 by the source of income, for each withholding.

§48-14-407. Contents of notice to source of income.

1 (a) The source of income of any obligor who is subject to
2 withholding, upon being given notice of withholding, shall
3 withhold from such obligor's income the amount specified by
4 the notice and pay such amount to the bureau for child support
5 enforcement for distribution. The notice given to the source of
6 income shall contain only such information as may be neces-
7 sary for the source of income to comply with the withholding
8 order and no source of income may require additional informa-
9 tion or documentation. Such notice to the source of income
10 shall include, at a minimum, the following:

11 (1) The amount to be withheld from the obligor's dispos-
12 able earnings, and a statement that the amount to be withheld
13 for support and other purposes, including the fee specified
14 under subdivision (3) of this subsection, may not be in excess
15 of the maximum amounts permitted under Section 303(b) of the
16 federal Consumer Credit Protection Act or limitations imposed
17 under the provisions of this code;

18 (2) That the source of income shall send the amount to be
19 withheld from the obligor's income to the bureau for child
20 support enforcement, along with such identifying information
21 as may be required by the bureau, the same day that the obligor
22 is paid;

23 (3) That, in addition to the amount withheld under the
24 provisions of subdivision (1) of this subsection, the source of
25 income may deduct a fee, not to exceed one dollar, for adminis-
26 trative costs incurred by the source of income, for each with-
27 holding;

28 (4) That withholding is binding on the source of income
29 until further notice by the bureau for child support enforcement
30 or until the source of income notifies the bureau for child
31 support enforcement of a termination of the obligor's employ-
32 ment in accordance with the provisions of subsection (1) of this
33 section;

34 (5) That the source of income is subject to a fine for
35 discharging an obligor from employment, refusing to employ,
36 or taking disciplinary action against any obligor because of the
37 withholding;

38 (6) That when the source of income fails to withhold
39 income in accordance with the provisions of the notice, the
40 source of income is liable for the accumulated amount the
41 source of income should have withheld from the obligor's
42 income;

43 (7) That the withholding under the provisions of this part 4
44 shall have priority over any other legal process under the laws
45 of this state against the same income, and shall be effective
46 despite any exemption that might otherwise be applicable to the
47 same income;

48 (8) That when an employer has more than one employee
49 who is an obligor who is subject to wage withholding from
50 income under the provisions of this code, the employer may
51 combine all withheld payments to the bureau for child support
52 enforcement when the employer properly identifies each
53 payment with the information listed in this part 4. A source of
54 income is liable to an obligee, including the state of West
55 Virginia or the department of health and human resources
56 where appropriate, for any amount which the source of income

57 fails to identify with the information required by this part 4 and
58 is therefore not received by the obligee;

59 (9) That the source of income shall implement withholding
60 no later than the first pay period or first date for payment of
61 income that occurs after fourteen days following the date the
62 notice to the source of income was mailed; and

63 (10) That the source of income shall notify the bureau for
64 child support enforcement promptly when the obligor termi-
65 nates his or her employment or otherwise ceases receiving
66 income from the source of income, and shall provide the
67 obligor's last known address and the name and address of the
68 obligor's new source of income, if known.

69 (b) The commission shall, by administrative rule, establish
70 procedures for promptly refunding to obligors amounts which
71 have been improperly withheld under the provisions of this part
72 4.

§48-14-408. Determination of amounts to be withheld.

1 Notwithstanding any other provision of this code to the
2 contrary which provides for a limitation upon the amount which
3 may be withheld from earnings through legal process, the
4 amount of an obligor's aggregate disposable earnings for any
5 given workweek which may be withheld as support payments
6 is to be determined in accordance with the provisions of this
7 subsection, as follows:

8 (1) After ascertaining the status of the payment record of
9 the obligor under the terms of the support order, the payment
10 record shall be examined to determine whether any arrearage is
11 due for amounts which should have been paid prior to a
12 twelve-week period which ends with the workweek for which
13 withholding is sought to be enforced.

14 (2) Prior to the first day of January, two thousand one,
15 when none of the withholding is for amounts which came due
16 prior to such twelve-week period, then:

17 (A) When the obligor is supporting another spouse or
18 dependent child other than the spouse or child for whom the
19 proposed withholding is being sought, the amount withheld may
20 not exceed fifty percent of the obligor's disposable earnings for
21 that week; and

22 (B) When the obligor is not supporting another spouse or
23 dependent child as described in paragraph (A) of this subdivi-
24 sion, the amount withheld may not exceed sixty percent of the
25 obligor's disposable earnings for that week.

26 (3) Prior to the first day of January, two thousand one,
27 when a part of the withholding is for amounts which came due
28 prior to such twelve-week period, then:

29 (A) Where the obligor is supporting another spouse or
30 dependent child other than the spouse or child for whom the
31 proposed withholding is being sought, the amount withheld may
32 not exceed fifty-five percent of the obligor's disposable
33 earnings for that week; and

34 (B) Where the obligor is not supporting another spouse or
35 dependent child as described in paragraph (A) of this subdivi-
36 sion, the amount withheld may not exceed sixty-five percent of
37 the obligor's disposable earnings for that week.

38 (4) Beginning the first day of January, two thousand one,
39 when none of the withholding is for amounts which came due
40 prior to such twelve-week period, then:

41 (A) When the obligor is supporting another spouse or
42 dependent child other than the spouse or child for whom the
43 proposed withholding is being sought, the amount withheld may
44 not exceed forty percent of the obligor's disposable earnings for
45 that week; and

46 (B) When the obligor is not supporting another spouse or
47 dependent child as described in paragraph (A) of this subdivi-
48 sion, the amount withheld may not exceed fifty percent of the
49 obligor's disposable earnings for that week.

50 (5) Beginning the first day of January, two thousand one,
51 when a part of the withholding is for amounts which came due
52 prior to such twelve-week period, then:

53 (A) When the obligor is supporting another spouse or
54 dependent child other than the spouse or child for whom the
55 proposed withholding is being sought, the amount withheld may
56 not exceed forty-five percent of the obligor's disposable
57 earnings for that week; and

58 (B) Where the obligor is not supporting another spouse or
59 dependent child as described in paragraph (A) of this subdivi-
60 sion, the amount withheld may not exceed fifty-five percent of
61 the obligor's disposable earnings for that week.

62 (6) In addition to the percentage limitations set forth in
63 subdivisions (2) and (3) of this subsection, it shall be a further
64 limitation that when the current month's obligation plus
65 arrearages are being withheld from salaries or wages in no case
66 shall the total amounts withheld for the current month's
67 obligation plus arrearage exceed the amounts withheld for the
68 current obligation by an amount greater than twenty-five
69 percent of the current monthly support obligation.

70 (7) The provisions of this subsection shall apply directly to
71 the withholding of disposable earnings of an obligor regardless
72 of whether the obligor is paid on a weekly, biweekly, monthly
73 or other basis.

74 (8) The bureau for child support enforcement has the
75 authority to prorate the current support obligation in accordance
76 with the pay cycle of the source of income. This prorated
77 current support obligation shall be known as the "adjusted
78 support obligation." The current support obligation or the
79 adjusted support obligation is the amount, if unpaid, on which
80 interest will be charged.

81 (9) When an obligor acts so as to purposefully minimize his
82 or her income and to thereby circumvent the provisions of this
83 part 4 which provide for withholding from income of amounts

84 payable as support, the amount to be withheld as support
85 payments may be based upon the obligor's potential earnings
86 rather than his or her actual earnings, and such obligor may not
87 rely upon the percentage limitations set forth in this subsection
88 which limit the amount to be withheld from disposable earn-
89 ings.

§48-14-409. Time for implementing withholding.

1 Every source of income who receives a notice of withhold-
2 ing under the provisions of this section shall implement
3 withholding no later than the first pay period or first date for the
4 payment of income which occurs after fourteen days following
5 the date the notice to the source of income was mailed.

§48-14-410. Sending amounts withheld to bureau; notice.

1 After implementation in accordance with the provisions of
2 section 14-409, a source of income shall send the amount to be
3 withheld from the obligor's income to the bureau for child
4 support enforcement and shall notify the bureau for child
5 support enforcement of the date of withholding, the same date
6 that the obligor is paid.

§48-14-411. Time withholding is to stay in effect.

1 Withholding of amounts payable as support under the
2 provisions of this part 4 of this article is binding on the source
3 of income until further notice by the bureau for child support
4 enforcement or until the source of income notifies the bureau
5 for child support enforcement of a termination of the obligor's
6 employment in accordance with the provisions of section 14-
7 412.

§48-14-412. Notice of termination of employment or receipt of income.

1 A source of income who employs or otherwise pays income
2 to an obligor who is subject to withholding under the provisions
3 of this part 4 shall notify the bureau for child support enforce-

4 ment promptly when the obligor terminates employment or
 5 otherwise ceases receiving income from the source of income,
 6 and shall provide the bureau for child support enforcement with
 7 the obligor's last known address and the name and address of
 8 the obligor's new source of income, if known.

§48-14-413. Combining withheld amounts.

1 When an employer has more than one employee who is an
 2 obligor who is subject to wage withholding from income for
 3 amounts payable as support, the employer may combine all
 4 withheld payments to the bureau for child support enforcement
 5 when the employer properly identifies each payment with the
 6 information listed in this part 4. A source of income is liable to
 7 an obligee, including the state of West Virginia or the depart-
 8 ment of health and human resources where appropriate, for any
 9 amount which the source of income fails to identify in accord-
 10 dance with this part 4 and is therefore not received by the
 11 obligee.

§48-14-414. Sending amounts withheld to division; notice.

1 A source of income is liable to an obligee, including the
 2 state of West Virginia or the department of health and human
 3 resources where appropriate, for any amount which the source
 4 of income fails to withhold from income due an obligor
 5 following receipt by such source of income of proper notice
 6 under section 14-407: *Provided*, That a source of income shall
 7 not be required to vary the normal pay and disbursement cycles
 8 in order to comply with the provisions of this section.

**§48-14-415. Misdemeanor offense of concealing payment of
 income to obligor; penalty.**

1 Any source of income who knowingly and willfully
 2 conceals the fact that the source of income is paying income to
 3 an obligor, with the intent to avoid withholding from the
 4 obligor's income of amounts payable as support, is guilty of a
 5 misdemeanor and, upon conviction thereof, shall be fined not
 6 more than one hundred dollars.

§48-14-416. Request to source of income for information regarding payment of income.

1 When the bureau for child support enforcement makes a
2 written request to a source of income to provide information as
3 to whether the source of income has paid income to a specific
4 obligor, within the preceding sixty-day period, the source of
5 income shall, within fourteen days thereafter, respond to such
6 request, itemizing all such income, if any, paid to the obligor
7 during such sixty-day period. A source of income shall not be
8 liable, civilly or criminally, for providing such information in
9 good faith.

§48-14-417. Priority of support collection over other legal process.

1 Support collection under the provisions of this section shall
2 have priority over any other legal process under the laws of this
3 state against the same income, and shall be effective despite any
4 exemption that might otherwise be applicable to the same
5 income.

§48-14-418. Misdemeanor offense for source of income's action against an obligor; penalty.

1 Any source of income who discharges from employment,
2 refuses to employ, or takes disciplinary action against any
3 obligor subject to income withholding required by this part 4
4 because of the existence of such withholding and the obliga-
5 tions or additional obligations which it imposes on the source
6 of income, shall be guilty of a misdemeanor and, upon convic-
7 tion thereof, shall be fined not less than five hundred dollars nor
8 more than one thousand dollars.

§48-14-419. Proposal of legislative rules by bureau for child support enforcement.

1 The West Virginia support enforcement commission shall
2 promulgate legislative rules pursuant to chapter twenty-nine-a

3 of this code further defining the duties of the bureau for child
4 support enforcement and the employer in wage withholding.

**PART 5. ENFORCEMENT OF SUPPORT ORDERS
BY CONTEMPT PROCEEDINGS.**

§48-14-501. Commencement of contempt action in circuit court.

1 In addition to or in lieu of the other remedies provided by
2 this article for the enforcement of support orders, the bureau for
3 child support enforcement may commence a civil or criminal
4 contempt proceeding in accordance with the provisions of
5 section 1-305 against an obligor who is alleged to have willfully
6 failed or refused to comply with the order of a court of compe-
7 tent jurisdiction requiring the payment of support. Such
8 proceeding shall be instituted by filing with the circuit court a
9 petition for an order to show cause why the obligor should not
10 be held in contempt.

**§48-14-502. Willful failure or refusal to comply with order to pay
support.**

1 If the court finds that the obligor willfully failed or refused
2 to comply with an order requiring the payment of support, the
3 court shall find the obligor in contempt and may do one or more
4 of the following:

5 (1) Require additional terms and conditions consistent with
6 the court's support order.

7 (2) After notice to both parties and a hearing, if requested
8 by a party, on any proposed modification of the order, modify
9 the order in the same manner and under the same requirements
10 as an order requiring the payment of support may be modified
11 under the provisions of part 5-701, *et seq.* A modification
12 sought by an obligor, if otherwise justified, shall not be denied
13 solely because the obligor is found to be in contempt.

14 (3) Order that all accrued support and interest thereon be
15 paid under such terms and conditions as the court, in its
16 discretion, may deem proper.

17 (4) Order the contemnor to pay support in accordance with
18 a plan approved by the bureau for child support enforcement or
19 to participate in such work activities as the court deems
20 appropriate.

21 (5) If appropriate under the provisions of section 1-305:

22 (A) Commit the contemnor to the county or regional jail; or

23 (B) Commit the contemnor to the county or regional jail
24 with the privilege of leaving the jail, during such hours as the
25 court determines and under such supervision as the court
26 considers necessary, for the purpose of allowing the contemnor
27 to go to and return from his or her place of employment.

§48-14-503. Limitation on length of commitment.

1 (a) A commitment under subdivision (5) of section 14-502
2 shall not exceed forty-five days for the first adjudication of
3 contempt or ninety days for any subsequent adjudication of
4 contempt.

5 (b) An obligor committed under subdivision (5), of section
6 14-502 shall be released if the court has reasonable cause to
7 believe that the obligor will comply with the court's orders.

§48-14-504. Violation of work release conditions.

1 If an obligor is committed to jail under the provisions of
2 paragraph (B), subdivision (5), of section 14-502 and violates
3 the conditions of the court, the court may commit the person to
4 the county or regional jail without the privilege provided under
5 said paragraph (B) for the balance of the period of commitment
6 imposed by the court.

§48-14-505. Misdemeanor offense of escape from custody; penalty.

1 If a person is committed to jail under the provisions of
2 paragraph (B), subdivision (5), of section 14-502 and willfully
3 fails to return to the place of confinement within the time

4 prescribed, such person shall be considered to have escaped
5 from custody and shall be guilty of a misdemeanor, punishable
6 by imprisonment for not more than one year.

**PART 6. HIGH-VOLUME AUTOMATED
ADMINISTRATIVE ENFORCEMENT
OF CHILD SUPPORT IN INTERSTATE CASES.**

§48-14-601. Definitions.

1 As used in this chapter:

2 (1) “High-volume automated administrative enforcement”
3 in interstate cases means at the request of another state, the
4 identification by a state, through automated data matches with
5 financial institutions and other entities where assets may be
6 found, of assets owned by persons who owe child support in
7 other states, and the seizure of such assets by the state, through
8 levy or other appropriate processes.

9 (2) “Assisting state” means a state which matches the
10 requesting state’s delinquent obligors against the databases of
11 financial institutions and other entities within its own state
12 boundaries where assets may be found, and, if appropriate,
13 seizes assets on behalf of the requesting state.

14 (3) “Requesting state” means a state transmitting a request
15 for administrative enforcement to another state.

16 (4) “State” means a state of the United States, or the
17 District of Columbia, Puerto Rico, the United States Virgin
18 Islands, or any territory or insular possession subject to the
19 jurisdiction of the United States. The term “state” shall also
20 include Indian tribes and a foreign jurisdiction that has enacted
21 a law or established procedures for issuance and enforcement
22 of support which are substantially similar to the procedures
23 under this chapter or under the uniform reciprocal enforcement
24 of support act, the revised uniform reciprocal enforcement of
25 support act, or the uniform interstate family support act.

§48-14-602. Use of automated administrative enforcement.

1 The bureau for child support enforcement shall use auto-
2 mated administrative enforcement to the same extent as used
3 for intrastate cases in response to a request made by another
4 state to enforce support orders, and shall promptly report the
5 results of such enforcement procedures to the requesting state.

§48-14-603. Enforcing support orders through automated administrative enforcement.

1 (a) The bureau for child support enforcement may, by
2 electronic or other means, transmit to, or receive from, another
3 state a request for assistance in enforcing support orders
4 through automated administrative enforcement. Such request
5 shall include:

6 (1) Information as will enable the assisting state to compare
7 the information about the cases to the information in the
8 databases of the state;

9 (2) All supporting documentation necessary under the laws
10 of this state to support an attachment of the asset or assets,
11 should such assets be located; and

12 (3) Said transmittal shall constitute a certification by the
13 requesting state:

14 (A) Of the amount of past-due support owed; and

15 (B) That the requesting state has complied with all proce-
16 dural due process requirements applicable to each case.

17 (b) A requesting state may transmit to an assisting state
18 either:

19 (1) A request to locate and seize assets; or

20 (2) A request to seize an asset already identified by the
21 requesting state.

**PART 7. BONDS OR SECURITY TO SECURE
PAYMENT OF OVERDUE SUPPORT.**

**§48-14-701. Posting of bonds or giving security to guarantee
payment of overdue support.**

1 (a) An obligor with a pattern of overdue support may be
2 required by order of the family law master or the court to post
3 bond, give security or some other guarantee to secure payment
4 of overdue support. The guarantee may include an order
5 requiring that stocks, bonds or other assets of the obligor be
6 held in escrow by the court until the obligor pays the support.

7 (b) No less than fifteen days before such an order may be
8 entered the childrens' advocate shall cause the mailing of a
9 notice by first class mail to the obligor informing the obligor of
10 the impending action, his or her right to contest it, and setting
11 forth a date, time and place for a meeting with the childrens'
12 advocate and the date, time and place of a hearing before the
13 family law master if the impending action is contested.

PART 8. INCREASE IN PAYMENTS TO SATISFY ARREARAGE.

**§48-14-801. When monthly payments may be increased to satisfy
overdue support.**

1 (a) For the purpose of securing overdue support, the bureau
2 for child support enforcement has the authority to increase the
3 monthly support payments by as much as one hundred dollars
4 per month to satisfy the arrearage where the obligor:

5 (1) Owes an arrearage of not less than eight thousand
6 dollars; or

7 (2) Has not paid support for twelve consecutive months.

8 (b) An increase in monthly support under this section will
9 be in addition to any amounts withheld from income pursuant
10 to part 4 of this article.

11 (c) This increase in monthly support may be enforced
12 through the withholding process.

§48-14-802. Notice of increase in monthly payments to satisfy overdue support.

1 Notice of the increase shall be sent to the obligor at the
2 time such increase is implemented. If the obligor disagrees with
3 the increase in payments, he or she may file, within thirty days
4 of the date of the notice, a motion with the circuit court in
5 which the case is situated for a determination of whether there
6 should be an increase in monthly payments and the amount of
7 that increase, if any.

§48-14-803. Application to support orders of courts of competent jurisdiction.

1 The provisions of sections 14-801 and 14-802 apply to
2 support orders issued by a court of competent jurisdiction of
3 this or any other state.

**PART 9. PROCEDURES BEFORE THE BUREAU
FOR CHILD SUPPORT ENFORCEMENT.**

§48-14-901. Procedure when person contests action proposed to be taken against him.

1 (a) In any case arising under the provisions of this article
2 wherein a notice is served upon a person requiring him or her
3 to notify the bureau for child support enforcement if the person
4 is contesting action proposed to be taken against him:

5 (1) If the person so notified does not submit written reasons
6 for contesting the action within the time set to contest the
7 proposed action, and does not request a meeting with the bureau
8 for child support enforcement, then the bureau for child support
9 enforcement shall proceed with the proposed action; or

10 (2) If the person so notified does submit written reasons for
11 contesting the action within the time set to contest the proposed
12 action, and requests a meeting with the bureau for child support
13 enforcement, then the bureau for child support enforcement

14 shall schedule a meeting at the earliest practicable time with the
15 person and attempt to resolve the matter informally.

16 (b) If the matter cannot be resolved informally, the bureau
17 for child support enforcement shall make a determination as to
18 whether the proposed action is proper and should actually
19 occur.

20 (c) The determination of the bureau for child support
21 enforcement shall be made within forty-five days from the date
22 of the notice which first apprised the person of the proposed
23 action. Upon making the determination, the bureau for child
24 support enforcement shall inform the parties as to whether or
25 not the proposed action will occur, and, if it is to occur, of the
26 date on which it is to begin, and in the case of withholding from
27 income, shall furnish the obligor with the information contained
28 in any notice given to an employer under the provisions of
29 section 14-407 with respect to such withholding.

PART 10. OFFENSES.

§48-14-1001. Misrepresentation of delinquent support payments; penalty.

1 If any person knowingly and willfully makes any false,
2 fictitious or fraudulent statement or representation, or makes or
3 uses any false writing or document knowing the same to contain
4 any false, fictitious or fraudulent statement or entry, thus
5 misrepresenting the amount of child support actually due and
6 owing, and if such statement, representation, writing or
7 document causes bureau for support enforcement attorney in
8 reliance thereon to institute an action or proceeding or other-
9 wise commence to enforce a support obligation under this
10 article or under section 1-305, such person is guilty of false
11 swearing and, upon conviction thereof, shall be punished as
12 provided by law for such offense.

ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.

PART 1. DEFINITIONS.

§48-15-101. Applicability of definitions.

1 For purposes of this article, the words or terms defined in
2 this article, and any variation of those words or terms required
3 by the context, have the meanings ascribed to them. These
4 definitions are applicable unless a different meaning clearly
5 appears from the context.

§48-15-102. Action against a license defined.

1 “Action against a license” means action taken by the
2 bureau for child support enforcement to cause the denial,
3 nonrenewal, suspension or restriction of a license applied for or
4 held by: (A) A support obligor owing overdue support; or (B)
5 a person who has failed to comply with subpoenas or warrants
6 relating to paternity or child support proceedings.

§48-15-103. Application defined.

1 “Application” means a request to have a license issued, a
2 request for a renewal of an existing license or a request to
3 change the status of an existing license.

§48-15-104. License defined.

1 “License” means a license, permit, certificate of registra-
2 tion, registration, credential, stamp or other indicia that evi-
3 dences a personal privilege entitling a person to do an act that
4 he or she would otherwise not be entitled to do, or evidences a
5 special privilege to pursue a profession, trade, occupation,
6 business or vocation.

PART 2. ACTION AGAINST LICENSE.

§48-15-201. Licenses subject to action.

1 The following licenses are subject to an action against a
2 license as provided for in this article:

3 (1) A permit or license issued under chapter seventeen-b of
4 this code, authorizing a person to drive a motor vehicle;

5 (2) A commercial driver's license, issued under chapter
6 seventeen-e of this code, authorizing a person to drive a class
7 of commercial vehicle;

8 (3) A permit, license or stamp issued under article two or
9 two-b, chapter twenty of this code, regulating a person's
10 activities for wildlife management purposes, authorizing a
11 person to serve as an outfitter or guide, or authorizing a person
12 to hunt or fish;

13 (4) A license or registration issued under chapter thirty of
14 this code, authorizing a person to practice or engage in a
15 profession or occupation;

16 (5) A license issued under article twelve, chapter forty-
17 seven of this code, authorizing a person to transact business as
18 a real estate broker or real estate salesperson;

19 (6) A license or certification issued under article fourteen,
20 chapter thirty-seven of this code, authorizing a person to
21 transact business as a real estate appraiser;

22 (7) A license issued under article twelve, chapter thirty-
23 three of this code, authorizing a person to transact insurance
24 business as an agent, broker or solicitor;

25 (8) A registration made under article two, chapter thirty-two
26 of this code, authorizing a person to transact securities business
27 as a broker-dealer, agent or investment advisor;

28 (9) A license issued under article twenty-two, chapter
29 twenty-nine of this code, authorizing a person to transact
30 business as a lottery sales agent;

31 (10) A license issued under articles thirty-two or thirty-four,
32 chapter sixteen of this code, authorizing persons to pursue a
33 trade or vocation in asbestos abatement or radon mitigation;

34 (11) A license issued under article eleven, chapter twenty-
35 one of this code, authorizing a person to act as a contractor;

36 (12) A license issued under article two-c, chapter nineteen
37 of this code, authorizing a person to act as an auctioneer; and

38 (13) A license, permit or certificate issued under chapter
39 nineteen of this code, authorizing a person to sell, market or
40 distribute agricultural products or livestock.

§48-15-202. Persons subject to notice of action against license.

1 The bureau for child support enforcement shall send a
2 written notice of an action against a license to a person who:

3 (1) Owes overdue child support, if the child support
4 arrearage equals or exceeds the amount of child support payable
5 for six months;

6 (2) Has failed for a period of six months to pay medical
7 support ordered under article 12-101, *et seq.*, of this code; or

8 (3) Has failed, after appropriate notice, to comply with
9 subpoenas or warrants relating to paternity or child support
10 proceedings.

§48-15-203. Exhaustion of other statutory enforcement methods.

1 In the case of overdue child support or noncompliance with
2 a medical support order, notice of an action against a license
3 shall be served only if other statutory enforcement methods to
4 collect the support arrearage have been exhausted or are not
5 available.

§48-15-204. Service of notice of action against a license.

1 The bureau shall send a notice of action against a license
2 by regular mail and by certified mail, return receipt requested,

3 to the person's last-known address or place of business or
4 employment. Simultaneous certified and regular mailing of the
5 written notice shall constitute effective service unless the
6 United States Postal Service returns the mail to the bureau for
7 child support enforcement within the thirty-day response period
8 marked "moved, unable to forward," "addressee not known,"
9 "no such number/street," "insufficient address," or "forwarding
10 order expired." If the certified mail is returned for any other
11 reason without the return of the regular mail, the regular mail
12 service shall constitute effective service. If the mail is ad-
13 dressed to the person at his or her place of business or employ-
14 ment, with postal instructions to deliver to addressee only,
15 service will be deemed effective only if the signature on the
16 return receipt appears to be that of the person. Acceptance of
17 the certified mail notice signed by the person, the person's
18 attorney, or a competent member of the person's household
19 above the age of sixteen shall be deemed effective service.

§48-15-205. Form of notice of action against a license.

1 The notice shall be substantially in the following form:

NOTICE OF ACTION AGAINST LICENSE		
Name and address:	Date:	Case No:
	Social Security No:	
	Circuit Court of County, West Virginia	
<p>Section 1.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with an order to pay child support, and that the amount you owe equals six months child support or more. The amount you owe is calculated to be \$ _____ as of the _____ day of _____, _____.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be \$ _____ as of the _____ day of _____, _____.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.</p> <p><input type="checkbox"/> The Bureau for Child Support Enforcement has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.</p>		

Section 2.

Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's license, a recreational license such as a hunting and fishing license, and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.

The Bureau for Child Support Enforcement has determined that you are a current license holder, have applied for, or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:

- I want to pay in full the overdue amount I owe as child support. I am enclosing a check or money order in the amount of \$.
- I want pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of \$.
- I am requesting a meeting with a representative of the Bureau for Child Support Enforcement to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.
- I am requesting a hearing before the family law master or circuit judge to contest an action against my licenses. Please serve me with any petition filed, and provide me with notice of the time and place of the hearing.

Signed ✕ _____ Date: _____

Section 3.

You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Bureau for Child Support Enforcement before the _____ day of _____, _____. Otherwise, the Bureau for Child Support Enforcement may begin an action against your licenses in the Circuit Court without further notice to you. Mail this form to the following address:

§48-15-206. Notice of consequences of failure to comply.

1 The notice shall advise the person that further failure to
2 comply may result in an action against licenses held by the
3 person, and that any pending application for a license may be
4 denied, renewal of a license may be refused, or an existing
5 license may be suspended or restricted unless, within thirty days
6 of the date of the notice, the person pays the full amount of the
7 child support arrearage or the medical support arrearage, makes
8 a request for a meeting with a representative of the bureau for
9 child support enforcement to arrange a payment plan or to
10 otherwise arrange compliance with existing support orders, or
11 makes a request for a court hearing to the bureau for child
12 support enforcement. An action against a license shall be
13 terminated if the person pays the full amount of the child
14 support arrearage or medical support arrearage, or provides
15 proof that health insurance for the child has been obtained as
16 required by a medical support order or enters into a written plan
17 with the bureau for child support enforcement for the payment
18 of current payments and payment on the arrearage.

§48-15-207. Failure to act in response to notice; entry of order.

1 If the person fails to take one of the actions described in
2 section 15-206 of this section within thirty days of the date of

3 the notice and there is proof that service on the person was
 4 effective, the bureau for child support enforcement shall file a
 5 certification with the circuit court setting forth the person's
 6 noncompliance with the support order or failure to comply with
 7 a subpoena or warrant and the person's failure to respond to the
 8 written notice of the potential action against his or her license.
 9 If the circuit court is satisfied that service of the notice on the
 10 person was effective as set forth in this section, it shall without
 11 need for further due process or hearing, enter an order suspend-
 12 ing or restricting any licenses held by the person. Upon the
 13 entry of the order, the bureau for child support enforcement
 14 shall forward a copy to the person and to any appropriate
 15 agencies responsible for the issuance of a license.

§48-15-208. Request and petition for hearing.

1 If the person requests a hearing, the bureau for child
 2 support enforcement shall file a petition for a judicial hearing
 3 before the family law master. The hearing shall occur within
 4 forty-two days of the receipt of the person's request. If, prior to
 5 the hearing, the person pays the full amount of the child support
 6 arrearage or medical support arrearage or provides health
 7 insurance as ordered, the action against a license shall be
 8 terminated. No action against a license shall be initiated if the
 9 bureau for child support enforcement has received notice that
 10 the person has pending a motion to modify the child support
 11 order, if that motion was filed prior to the date that the notice of
 12 the action against the license was sent by the bureau for child
 13 support enforcement. The court shall consider the bureau for
 14 child support enforcement's petition to deny, refuse to renew,
 15 suspend or restrict a license in accordance with section 15-209.

**§48-15-209. Hearing on denial, nonrenewal, suspension or restric-
 tion of license.**

1 (a) The court shall order a licensing authority to deny,
 2 refuse to renew, suspend or restrict a license if it finds that:

3 (1) All appropriate enforcement methods have been
 4 exhausted or are not available;

5 (2) The person is the holder of a license or has an applica-
6 tion pending for a license;

7 (3) The requisite amount of child support or medical
8 support arrearage exists or health insurance for the child has not
9 been provided as ordered, or the person has failed to comply
10 with a subpoena or warrant relating to a paternity or child
11 support proceeding;

12 (4) No motion to modify the child support order, filed prior
13 to the date that the notice was sent by the bureau for child
14 support enforcement, is pending before the court; and

15 (5) There is no equitable reason, such as involuntary
16 unemployment, disability, or compliance with a court-ordered
17 plan for the periodic payment of the child support arrearage
18 amount, for the person's noncompliance with the child support
19 order.

20 (b) If the court is satisfied that the conditions described in
21 subsection (a) of this section exist, it shall first consider
22 suspending or restricting a driver's license prior to professional
23 license. If the person fails to appear at the hearing after being
24 properly served with notice, the court shall order the suspension
25 of all licenses held by the person.

26 (c) If the court finds that a license suspension will result in
27 a significant hardship to the person, to the person's legal
28 dependents under eighteen years of age living in the person's
29 household, to the person's employees, or to persons, businesses
30 or entities to whom the person provides goods or services, the
31 court may allow the person to pay a percentage of the past-due
32 child support amount as an initial payment, and establish a
33 payment schedule to satisfy the remainder of the arrearage
34 within one year, and require that the person comply with any
35 current child support obligation. If the person agrees to this
36 arrangement, no suspension or restriction of any licenses shall
37 be ordered. Compliance with the payment agreement shall be
38 monitored by the bureau for child support enforcement.

39 (d) If a person has good cause for not complying with the
40 payment agreement within the time permitted, the person shall

41 immediately file a motion with the court and the bureau for
 42 child support enforcement requesting an extension of the
 43 payment plan. The court may extend the payment plan if it is
 44 satisfied that the person has made a good faith effort to comply
 45 with the plan and is unable to satisfy the full amount of past-due
 46 support within the time permitted due to circumstances beyond
 47 the person's control. If the person fails to comply with the
 48 court-ordered payment schedule, the court shall, upon receipt
 49 of a certification of noncompliance from the bureau for child
 50 support enforcement, and without further hearing, order the
 51 immediate suspension or restriction of all licenses held by the
 52 person.

PART 3. ENFORCEMENT OF ORDER BY LICENSING AUTHORITY.

§48-15-301. Copy of order provided to licensing authority.

1 (a) The bureau for child support enforcement shall provide
 2 the licensing authority with a copy of the order requiring the
 3 denial, nonrenewal, suspension or restriction of a license.

4 (b) Upon receipt of an order requiring the suspension or
 5 restriction of a license for nonpayment of child support, the
 6 licensing authority shall immediately notify the applicant or
 7 licensee of the effective date of the denial, nonrenewal,
 8 suspension or limitation, which shall be twenty days after the
 9 date of the notice, direct any licensee to refrain from engaging
 10 in the activity associated with the license, surrender any license
 11 as required by law, and inform the applicant or licensee that the
 12 license shall not be approved, renewed or reinstated until the
 13 court or bureau for child support enforcement certifies compli-
 14 ance with court orders for the payment of current child support
 15 and arrearage.

16 (c) The bureau for child support enforcement, in association
 17 with the affected licensing authorities, may develop electronic
 18 or magnetic tape data transfers to notify licensing authorities of
 19 denials, nonrenewals, suspensions and reinstatements.

20 (d) No liability shall be imposed on a licensing authority for
 21 suspending or restricting a license if the action is in response to
 22 a court order issued in accordance with this article.

23 (e) Licensing authorities shall not have jurisdiction to
24 modify, remand, reverse, vacate or stay a court order to deny,
25 not renew, suspend or restrict a license for nonpayment of child
26 support.

§48-15-302. Denial, nonrenewal, suspension or restriction continues until further order or issuance of certificate of compliance.

1 The denial, nonrenewal, suspension or restriction of a
2 license ordered by the court shall continue until the bureau for
3 child support enforcement files with the licensing authority
4 either a court order restoring the license or a bureau for child
5 support enforcement certification attesting to compliance with
6 court orders for the payment of current child support and
7 arrearage.

§48-15-303. License applicant to certify information regarding child support obligation.

1 (a) Each licensing authority shall require license applicants
2 to certify on the license application form, under penalty of false
3 swearing, that the applicant does not have a child support
4 obligation, the applicant does have such an obligation but any
5 arrearage amount does not equal or exceed the amount of child
6 support payable for six months, or the applicant is not the
7 subject of a child-support related subpoena or warrant. The
8 application form shall state that making a false statement may
9 subject the license holder to disciplinary action including, but
10 not limited to, immediate revocation or suspension of the
11 license.

12 (b) A license shall not be granted to any person who applies
13 for a license if there is an arrearage equal to or exceeding the
14 amount of child support payable for six months or if it is
15 determined that the applicant has failed to comply with a
16 warrant or subpoena in a paternity or child support proceeding.

§48-15-304. Procedure where license to practice law may be subject to denial, suspension or restriction.

1 If a person who has been admitted to the practice of law in
 2 this state by order of the supreme court of appeals is determined
 3 to be in default under a support order or has failed to comply
 4 with a subpoena or warrant in a paternity or child support
 5 proceeding, such that his or her other licenses are subject to
 6 suspension or restriction under this article, the bureau for child
 7 support enforcement may send a notice listing the name and
 8 social security number or other identification number to the
 9 lawyer disciplinary board established by the supreme court of
 10 appeals. The Legislature hereby requests the supreme court of
 11 appeals to promptly adopt rules pursuant to its constitutional
 12 authority to govern the practice of law that would include as
 13 attorney misconduct for which an attorney may be disciplined,
 14 situations in which a person licensed to practice law in West
 15 Virginia has been determined to be in default under a support
 16 order or has failed to comply with a subpoena or warrant in a
 17 paternity or child support proceeding.

PART 4. MISCELLANEOUS PROVISIONS.

§48-15-401. Application of article.

1 The provisions of this article apply to all orders issued
 2 before or after the enactment of this article. All child support,
 3 medical support and health insurance provisions in existence on
 4 or before the effective date of this article shall be included in
 5 determining whether a case is eligible for enforcement. This
 6 article applies to all child support obligations ordered by any
 7 state, territory or district of the United States that are being
 8 enforced by the bureau for child support enforcement, that are
 9 payable directly to the obligee, or have been registered in this
 10 state in accordance with the uniform interstate family support
 11 act.

§48-15-402. Effect of determination as to authority of federal government to require denials, suspensions or restrictions of licenses.

1 The provisions of this article have been enacted to conform
 2 to the mandates of the federal "Personal Responsibility and
 3 Work Opportunity Reconciliation Act of 1996". If a court of

4 competent jurisdiction should determine, or if it is otherwise
5 determined that the federal government lacked authority to
6 mandate the license denials, nonrenewals, suspensions or
7 restrictions contemplated by this article, then the provisions of
8 this article shall be null and void and of no force and effect.

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

PART 1. GENERAL PROVISIONS.

§48-16-101. Definitions.

1 As used in this article:

2 (1) "Child" means an individual, whether over or under the
3 age of majority, who is or is alleged to be owed a duty of
4 support by the individual's parent or who is or is alleged to be
5 the beneficiary of a support order directed to the parent.

6 (2) "Child support order" means a support order for a child,
7 including a child who has attained the age of majority under the
8 law of the issuing state.

9 (3) "Duty of support" means an obligation imposed or
10 imposable by law to provide support for a child, spouse, or
11 former spouse, including an unsatisfied obligation to provide
12 support.

13 (4) "Home state" means the state in which a child lived
14 with a parent or a person acting as parent for at least six
15 consecutive months immediately preceding the time of filing of
16 a petition or comparable pleading for support and, if a child is
17 less than six months old, the state in which the child lived from
18 birth with any of them. A period of temporary absence of any
19 of them is counted as part of the six-month or other period.

20 (5) "Income" includes earnings or other periodic
21 entitlements to money from any source and any other property
22 subject to withholding for support under the law of this state.

23 (6) "Income-withholding order" means an order or other
24 legal process directed to an obligor's source of income as

25 defined by section 1-240 of this chapter to withhold support
26 from the income of the obligor.

27 (7) "Initiating state" means a state from which a proceeding
28 is forwarded or in which a proceeding is filed for forwarding to
29 a responding state under this article or a law or procedure
30 substantially similar to this article, the uniform reciprocal
31 enforcement of support act, or the revised uniform reciprocal
32 enforcement of support act.

33 (8) "Initiating tribunal" means the authorized tribunal in an
34 initiating state.

35 (9) "Issuing state" means the state in which a tribunal issues
36 a support order or renders a judgment determining parentage.

37 (10) "Issuing tribunal" means the tribunal that issues a
38 support order or renders a judgment determining parentage.

39 (11) "Law" includes decisional and statutory law and rules
40 having the force of law.

41 (12) "Obligee" means: (i) An individual to whom a duty of
42 support is or is alleged to be owed or in whose favor a support
43 order has been issued or a judgment determining parentage has
44 been rendered; (ii) a state or political subdivision to which the
45 rights under a duty of support or support order have been
46 assigned or which has independent claims based on financial
47 assistance provided to an individual obligee; or (iii) an individ-
48 ual seeking a judgment determining parentage of the individ-
49 ual's child.

50 (13) "Obligor" means an individual, or the estate of a
51 decedent: (i) Who owes or is alleged to owe a duty of support;
52 (ii) who is alleged but has not been adjudicated to be a parent
53 of a child; or (iii) who is liable under a support order.

54 (14) "Register" means to record a support order or judg-
55 ment determining parentage in the registry of foreign support
56 orders.

57 (15) "Registering tribunal" means a tribunal in which a
58 support order is registered.

59 (16) "Responding state" means a state in which a proceed-
60 ing is filed or to which a proceeding is forwarded for filing
61 from an initiating state under this article or a law or procedure
62 substantially similar to this article, the uniform reciprocal
63 enforcement of support act, or the revised uniform reciprocal
64 enforcement of support act.

65 (17) "Responding tribunal" means the authorized tribunal
66 in a responding state.

67 (18) "Spousal-support order" means a support order for a
68 spouse or former spouse of the obligor.

69 (19) "State" means a state of the United States, the District
70 of Columbia, Puerto Rico, the United States Virgin Islands or
71 any territory or insular possession subject to the jurisdiction of
72 the United States. The term includes: (i) An Indian tribe; (ii) a
73 foreign jurisdiction that has enacted a law or established
74 procedures for issuance and enforcement of support orders
75 which are substantially similar to the procedures under this
76 article, the uniform reciprocal enforcement of support act, or
77 the revised uniform reciprocal of enforcement of support act.

78 (20) "Support enforcement agency" means a public official
79 or agency authorized to seek: (i) Enforcement of support orders
80 or laws relating to the duty of support; (ii) establishment or
81 modification of child support; (iii) determination of parentage;
82 or (iv) to locate obligors or their assets.

83 (21) "Support order" means a judgment, decree or order,
84 whether temporary, final or subject to modification, for the
85 benefit of a child, a spouse or a former spouse, which provides
86 for monetary support, health care, arrearages, or reimbursement
87 and may include related costs and fees, interest, income
88 withholding, attorney's fees and other relief.

89 (22) "Tribunal" means a court, administrative agency,
90 family law master or quasi-judicial entity authorized to estab-
91 lish, enforce or modify support orders or to determine parent-
92 age.

§48-16-102. Tribunals of state.

1 The circuit court and the family law masters are the
2 tribunals of this state.

§48-16-103. Remedies cumulative.

1 Remedies provided by this article are cumulative and do not
2 affect the availability of remedies under other law.

PART 2. JURISDICTION.

§48-16-201. Bases for jurisdiction over nonresident.

1 In a proceeding to establish, enforce, or modify a support
2 order or to determine parentage, a tribunal of this state may
3 exercise personal jurisdiction over a nonresident individual or
4 the individual's guardian or conservator if: (1) The individual
5 is personally served with notice within this state; (2) the
6 individual submits to the jurisdiction of this state by consent, by
7 entering a general appearance, or by filing a responsive
8 document having the effect of waiving any contest to personal
9 jurisdiction; (3) the individual resided with the child in this
10 state; (4) the individual resided in this state and provided
11 prenatal expenses or support for the child; (5) the child resides
12 in this state as a result of the acts or directives of the individual;
13 (6) the individual engaged in sexual intercourse in this state and
14 the child may have been conceived by that act of intercourse;
15 (7) the individual has committed a tortious act by failing to
16 support a child resident in this state; or (8) there is any other
17 basis consistent with the constitutions of this state and the
18 United States for the exercise of personal jurisdiction.

§48-16-202. Procedure when exercising jurisdiction over nonresident.

1 A tribunal of this state exercising personal jurisdiction over
2 a nonresident under section 16-201 may apply section 16-316
3 (Special Rules of Evidence and Procedure) to receive evidence
4 from another state, and section 16-318 (Assistance with
5 Discovery) to obtain discovery through a tribunal of another
6 state. In all other respects, parts 3 through 7 do not apply and

7 the tribunal shall apply the procedural and substantive law of
8 this state, including the rules on choice of law other than those
9 established by this article.

§48-16-203. Initiating and responding tribunal of state.

1 Under this article, a tribunal of this state may serve as an
2 initiating tribunal to forward proceedings to another state and
3 as a responding tribunal for proceedings initiated in another
4 state.

§48-16-204. Simultaneous proceedings in another state.

1 (a) A tribunal of this state may exercise jurisdiction to
2 establish a support order if the petition or comparable pleading
3 is filed after a petition or comparable pleading is filed in
4 another state only if: (1) The petition or comparable pleading in
5 this state is filed before the expiration of the time allowed in the
6 other state for filing a responsive pleading challenging the
7 exercise of jurisdiction by the other state; (2) the contesting
8 party timely challenges the exercise of jurisdiction in the other
9 state; and (3) if relevant, this state is the home state of the child.

10 (b) A tribunal of this state may not exercise jurisdiction to
11 establish a support order if the petition or comparable pleading
12 is filed before a petition or comparable pleading is filed in
13 another state if: (1) The petition or comparable pleading in the
14 other state is filed before the expiration of the time allowed in
15 this state for filing a responsive pleading challenging the
16 exercise of jurisdiction by this state; (2) the contesting party
17 timely challenges the exercise of jurisdiction in this state; and
18 (3) if relevant, the other state is the home state of the child.

§48-16-205. Continuing, exclusive jurisdiction.

1 (a) A tribunal of this state issuing a support order consistent
2 with the law of this state has continuing, exclusive jurisdiction
3 over a child support order: (1) As long as this state remains the
4 residence of the obligor, the individual obligee, or the child for
5 whose benefit the support order is issued; or (2) until all of the
6 parties who are individuals have filed written consents with the

7 tribunal of this state for a tribunal of another state to modify the
8 order and assume continuing, exclusive jurisdiction.

9 (b) A tribunal of this state issuing a child support order
10 consistent with the law of this state may not exercise its
11 continuing jurisdiction to modify the order if the order has been
12 modified by a tribunal of another state pursuant to this article
13 or a law substantially similar to this article.

14 (c) If a child support order of this state is modified by a
15 tribunal of another state pursuant to this article or a law
16 substantially similar to this article, a tribunal of this state loses
17 its continuing, exclusive jurisdiction with regard to prospective
18 enforcement of the order issued in this state, and may only: (1)
19 Enforce the order that was modified as to amounts accruing
20 before the modification; (2) enforce nonmodifiable aspects of
21 that order; and (3) provide other appropriate relief for violations
22 of that order which occurred before the effective date of the
23 modification.

24 (d) A tribunal of this state shall recognize the continuing,
25 exclusive jurisdiction of a tribunal of another state which has
26 issued a child support order pursuant to a law substantially
27 similar to this article.

28 (e) A temporary support order issued ex parte or pending
29 resolution of a jurisdictional conflict does not create continuing,
30 exclusive jurisdiction in the issuing tribunal.

31 (f) A tribunal of this state issuing a support order consistent
32 with the law of this state has continuing, exclusive jurisdiction
33 over a spousal support order throughout the existence of the
34 support obligation. A tribunal of this state may not modify a
35 spousal support order issued by a tribunal of another state
36 having continuing, exclusive jurisdiction over that order under
37 the law of that state.

**§48-16-206. Enforcement and modification of support order by
tribunal having continuing jurisdiction.**

1 (a) A tribunal of this state may serve as an initiating
2 tribunal to request a tribunal of another state to enforce or
3 modify a support order issued in that state.

4 (b) A tribunal of this state having continuing, exclusive
5 jurisdiction over a support order may act as a responding
6 tribunal to enforce or modify the order. If a party subject to the
7 continuing, exclusive jurisdiction of the tribunal no longer
8 resides in the issuing state, in subsequent proceedings the
9 tribunal may apply section 16-316 (Special Rules of Evidence
10 and Procedure) to receive evidence from another state and
11 section 16-318 (Assistance with Discovery) to obtain discovery
12 through a tribunal of another state.

13 (c) A tribunal of this state which lacks continuing, exclu-
14 sive jurisdiction over a spousal support order may not serve as
15 a responding tribunal to modify a spousal support order of
16 another state.

§48-16-207. Recognition of controlling child support order.

1 (a) If a proceeding is brought under this article and only one
2 tribunal has issued a child support order, the order of that
3 tribunal is controlling and must be recognized.

4 (b) If a proceeding is brought under this article, and two or
5 more child support orders have been issued by tribunals of this
6 state or another state with regard to the same obligor and child,
7 a tribunal of this state shall apply the following rules in
8 determining which order to recognize for purposes of continu-
9 ing, exclusive jurisdiction:

10 (1) If only one of the tribunals would have continuing,
11 exclusive jurisdiction under this article, the order of that
12 tribunal is controlling and must be recognized.

13 (2) If more than one of the tribunals would have continuing,
14 exclusive jurisdiction under this article, an order issued by a
15 tribunal in the current home state of the child must be recog-
16 nized, but if an order has not been issued in the current home
17 state of the child, the order most recently issued is controlling
18 and must be recognized.

19 (3) If none of the tribunals would have continuing, exclu-
20 sive jurisdiction under this article, the tribunal of this state

21 having jurisdiction over the parties must issue a child support
22 order, which is controlling and must be recognized.

23 (c) If two or more child support orders have been issued for
24 the same obligor and child and if the obligor or the individual
25 obligee resides in this state, a party may request a tribunal of
26 this state to determine which order controls and must be
27 recognized under subsection (b). The request must be accompa-
28 nied by a certified copy of every support order in effect. Every
29 party whose rights may be affected by a determination of the
30 controlling order must be given notice of the request for that
31 determination.

32 (d) The tribunal that issued the order that must be recog-
33 nized as controlling under subsection (a), (b) or (c) is the
34 tribunal that has continuing, exclusive jurisdiction in accor-
35 dance with section 16-205.

36 (e) A tribunal of this state which determines by order the
37 identity of the controlling child support order under subsection
38 (b) (1) or (b) (2) or which issued a new controlling child
39 support order under subsection (b) (3) shall include in that order
40 the basis upon which the tribunal made its determination.

41 (f) Within thirty days after issuance of the order determin-
42 ing the identity of the controlling order, the party obtaining that
43 order shall file a certified copy of it with each tribunal that had
44 issued or registered an earlier order of child support. Failure of
45 the party obtaining the order to file a certified copy as required
46 subjects that party to appropriate sanctions by a tribunal in
47 which the issue of failure to file arises, but that failure has no
48 effect on the validity or enforceability of the controlling order.

**§48-16-208. Multiple child support orders for two or more obli-
gees.**

1 In responding to multiple registrations or petitions for
2 enforcement of two or more child support orders in effect at the
3 same time with regard to the same obligor and different
4 individual obligees, at least one of which was issued by a
5 tribunal of another state, a tribunal of this state shall enforce

6 those orders in the same manner as if the multiple orders had
7 been issued by a tribunal of this state.

§48-16-209. Credit for payments.

1 Amounts collected and credited for a particular period
2 pursuant to a support order issued by a tribunal of another state
3 must be credited against the amounts accruing or accrued for
4 the same period under a support order issued by the tribunal of
5 this state.

PART 3. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-301. Proceedings under article.

1 (a) Except as otherwise provided in this article, this part 3
2 applies to all proceedings under this article.

3 (b) This article provides for the following proceedings: (1)
4 Establishment of an order for spousal support or child support;
5 (2) enforcement of a support order and income-withholding
6 order of another state without registration; (3) registration of an
7 order for spousal support or child support of another state for
8 enforcement; (4) modification of an order for child support or
9 spousal support issued by a tribunal of this state; (5) registration
10 of an order for child support of another state for modification;
11 (6) determination of parentage; and (7) assertion of jurisdiction
12 over nonresidents.

13 (c) An individual petitioner or a support enforcement
14 agency may commence a proceeding authorized under this
15 article by filing a petition in an initiating tribunal for forward-
16 ing to a responding tribunal or by filing a petition or a compara-
17 ble pleading directly in a tribunal of another state which has or
18 can obtain personal jurisdiction over the respondent.

§48-16-302. Action by minor parent.

1 A minor parent, or a guardian or other legal representative
2 of a minor parent, may maintain a proceeding on behalf of or
3 for the benefit of the minor's child.

§48-16-303. Application of law of state.

1 Except as otherwise provided by this article, a responding
2 tribunal of this state: (1) Shall apply the procedural and
3 substantive law, including the rules on choice of law, generally
4 applicable to similar proceedings originating in this state and
5 may exercise all powers and provide all remedies available in
6 those proceedings; and (2) shall determine the duty of support
7 and the amount payable in accordance with the law and support
8 guidelines of this state.

§48-16-304. Duties of initiating tribunal.

1 (a) Upon the filing of a petition authorized by this article,
2 an initiating tribunal of this state shall forward three copies of
3 the petition and its accompanying documents: (1) To the
4 responding tribunal or appropriate support enforcement agency
5 in the responding state; or (2) if the identity of the responding
6 tribunal is unknown, to the state information agency of the
7 responding state with a request that they be forwarded to the
8 appropriate tribunal and that receipt be acknowledged.

9 (b) If a responding state has not enacted this article or a law
10 or procedure substantially similar to this article, a tribunal of
11 this state may issue a certificate or other document and make
12 findings required by the law of the responding state. If the
13 responding state is a foreign jurisdiction, the tribunal may
14 specify the amount of support sought and provide other
15 documents necessary to satisfy the requirements of the respond-
16 ing state.

§48-16-305. Duties and powers of responding tribunal.

1 (a) When a responding tribunal of this state receives a
2 petition or comparable pleading from an initiating tribunal or
3 directly pursuant to subsection (c), section 16-301 (proceedings
4 under this article), the clerk of the court shall cause the petition
5 or pleading to be filed and notify the petitioner where and when
6 it was filed.

7 (b) A responding tribunal of this state, to the extent
8 otherwise authorized by law, may do one or more of the

9 following: (1) Issue or enforce a support order, modify a child
10 support order or render a judgment to determine parentage; (2)
11 order an obligor to comply with a support order, specifying the
12 amount and the manner of compliance; (3) order income
13 withholding; (4) determine the amount of any arrearages and
14 specify a method of payment; (5) enforce orders by civil or
15 criminal contempt, or both; (6) set aside property for satisfac-
16 tion of the support order; (7) place liens and order execution on
17 the obligor's property; (8) order an obligor to keep the tribunal
18 informed of the obligor's current residential address, telephone
19 number, employer, address of employment and telephone
20 number at the place of employment; (9) issue a capias for an
21 obligor who has failed after proper notice to appear at a hearing
22 ordered by the tribunal and enter the capias in any local and
23 state computer systems for criminal warrants; (10) order the
24 obligor to seek appropriate employment by specified methods;
25 (11) award reasonable attorney's fees and other fees and costs;
26 and (12) grant any other available remedy.

27 (c) A responding tribunal of this state shall include in a
28 support order issued under this article, or in the documents
29 accompanying the order, the calculations on which the support
30 order is based.

31 (d) A responding tribunal of this state may not condition the
32 payment of a support order issued under this article upon
33 compliance by a party with provisions for visitation.

34 (e) If a responding tribunal of this state issues an order
35 under this article, the tribunal shall send a copy of the order to
36 the petitioner and the respondent and to the initiating tribunal,
37 if any.

§48-16-306. Inappropriate tribunal.

1 If a petition or comparable pleading is received by an
2 inappropriate tribunal of this state, the clerk of the court shall
3 forward the pleading and accompanying documents to an
4 appropriate tribunal in this state or another state and notify the
5 petitioner where and when the pleading was sent.

§48-16-307. Duties of support enforcement agency.

1 (a) A support enforcement agency of this state, upon
2 request, shall provide services to a petitioner in a proceeding
3 under this article.

4 (b) A support enforcement agency that is providing services
5 to the petitioner as appropriate shall: (1) Take all steps neces-
6 sary to enable an appropriate tribunal in this state or another
7 state to obtain jurisdiction over the respondent; (2) request an
8 appropriate tribunal to set a date, time, and place for a hearing;
9 (3) make a reasonable effort to obtain all relevant information,
10 including information as to income and property of the parties;
11 (4) within two days, exclusive of Saturdays, Sundays and legal
12 holidays, after receipt of a written notice from an initiating,
13 responding, or registering tribunal, send a copy of the notice to
14 the petitioner; (5) within two days, exclusive of Saturdays,
15 Sundays and legal holidays, after receipt of a written communi-
16 cation from the respondent or the respondent's attorney, send
17 a copy of the communication to the petitioner; and (6) notify
18 the petitioner if jurisdiction over the respondent cannot be
19 obtained.

20 (c) This article does not create or negate a relationship of
21 attorney and client or other fiduciary relationship between a
22 support enforcement agency or the attorney for the agency and
23 the individual being assisted by the agency.

**§48-16-308. Duty of West Virginia support enforcement commis-
sion.**

1 If the West Virginia support enforcement commission
2 determines that the support enforcement agency is neglecting
3 or refusing to provide services to an individual, the commission
4 may order the agency to perform its duties under this article or
5 may provide those services directly to the individual.

§48-16-309. Private counsel.

1 An individual may employ private counsel to represent the
2 individual in proceedings authorized by this article.

§48-16-310. Duties of state information agency.

1 (a) The bureau for child support enforcement is the state
2 information agency under this article.

3 (b) The state information agency shall: (1) Compile and
4 maintain a current list, including addresses, of the tribunals in
5 this state which have jurisdiction under this article and any
6 support enforcement agencies in this state and transmit a copy
7 to the state information agency of every other state; (2) main-
8 tain a register of tribunals and support enforcement agencies
9 received from other states; (3) forward to the appropriate
10 tribunal in the place in this state in which the individual obligee
11 or the obligor resides, or in which the obligor's property is
12 believed to be located, all documents concerning a proceeding
13 under this article received from an initiating tribunal or the state
14 information agency of the initiating state; and (4) obtain
15 information concerning the location of the obligor and the
16 obligor's property within this state not exempt from execution,
17 by such means as postal verification and federal or state locator
18 services, examination of telephone directories, requests for the
19 obligor's address from employers, and examination of govern-
20 mental records, including, to the extent not prohibited by other
21 law, those relating to real property, vital statistics, law enforce-
22 ment, taxation, motor vehicles, driver's licenses and social
23 security.

§48-16-311. Pleadings and accompanying documents.

1 (a) A petitioner seeking to establish or modify a support
2 order or to determine parentage in a proceeding under this
3 article must verify the petition. Unless otherwise ordered under
4 section 16-312 (Nondisclosure of Information in Exceptional
5 Circumstances), the petition or accompanying documents must
6 provide, so far as known, the name, residential address and
7 social security numbers of the obligor and the obligee, and the
8 name, sex, residential address, social security number and date
9 of birth of each child for whom support is sought. The petition
10 must be accompanied by a certified copy of any support order
11 in effect. The petition may include any other information that
12 may assist in locating or identifying the respondent.

13 (b) The petition must specify the relief sought. The petition
14 and accompanying documents must conform substantially with
15 the requirements imposed by the forms mandated by federal
16 law for use in cases filed by a support enforcement agency.

§48-16-312. Nondisclosure of information in exceptional circumstances.

1 Upon a finding, which may be made ex parte, that the
2 health, safety or liberty of a party or child would be unreason-
3 ably put at risk by the disclosure of identifying information, or
4 if an existing order so provides, a tribunal shall order that the
5 address of the child or party or other identifying information
6 not be disclosed in a pleading or other document filed in a
7 proceeding under this article.

§48-16-313. Costs and fees.

1 (a) The petitioner may not be required to pay a filing fee or
2 other costs.

3 (b) If an obligee prevails, a responding tribunal may assess
4 against an obligor filing fees, reasonable attorney's fees, other
5 costs and necessary travel and other reasonable expenses
6 incurred by the obligee and the obligee's witnesses. The
7 tribunal may not assess fees, costs or expenses against the
8 obligee or the support enforcement agency of either the
9 initiating or the responding state, except as provided by other
10 law. Attorney's fees may be taxed as costs, and may be ordered
11 paid directly to the attorney, who may enforce the order in the
12 attorney's own name. Payment of support owed to the obligee
13 has priority over fees, costs and expenses.

14 (c) The tribunal shall order the payment of costs and
15 reasonable attorney's fees if it determines that a hearing was
16 requested primarily for delay. In a proceeding under part 16-
17 601, et seq., (Enforcement and Modification of Support Order
18 After Registration), a hearing is presumed to have been
19 requested primarily for delay if a registered support order is
20 confirmed or enforced without change.

§48-16-314. Limited immunity of petitioner.

1 (a) Participation by a petitioner in a proceeding before a
2 responding tribunal, whether in person, by private attorney, or
3 through services provided by the support enforcement agency,
4 does not confer personal jurisdiction over the petitioner in
5 another proceeding.

6 (b) A petitioner is not amenable to service of civil process
7 while physically present in this state to participate in a proceed-
8 ing under this article.

9 (c) The immunity granted by this section does not extend to
10 civil litigation based on acts unrelated to a proceeding under
11 this article committed by a party while present in this state to
12 participate in the proceeding.

§48-16-315. Nonparentage as defense.

1 A party whose parentage of a child has been previously
2 determined by or pursuant to law may not plead nonparentage
3 as a defense to a proceeding under this article.

§48-16-316. Special rules of evidence and procedure.

1 (a) The physical presence of the petitioner in a responding
2 tribunal of this state is not required for the establishment,
3 enforcement or modification of a support order or the rendition
4 of a judgment determining parentage.

5 (b) A verified petition, affidavit, document substantially
6 complying with federally mandated forms and a document
7 incorporated by reference in any of them, not excluded under
8 the hearsay rule if given in person, is admissible in evidence if
9 given under oath by a party or witness residing in another state.

10 (c) A copy of the record of child support payments certified
11 as a true copy of the original by the custodian of the record may
12 be forwarded to a responding tribunal. The copy is evidence of
13 facts asserted in it, and is admissible to show whether payments
14 were made.

15 (d) Copies of bills for testing for parentage, and for prenatal
16 and postnatal health care of the mother and child, furnished to
17 the adverse party at least ten days before trial, are admissible in
18 evidence to prove the amount of the charges billed and that the
19 charges were reasonable, necessary and customary.

20 (e) Documentary evidence transmitted from another state
21 to a tribunal of this state by telephone, telecopier or other
22 means that do not provide an original writing may not be
23 excluded from evidence on an objection based on the means of
24 transmission.

25 (f) In a proceeding under this article, a tribunal of this state
26 may permit a party or witness residing in another state to be
27 deposed or to testify by telephone, audiovisual means or other
28 electronic means at a designated tribunal or other location in
29 that state. A tribunal of this state shall cooperate with tribunals
30 of other states in designating an appropriate location for the
31 deposition or testimony. The supreme court of appeals shall
32 promulgate new rules or amend the rules of practice and
33 procedure for family law to establish procedures pertaining to
34 the exercise of cross examination in those instances involving
35 the receipt of testimony by means other than direct or personal
36 testimony.

37 (g) If a party called to testify at a civil hearing refuses to
38 answer on the ground that the testimony may be self-incriminat-
39 ing, the trier of fact may draw an adverse inference from the
40 refusal.

41 (h) A privilege against disclosure of communications
42 between spouses does not apply in a proceeding under this
43 article.

44 (i) The defense of immunity based on the relationship of
45 husband and wife or parent and child does not apply in a
46 proceeding under this article.

§48-16-317. Communications between tribunals.

1 A tribunal of this state may communicate with a tribunal of
2 another state in writing, or by telephone or other means, to

3 obtain information concerning the laws of that state, the legal
4 effect of a judgment, decree, or order of that tribunal and the
5 status of a proceeding in the other state. A tribunal of this state
6 may furnish similar information by similar means to a tribunal
7 of another state.

§48-16-318. Assistance with discovery.

1 A tribunal of this state may: (1) Request a tribunal of
2 another state to assist in obtaining discovery; and (2) upon
3 request, compel a person over whom it has jurisdiction to
4 respond to a discovery order issued by a tribunal of another
5 state.

§48-16-319. Receipt and disbursement of payments.

1 A support enforcement agency or tribunal of this state shall
2 disburse promptly any amounts received pursuant to a support
3 order, as directed by the order. The agency or tribunal shall
4 furnish to a requesting party or tribunal of another state a
5 certified statement by the custodian of the record of the
6 amounts and dates of all payments received.

PART 4. ESTABLISHMENT OF SUPPORT ORDER.

§48-16-401. Petition to establish support order.

1 (a) If a support order entitled to recognition under this
2 article has not been issued, a responding tribunal of this state
3 may issue a support order if: (1) The individual seeking the
4 order resides in another state; or (2) the support enforcement
5 agency seeking the order is located in another state.

6 (b) The tribunal may issue a temporary child support order
7 if: (1) The respondent has signed a verified statement acknowl-
8 edging parentage; (2) the respondent has been determined by or
9 pursuant to law to be the parent; or (3) there is other clear and
10 convincing evidence that the respondent is the child's parent.

11 (c) Upon finding, after notice and opportunity to be heard,
12 that an obligor owes a duty of support, the tribunal shall issue
13 a support order directed to the obligor and may issue other

14 orders pursuant to section 16-305 (Duties and Powers of
15 Responding Tribunal).

**PART 5. DIRECT ENFORCEMENT OF ORDER OF
ANOTHER STATE WITHOUT REGISTRATION.**

**§48-16-501. Employer's receipt of income-withholding order of
another state.**

1 An income-withholding order issued in another state may
2 be sent to the person or entity defined as the obligor's source of
3 income under section 1-241 of this chapter without first filing
4 a petition or comparable pleading or registering the order with
5 a tribunal of this state.

**§48-16-502. Employer's compliance with income-withholding
order of another state.**

1 (a) Upon receipt of the order, the obligor's employer shall
2 immediately provide a copy of the order to the obligor.

3 (b) The employer shall treat an income-withholding order
4 issued in another state which appears regular on its face as if it
5 had been issued by a tribunal of this state.

6 (c) Except as provided by subsection (d) and section 16-
7 503, the employer shall withhold and distribute the funds as
8 directed in the withholding order by complying with the terms
9 of the order, as applicable, that specify:

10 (1) The duration and the amount of periodic payments of
11 current child support, stated as a sum certain;

12 (2) The person or agency designated to receive payments
13 and the address to which the payments are to be forwarded;

14 (3) Medical support, whether in the form of periodic cash
15 payment, stated as a sum certain, or ordering the obligor to
16 provide health insurance coverage for the child under a policy
17 available through the obligor's employment;

18 (4) The amount of periodic payments of fees and costs for
19 a support enforcement agency, the issuing tribunal, and the
20 obligee's attorney, stated as sums certain; and

21 (5) The amount of periodic payments of arrears and interest
22 on arrears, stated as sums certain.

23 (d) The employer shall comply with the law of the state of
24 the obligor's principal place of employment for withholding
25 from income with respect to:

26 (1) The employer's fee for processing an income withhold-
27 ing order;

28 (2) The maximum amount permitted to be withheld from
29 the obligor's income;

30 (3) The time periods within which the employer must
31 implement the withholding order and forward the child support
32 payment.

§48-16-503. Compliance with multiple income withholding orders.

1 If the obligor's employer receives multiple orders to
2 withhold support from the earnings of the same obligor, the
3 employer shall be deemed to have satisfied the terms of the
4 multiple orders if the law of the state of the obligor's principal
5 place of employment to establish the priorities for withholding
6 and allocating income withheld for multiple child support
7 obligees is complied with.

§48-16-504. Immunity from civil liability.

1 An employer who complies with an income-withholding
2 order issued in another state in accordance with this article is
3 not subject to civil liability to any individual or agency with
4 regard to the employer's withholding child support from the
5 obligor's income.

§48-16-505. Penalties for noncompliance.

1 An employer who willfully fails to comply with an income-
2 withholding order issued by another state and received for
3 enforcement is subject to the same penalties that may be
4 imposed for noncompliance with an order issued by a tribunal
5 of this state.

§48-16-506. Contest by obligor.

1 (a) An obligor may contest the validity or enforcement of
2 an income-withholding order issued in another state and
3 received directly by an employer in this state in the same
4 manner as if the order had been issued by a tribunal of this
5 state. Section 604 (Choice of Law) applies to the contest.

6 (b) The obligor shall give notice of the contest to:

7 (1) A support enforcement agency providing services to the
8 obligee;

9 (2) Each employer which has directly received an income-
10 withholding order; and

11 (3) The person or agency designated to receive payments in
12 the income-withholding order; or if no person or agency is
13 designated, to the obligee.

§48-16-507. Administrative enforcement of orders.

1 (a) A party seeking to enforce a support order or an income-
2 withholding order, or both, issued by a tribunal of another state
3 may send the documents required for registering the order to a
4 support enforcement agency of this state.

5 (b) Upon receipt of the documents, the support enforcement
6 agency, without initially seeking to register the order, shall
7 consider and, if appropriate, use any administrative procedure
8 authorized by the law of this state to enforce a support order or
9 an income-withholding order, or both. If the obligor does not
10 contest administrative enforcement, the order need not be
11 registered. If the obligor contests the validity or administrative

12 enforcement of the order, the support enforcement agency shall
13 register the order pursuant to this article.

**PART 6. ENFORCEMENT AND MODIFICATION OF
SUPPORT ORDER AFTER REGISTRATION.**

§48-16-601. Registration of order for enforcement.

1 A support order or an income-withholding order issued by
2 a tribunal of another state may be registered in this state for
3 enforcement.

§48-16-602. Procedure to register order for enforcement.

1 (a) A support order or income-withholding order of another
2 state may be registered in this state by sending the following
3 documents and information to the state information agency who
4 shall forward the order to the appropriate tribunal: (1) A letter
5 of transmittal to the tribunal requesting registration and
6 enforcement; (2) two copies, including one certified copy, of all
7 orders to be registered, including any modification of an order;
8 (3) a sworn statement by the party seeking registration or a
9 certified statement by the custodian of the records showing the
10 amount of any arrearage; (4) the name of the obligor and, if
11 known: (i) The obligor's address and social security number;
12 (ii) the name and address of the obligor's employer and any
13 other source of income of the obligor; and (iii) a description and
14 the location of property of the obligor in this state not exempt
15 from execution; and (5) the name and address of the obligee
16 and, if applicable, the agency or person to whom support
17 payments are to be remitted.

18 (b) On receipt of a request for registration, the clerk of the
19 court shall cause the order to be filed as a foreign judgment,
20 together with one copy of the documents and information,
21 regardless of their form.

22 (c) A petition or comparable pleading seeking a remedy that
23 must be affirmatively sought under other law of this state may
24 be filed at the same time as the request for registration or later.
25 The pleading must specify the grounds for the remedy sought.

§48-16-603. Effect of registration for enforcement.

1 (a) A support order or income-withholding order issued in
2 another state is registered when the order is filed in the register-
3 ing tribunal of this state.

4 (b) A registered order issued in another state is enforceable
5 in the same manner and is subject to the same procedures as an
6 order issued by a tribunal of this state.

7 (c) Except as otherwise provided in this article, a tribunal
8 of this state shall recognize and enforce, but may not modify, a
9 registered order if the issuing tribunal had jurisdiction.

§48-16-604. Choice of law.

1 (a) The law of the issuing state governs the nature, extent,
2 amount, and duration of current payments and other obligations
3 of support and the payment of arrearages under the order.

4 (b) In a proceeding for arrearages, the statute of limitation
5 under the laws of this state or of the issuing state, whichever is
6 longer, applies.

§48-16-605. Notice of registration of order.

1 (a) When a support order or income-withholding order
2 issued in another state is registered, the clerk of the court shall
3 notify the nonregistering party. The notice must be accompa-
4 nied by a copy of the registered order and the documents and
5 relevant information accompanying the order.

6 (b) The notice must inform the nonregistering party: (1)
7 That a registered order is enforceable as of the date of registra-
8 tion in the same manner as an order issued by a tribunal of this
9 state; (2) that a hearing to contest the validity or enforcement of
10 the registered order must be requested within twenty days after
11 notice; (3) that failure to contest the validity or enforcement of
12 the registered order in a timely manner will result in confirma-
13 tion of the order and enforcement of the order and the alleged
14 arrearages and precludes further contest of that order with
15 respect to any matter that could have been asserted; and (4) of
16 the amount of any alleged arrearages.

17 (c) Upon registration of an income-withholding order for
18 enforcement, the registering tribunal shall notify the obligor's
19 source of income pursuant to part 14-401 et seq. of this chapter.

§48-16-606. Procedure to contest validity or enforcement of registered order.

1 (a) A nonregistering party seeking to contest the validity or
2 enforcement of a registered order in this state shall request a
3 hearing within twenty days after the date of mailing or personal
4 service of notice of the registration. The nonregistering party
5 may seek to vacate the registration, to assert any defense to an
6 allegation of noncompliance with the registered order, or to
7 contest the remedies being sought or the amount of any alleged
8 arrearages pursuant to section 16-607 (Contest of Registration
9 or Enforcement).

10 (b) If the nonregistering party fails to contest the validity or
11 enforcement of the registered order in a timely manner, the
12 order is confirmed by operation of law.

13 (c) If a nonregistering party requests a hearing to contest
14 the validity or enforcement of the registered order, the register-
15 ing tribunal shall schedule the matter for hearing and give
16 notice to the parties of the date, time and place of the hearing.

§48-16-607. Contest of registration or enforcement.

1 (a) A party contesting the validity or enforcement of a
2 registered order or seeking to vacate the registration has the
3 burden of proving one or more of the following defenses: (1)
4 The issuing tribunal lacked personal jurisdiction over the
5 contesting party; (2) the order was obtained by fraud; (3) the
6 order has been vacated, suspended or modified by a later order;
7 (4) the issuing tribunal has stayed the order pending appeal; (5)
8 there is a defense under the law of this state to the remedy
9 sought; (6) full or partial payment has been made; or (7) the
10 statute of limitation under section 16-604 (Choice of Law)
11 precludes enforcement of some or all of the arrearages.

12 (b) If a party presents evidence establishing a full or partial
13 defense under subsection (a), a tribunal may stay enforcement

14 of the registered order, continue the proceeding to permit
15 production of additional relevant evidence, and issue other
16 appropriate orders. An uncontested portion of the registered
17 order may be enforced by all remedies available under the law
18 of this state.

19 (c) If the contesting party does not establish a defense under
20 subsection (a) to the validity or enforcement of the order, the
21 registering tribunal shall issue an order confirming the order.

§48-16-608. Confirmed order.

1 Confirmation of a registered order, whether by operation of
2 law or after notice and hearing, precludes further contest of the
3 order with respect to any matter that could have been asserted
4 at the time of registration.

§48-16-609. Procedure to register child support order of another state for modification.

1 A party or support enforcement agency seeking to modify,
2 or to modify and enforce, a child support order issued in
3 another state shall register that order in this state in the same
4 manner provided in Part 1 if the order has not been registered.
5 A petition for modification may be filed at the same time as a
6 request for registration, or later. The pleading must specify the
7 grounds for modification.

§48-16-610. Effect of registration for modification.

1 A tribunal of this state may enforce a child support order of
2 another state registered for purposes of modification, in the
3 same manner as if the order had been issued by a tribunal of
4 this state, but the registered order may be modified only if the
5 requirements of section 16-611 (Modification of Child Support
6 Order of Another State) have been met.

§48-16-611. Modification of child support order of another state.

1 (a) After a child support order issued in another state has
2 been registered in this state, the responding tribunal of this state
3 may modify that order only if section 16-613 does not apply

4 and after notice and hearing it finds that: (1) The following
5 requirements are met: (i) The child, the individual obligee, and
6 the obligor do not reside in the issuing state; (ii) a petitioner
7 who is a nonresident of this state seeks modification; and (iii)
8 the respondent is subject to the personal jurisdiction of the
9 tribunal of this state; or (2) the child or a party who is an
10 individual, is subject to the personal jurisdiction of the tribunal
11 of this state and all of the parties who are individuals have filed
12 written consents in the issuing tribunal for a tribunal of this
13 state to modify the support order and assume continuing,
14 exclusive jurisdiction over the order. However, if the issuing
15 state is a foreign jurisdiction that has not enacted a law or
16 established procedures substantially similar to the procedures
17 under this article, the consent otherwise required of an individ-
18 ual residing in this state is not required for the tribunal to
19 assume jurisdiction to modify the child support order.

20 (b) Modification of a registered child support order is
21 subject to the same requirements, procedures, and defenses that
22 apply to the modification of an order issued by a tribunal of this
23 state and the order may be enforced and satisfied in the same
24 manner.

25 (c) A tribunal of this state may not modify any aspect of a
26 child support order that may not be modified under the law of
27 the issuing state. If two or more tribunals have issued child
28 support orders for the same obligor and child, the order that
29 controls and must be so recognized under section 16-207
30 establishes the aspects of the support order which are
31 nonmodifiable.

32 (d) On issuance of an order modifying a child support order
33 issued in another state, a tribunal of this state becomes the
34 tribunal of continuing, exclusive jurisdiction.

§48-16-612. Recognition of order modified in another state.

1 A tribunal of this state shall recognize a modification of its
2 earlier child support order by a tribunal of another state which
3 assumed jurisdiction pursuant to this article or a law substan-
4 tially similar to this article and, upon request, except as
5 otherwise provided in this article, shall: (1) Enforce the order

6 that was modified only as to amounts accruing before the
7 modification; (2) enforce only nonmodifiable aspects of that
8 order; (3) provide other appropriate relief only for violations of
9 that order which occurred before the effective date of the
10 modification; and (4) recognize the modifying order of the
11 other state, upon registration, for the purpose of enforcement.

**§48-16-613. Jurisdiction to modify support order of another state
when individual parties reside in this state.**

1 (a) If all of the individual parties reside in this state and the
2 child does not reside in the issuing state, a tribunal of this state
3 has jurisdiction to enforce and to modify the issuing state's
4 child support order in a proceeding to register that order.

5 (b) A tribunal of this state exercising jurisdiction as
6 provided in this section shall apply the provisions of parts 1 and
7 2 and this part 6 to the enforcement or modification proceeding.
8 Parts 3 through 5, and Parts 7 and 8 do not apply and the
9 tribunal shall apply the procedural and substantive law of this
10 state.

§48-16-614. Notice to issuing tribunal of modification.

1 Within thirty days after issuance of a modified child
2 support order, the party obtaining the modification shall file a
3 certified copy of the order with the issuing tribunal which had
4 continuing, exclusive jurisdiction over the earlier order, and in
5 each tribunal in which the party knows that earlier order has
6 been registered. Failure of the party obtaining the order to file
7 a certified copy as required subjects that party to appropriate
8 sanctions by a tribunal in which the issue of failure to file
9 arises, but that failure has no effect on the validity or
10 enforceability of the modified order of the new tribunal of
11 continuing, exclusive jurisdiction.

PART 7. DETERMINATION OF PARENTAGE.

§48-16-701. Proceeding to determine parentage.

1 (a) A tribunal of this state may serve as an initiating or
2 responding tribunal in a proceeding brought under this article

3 or a law substantially similar to this article, the uniform
4 reciprocal enforcement of support act, or the revised uniform
5 reciprocal enforcement of support act to determine that the
6 petitioner is a parent of a particular child or to determine that a
7 respondent is a parent of that child.

8 (b) In a proceeding to determine parentage, a responding
9 tribunal of this state shall apply article 24-101, et seq., of this
10 chapter and the rules of this state on choice of law.

PART 8. INTERSTATE RENDITION.

§48-16-801. Grounds for rendition.

1 (a) For purposes of this article, "governor" includes an
2 individual performing the functions of governor or the execu-
3 tive authority of a state covered by this article.

4 (b) The governor of this state may: (1) Demand that the
5 governor of another state surrender an individual found in the
6 other state who is charged criminally in this state with having
7 failed to provide for the support of an obligee; or (2) on the
8 demand by the governor of another state, surrender an individ-
9 ual found in this state who is charged criminally in the other
10 state with having failed to provide for the support of an obligee.

11 (c) A provision for extradition of individuals not inconsis-
12 tent with this article applies to the demand even if the individ-
13 ual whose surrender is demanded was not in the demanding
14 state when the crime was allegedly committed and has not fled
15 therefrom.

§48-16-802. Conditions of rendition.

1 (a) Before making demand that the governor of another
2 state surrender an individual charged criminally in this state
3 with having failed to provide for the support of an obligee, the
4 governor of this state may require a prosecutor of this state to
5 demonstrate that at least sixty days previously the obligee had

6 initiated proceedings for support pursuant to this article or that
7 the proceeding would be of no avail.

8 (b) If, under this article or a law substantially similar to this
9 article, the uniform reciprocal enforcement of support act, or
10 the revised uniform reciprocal enforcement of support act, the
11 governor of another state makes a demand that the governor of
12 this state surrender an individual charged criminally in that state
13 with having failed to provide for the support of a child or other
14 individual to whom a duty of support is owed, the governor
15 may require a prosecutor to investigate the demand and report
16 whether a proceeding for support has been initiated or would be
17 effective. If it appears that a proceeding would be effective but
18 has not been initiated, the governor may delay honoring the
19 demand for a reasonable time to permit the initiation of a
20 proceeding.

21 (c) If a proceeding for support has been initiated and the
22 individual whose rendition is demanded prevails, the governor
23 may decline to honor the demand. If the petitioner prevails and
24 the individual whose rendition is demanded is subject to a
25 support order, the governor may decline to honor the demand
26 if the individual is complying with the support order.

PART 9. MISCELLANEOUS PROVISIONS.

§48-16-901. Uniformity of application and construction.

1 This article shall be applied and construed to effectuate its
2 general purpose to make uniform the law with respect to the
3 subject of this article among states enacting it.

§48-16-902. Short title.

1 This article may be cited as the “Uniform Interstate Family
2 Support Act.”

§48-16-903. Effective date.

1 The provisions of this article take effect on the first day of
2 January, one thousand nine hundred ninety-eight.

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.

§48-17-101. Creation of support enforcement commission; number of members.

1 The West Virginia support enforcement commission,
2 consisting of nine members, is hereby created in the department
3 of health and human resources and may use the administrative
4 support and services of that department. The commission is not
5 subject to control, supervision or direction by the department of
6 health and human resources, but is an independent, self-
7 sustaining commission that shall have the powers and duties
8 specified in this chapter and all other powers necessary and
9 proper to establish policies and procedures for fully and
10 effectively carrying out the purposes of administering, regulat-
11 ing, overseeing and enforcing the provisions of this chapter
12 which relate to the establishment and enforcement of support
13 obligations.

14 The commission is a part-time commission whose members
15 make policy and have such other powers and perform such
16 other duties as specified in this chapter or set forth in legislative
17 rules promulgated by the commission. The ministerial duties of
18 the commission shall be administered and carried out by the
19 commissioner of the bureau for child support enforcement, with
20 the assistance of such staff of the department of health and
21 human resources as the secretary may assign.

22 Each member of the commission shall devote the time
23 necessary to carry out the duties and obligations of the office
24 and the six members appointed by the governor may pursue and
25 engage in another business, occupation or gainful employment
26 that is not in conflict with the duties of the commission.

27 While the commission is self-sustaining and independent,
28 it, its members, its employees and the commissioner are subject
29 to article nine-a of chapter six, chapter six-b, chapter twenty-
30 nine-a and chapter twenty-nine-b of this code.

§48-17-102. Appointment of members of support enforcement commission; qualifications and eligibility.

1 (a) Of the nine members of the commission, three shall be
2 members by virtue of the public offices which they hold, and
3 the remaining six members are to be appointed by the governor.
4 No more than five members of the commission may belong to
5 the same political party:

6 (1) One member is to be the secretary of the department of
7 health and human resources;

8 (2) One member is to be the secretary of the department of
9 tax and revenue;

10 (3) One member is to be the secretary of the department of
11 administration;

12 (4) One member is to be a lawyer licensed by, and in good
13 standing with, the West Virginia state bar, with at least five
14 years of professional experience in domestic relations law and
15 the establishment and enforcement of support obligations;

16 (5) One member is to be a person experienced as a public
17 administrator in the supervision and regulation of a governmen-
18 tal agency;

19 (6) One member is to be an employer experienced in
20 withholding support payments from the earnings of obligors;

21 (7) One member is to be a person selected from a list of
22 nominees submitted by the West Virginia judicial association:
23 *Provided*, That the list of nominees shall not include any person
24 currently exercising the powers of the judicial department; and

25 (8) Two members are to be representatives of the public at
26 large.

27 (b) Each member of the commission is to be a citizen of the
28 United States, a resident of the state of West Virginia and at
29 least twenty-one years of age.

§48-17-103. Terms of commission members; conditions of membership.

1 (a) The term of office for each member of the commission
2 who serves as a member by virtue of the public office held is
3 for a period concurrent with that person's tenure in the office.
4 The term of office for each member of the commission ap-
5 pointed by the governor is four years, except that for an initial
6 period, the terms of office of the initial six commission mem-
7 bers appointed by the governor commence from an initial date
8 of appointment not later than the first day of July, one thousand
9 nine hundred ninety-five, and run as follows:

10 (1) Two members shall be appointed for a term ending on
11 the thirtieth day of June, one thousand nine hundred ninety-
12 seven;

13 (2) Two members shall be appointed for terms ending on
14 the thirtieth day of June, one thousand nine hundred ninety-
15 eight; and

16 (3) Two members shall be appointed for terms ending on
17 the thirtieth day of June, one thousand nine hundred ninety-
18 nine.

19 (b) After the initial appointments made pursuant to the
20 provisions of subdivisions (1), (2) and (3), subsection (a) of this
21 section, members appointed by the governor shall thereafter be
22 appointed or reappointed for terms of office which end on the
23 thirtieth day of June in the fourth year following the expiration
24 date of the previous term or terms.

25 (c) Appointments to fill vacancies on the commission are
26 for the unexpired term of the member replaced.

27 (d) At the expiration of a member's term, the member shall
28 continue to serve until a successor is appointed and qualified.

§48-17-104. Oath.

1 Before entering upon the discharge of the duties as commis-
2 sioner, each commissioner shall take and subscribe to the oath

3 of office prescribed in section five, article IV of the constitution
4 of West Virginia.

§48-17-105. Commission chairman.

1 In making the initial appointments to the commission, the
2 governor shall designate a member to serve as chairman for a
3 term ending on the thirtieth day of June, one thousand nine
4 hundred ninety-six. The member so designated shall serve in
5 such capacity until his or her successor as chairman is elected
6 by the commission as hereinafter provided.

7 Following the term of the initial chairman, thereafter the
8 chairman shall be elected by the commission from among its
9 members, and the member so elected shall: (1) Serve as
10 chairman for a term of two years and until his or her successor
11 shall have been elected; or (2) shall serve in such capacity
12 throughout his or her service as a member of the commission,
13 whichever period is shorter. In the event that a successor
14 chairman is not elected by the commission members within
15 ninety calendar days after the expiration of a chairman's term,
16 a vacancy shall be deemed to exist, and the governor shall
17 designate a chairman from among the members of the commis-
18 sion. A member may not serve more than two consecutive
19 terms as chairman.

§48-17-106. Compensation of members; reimbursement for expenses.

1 (a) Each member of the commission shall receive one
2 hundred dollars for each day or portion thereof spent in the
3 discharge of his or her official duties.

4 (b) Each member of the commission shall be reimbursed for
5 all actual and necessary expenses and disbursements involved
6 in the execution of official duties.

§48-17-107. Meeting requirements.

1 (a) The commission shall meet within the state at least once
2 per calendar quarter and at such other times as the chairman

3 may decide. The commission shall also meet upon a call of five
4 or more members upon seventy-two hours written notice to
5 each member.

6 (b) Five members of the commission are a quorum for the
7 transaction of any business and for the performance of any
8 duty.

9 (c) A majority vote of the members present is required for
10 any final determination by the commission.

11 (d) The commission may elect to meet in executive session
12 after an affirmative vote of a majority of its members present
13 according to section four, article nine-a, chapter six of this
14 code.

15 (e) The commission shall keep a complete and accurate
16 record of all its meetings according to section five, article nine-
17 a, chapter six of this code.

§48-17-108. Removal of commission members.

1 Notwithstanding the provisions of section four, article six,
2 chapter six of this code, the governor may remove any commis-
3 sion member for incompetence, misconduct, gross immorality,
4 misfeasance, malfeasance or nonfeasance in office.

§48-17-109. General duties of support enforcement commission.

1 The support enforcement commission shall have general
2 responsibility for establishing policies and procedures for
3 obtaining and enforcing support orders and establishing
4 paternity according to this chapter, as hereinafter provided,
5 including, without limitation, the responsibility for the follow-
6 ing:

7 (a) To propose for promulgation, according to the provi-
8 sions of chapter twenty-nine-a of this code, such legislative
9 rules as in its judgment may be necessary to fulfill the policies
10 of this chapter;

11 (b) To undertake directly, or by contract, legal or policy
12 research related to obtaining and enforcing support orders and
13 establishing paternity;

14 (c) To serve as a clearinghouse for information;

15 (d) To keep a record of all commission proceedings
16 available for public inspection;

17 (e) To file a written annual report to the governor, the
18 president of the Senate and the speaker of the House of Dele-
19 gates on or before the thirtieth day of January of each year, and
20 such additional reports as the governor or Legislature may
21 request.

§48-17-110. General powers of support enforcement commission.

1 In establishing policies and procedures for enforcing the
2 provisions of this chapter, the commission shall have the
3 following power and authority:

4 (1) To establish and maintain procedures under which
5 expedited processes, administrative or judicial, are in effect for
6 obtaining and enforcing support orders and establishing
7 paternity according to this chapter;

8 (2) To monitor the child support enforcement system of this
9 state and from time to time to advise the bureau for child
10 support enforcement and other agencies of the state of West
11 Virginia regarding the establishment and enforcement of child
12 support orders;

13 (3) To promulgate all emergency and legislative rules
14 pursuant to chapter twenty-nine-a of this code as are required
15 by this chapter: *Provided*, That all rules which are in effect at
16 the time of the implementation of this section shall continue in
17 full force and effect until the commission promulgates a rule or
18 rules regarding the same subject matter;

19 (4) To promulgate legislative rules pursuant to chapter
20 twenty-nine-a of this code relating to the structure of the bureau
21 for child support enforcement, including, but not limited to, the
22 designation of administrative and legal tasks and the location of

23 offices for the bureau throughout the state. This rule shall
24 constitute an emergency rule within the meaning of section
25 fifteen, article three, chapter twenty-nine-a of this code;

26 (5) To adopt standards for staffing, recordkeeping, report-
27 ing, intergovernmental cooperation, training, physical structures
28 and time frames for case processing;

29 (6) To review the state plan for child and spousal support to
30 determine its conformance or nonconformance with the
31 provisions of 42 U.S.C. §654, and make recommendations or to
32 promulgate legislative rules based upon such review;

33 (7) To cooperate with judicial organizations and the private
34 bar to provide training to persons involved in the establishment
35 and enforcement of child support orders;

36 (8) To study the issues involving retroactive and reimburse-
37 ment child support payments which are ordered following the
38 establishment of paternity and to make a recommendation to the
39 Legislature on or before the first day of December, one thou-
40 sand nine hundred ninety-five, regarding any statutory or
41 regulatory action which should be implemented to ensure that
42 fathers are not ordered to pay retroactive or reimbursement
43 child support or medical expenses when such payments would
44 be unconscionable or inequitable given the totality of the
45 circumstances arising from the facts of a given case; and

46 (9) To promulgate such further legislative rules pursuant to
47 chapter twenty-nine-a of this code which may aid the bureau for
48 child support enforcement in the establishment and enforcement
49 of child support orders. In addition to the specific designation
50 of such rules that constitute emergency rules within the
51 meaning of section fifteen, article three, chapter twenty-nine-a
52 of this code, the commission may promulgate other rules as
53 emergency rules when such rule is necessary to ensure that the
54 state is awarded federal funds for the actions described in the
55 rule or when the promulgation of such rule is necessary to
56 prevent substantial harm to the public interest by ensuring that
57 child support is timely collected and disbursed.

§48-17-111. Required rule making.

1 The commission shall, without limitation on the powers
2 conferred in section 17-110 of this article, include within its
3 legislative rules the following specific provisions according to
4 the provisions of this chapter:

5 (1) Prescribing the methods and forms of proposal that a
6 prospective contractor shall follow and complete before
7 consideration of a proposal by the commission, which rules
8 shall require such plans as shall assure the commission that the
9 proposal conforms with the requirements of this chapter and all
10 applicable federal statutes and regulations;

11 (2) Prescribing standards and guidelines for contractors
12 providing professional services to ensure the maintenance of the
13 highest quality of service and professional standards, the
14 preservation of the attorney-client relationship, and the protec-
15 tion of the integrity of the adversarial process from any impair-
16 ment in furnishing legal representation;

17 (3) Requiring the bureau, and any contractors providing
18 professional services or collection services to the bureau, to
19 adopt procedures for the provision of such services which will
20 best advance the needs and interests of the obligees and
21 dependents who seek assistance in obtaining and enforcing
22 support orders and establishing paternity according to this
23 chapter, without regard to whether such procedures optimize or
24 maximize the profits derived by the contractor or result in the
25 payment of reimbursements or financial incentives to the
26 bureau;

27 (4) Prescribing standards and guidelines for contractors
28 providing professional services to ensure that appropriate
29 training and support services are provided to employees of the
30 contractor who are engaged in activities to obtain and enforce
31 support orders and establish paternity according to this chapter;

32 (5) Prescribing minimum procedures for the exercise of
33 effective control over the internal fiscal affairs of a contractor
34 providing collection services, including provisions for the
35 safeguarding of support payments, the recording of receipts and

36 evidence of nonpayment by obligors, and the maintenance of
37 reliable records, accounts and reports of transactions, operations
38 and events, including reports to the commission;

39 (6) Providing for a minimum uniform standard of account-
40 ing methods, procedures and forms; a uniform code of accounts
41 and accounting classifications; and other standard operating
42 procedures, as may be necessary to assure consistency, compa-
43 rability and effective disclosure of all financial information by
44 a contractor providing collection services; and

45 (7) Requiring periodic financial reports and the form
46 thereof, including an annual audit prepared by a certified public
47 accountant licensed to do business in this state, attesting to the
48 financial condition of a contractor providing collection services
49 and disclosing whether the accounts, records and control
50 procedures examined are maintained by the contractor as
51 required by this chapter.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

**§48-18-101. Establishment of the bureau for child support en-
forcement; cooperation with the division of hu-
man services; continuation.**

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-five, there is hereby established in the depart-
3 ment of health and human resources the bureau for child
4 support enforcement. The bureau is under the immediate
5 supervision of the commissioner, who is responsible for the
6 exercise of the duties and powers assigned to the bureau under
7 the provisions of this chapter. The bureau is designated as the
8 single and separate organizational unit within this state to
9 administer the state plan for child and spousal support accord-
10 ing to 42 U.S.C. §654(3).

11 (b) The division of human services shall cooperate with the
12 bureau for child support enforcement. At a minimum, such
13 cooperation shall require that the division of human services:

14 (1) Notify the bureau for child support enforcement when
15 the division of human services proposes to terminate or provide
16 public assistance payable to any obligee;

17 (2) Receive support payments made on behalf of a former
18 or current recipient to the extent permitted by Title IV-D, Part
19 D of the Social Security Act; and

20 (3) Accept the assignment of the right, title or interest in
21 support payments and forward a copy of the assignment to the
22 bureau for child support enforcement.

23 (c) Pursuant to the provisions of article ten, chapter four of
24 this code, the bureau for child support enforcement shall
25 continue to exist until the first day of July, two thousand two,
26 unless sooner terminated, continued or reestablished by act of
27 the Legislature.

§48-18-102. Appointment of commissioner; duties; compensation.

1 (a) There is hereby created the position of commissioner
2 whose duties include the ministerial management and adminis-
3 tration of the office of the support enforcement commission.
4 The commissioner shall:

5 (1) Be appointed by the secretary;

6 (2) Serve at the will and pleasure of the secretary;

7 (3) Serve on a full-time basis and shall not engage in any
8 other profession or occupation, including the holding of a
9 political office in the state either by election or appointment,
10 while serving as commissioner;

11 (4) Be a lawyer licensed by, and in good standing with, the
12 West Virginia state bar; and

13 (5) Have responsible administrative experience, possess
14 management skills, and have knowledge of the law as it relates
15 to domestic relations and the establishment and enforcement of
16 support obligations.

17 Before entering upon the discharge of the duties as commis-
18 sioner, the commissioner shall take and subscribe to the oath of
19 office prescribed in section five, article IV of the constitution
20 of West Virginia.

21 (b) The duties of the commissioner shall include the
22 following:

23 (1) To direct and administer the daily operations of the
24 commission;

25 (2) To administer the child support enforcement fund
26 created pursuant to section 18-107 of this article;

27 (3) To keep the records and papers of the commission,
28 including a record of each proceeding;

29 (4) To prepare, issue and submit reports of the commission;
30 and

31 (5) To perform any other duty that the commission directs.

32 (c) All payments to the commissioner as compensation
33 shall be made from the child support enforcement fund. The
34 commissioner is entitled to:

35 (1) A reasonable and competitive compensation package to
36 be established by the secretary; and

37 (2) Reimbursement for expenses under the standard state
38 travel regulations.

§48-18-103. Organization and employees.

1 (a) The commissioner shall organize the work of the bureau
2 in such offices or other organizational units as he or she may
3 determine to be necessary for effective and efficient operation.

4 (b) The secretary may transfer employees and resources of
5 the department to the bureau for child support enforcement as
6 may be necessary to fulfill the duties and responsibilities of the

7 bureau under this chapter: *Provided*, That the secretary may not
 8 transfer employees of other divisions and agencies within the
 9 department to the bureau for child support enforcement without
 10 a prior finding that the office or position held by the employee
 11 may be eliminated and until the office or position is, in fact,
 12 eliminated.

13 (c) The commissioner, if he or she deems such action
 14 necessary, may hire legal counsel for the division, notwith-
 15 standing the provisions of 5-3-2 of this code or any other code
 16 provision to the contrary, or may request the attorney general to
 17 appoint assistant attorneys general who shall perform such
 18 duties as may be required by the bureau. The attorney general,
 19 in pursuance of such request, may select and appoint assistant
 20 attorneys general, to serve during the will and pleasure of the
 21 attorney general, and such assistants shall be paid out of any
 22 funds allocated and appropriated to the child support enforce-
 23 ment fund.

24 (d) The commissioner may employ such staff or employees
 25 as may be necessary to administer and enforce this chapter.

**§48-18-104. Supervisory responsibilities within the bureau for
 child support enforcement.**

1 The commissioner shall have control and supervision of the
 2 bureau for child support enforcement and shall be responsible
 3 for the work of each of its organizational units. Each organiza-
 4 tional unit shall be headed by an employee of the bureau
 5 appointed by the commissioner who shall be responsible to the
 6 commissioner for the work of his or her organizational unit.

**§48-18-105. General duties and powers of the bureau for child
 support enforcement.**

1 In carrying out the policies and procedures for enforcing the
 2 provisions of this chapter, the bureau shall have the following
 3 power and authority:

4 (1) To undertake directly, or by contract, activities to obtain
 5 and enforce support orders and establish paternity;

6 (2) To undertake directly, or by contract, activities to
7 establish paternity for minors for whom paternity has not been
8 acknowledged by the father or otherwise established by law;

9 (3) To undertake directly, or by contract, activities to
10 collect and disburse support payments;

11 (4) To contract for professional services with any person,
12 firm, partnership, professional corporation, association or other
13 legal entity to provide representation for the bureau and the
14 state in administrative or judicial proceedings brought to obtain
15 and enforce support orders and establish paternity;

16 (5) To ensure that activities of a contractor under a contract
17 for professional services are carried out in a manner consistent
18 with attorneys' professional responsibilities as established in
19 the rules of professional conduct as promulgated by the
20 supreme court of appeals;

21 (6) To contract for collection services with any person,
22 firm, partnership, corporation, association or other legal entity
23 to collect and disburse amounts payable as support;

24 (7) To ensure the compliance of contractors and their
25 employees with the provisions of this chapter and legislative
26 rules promulgated pursuant to this chapter, and to terminate,
27 after notice and hearing, the contractual relationship between
28 the bureau and a contractor who fails to comply;

29 (8) To require a contractor to take appropriate remedial or
30 disciplinary action against any employee who has violated or
31 caused the contractor to violate the provisions of this chapter,
32 in accordance with procedures prescribed in legislative rules
33 promulgated by the commission;

34 (9) To locate parents who owe a duty to pay child support;

35 (10) To cooperate with other agencies of this state and other
36 states to search their records to help locate absent parents;

37 (11) To cooperate with other states in establishing and
38 enforcing support obligations;

39 (12) To exercise such other powers as may be necessary to
40 effectuate the provisions of this chapter.

§48-18-106. Notice to unemployed obligor.

1 Upon receipt of a report from an employer stating that a
2 support obligor has been discharged or laid off or has resigned
3 or voluntarily quit, the bureau for child support enforcement
4 shall send a notice to the obligor, informing the obligor of the
5 availability of a modification of the support award and of the
6 services that may be available to him or her from the bureau.
7 The bureau shall also inform the obligor of his or her possible
8 entitlement to a reduction in court-ordered support payments;
9 that a failure to obtain a modification will result in the
10 previously-ordered award remaining in effect; and that substan-
11 tial arrearage might accumulate and remain as judgments
12 against him or her.

§48-18-107. Creation of child support enforcement fund; purpose; funding; disbursements.

1 (a) There is hereby created in the state treasury a separate
2 special revenue account, which shall be an interest bearing
3 account, to be known as the "child support enforcement fund".
4 The special revenue account shall consist of all incentive
5 payments paid by the federal government pursuant to 42 U.S.C
6 §658 as a percentage of the total amount of support collected
7 directly or by contract by the bureau for child support enforce-
8 ment, all amounts appropriated by the Legislature to maintain
9 and operate the bureau for child support enforcement according
10 to this chapter, and all interest or other earnings from moneys
11 in the fund. Any agency or entity receiving federal matching
12 funds for services of the bureau for child support enforcement
13 shall enter into an agreement with the secretary whereby all
14 federal matching funds paid to and received by that agency or
15 entity for the activities of the bureau for child support enforce-
16 ment shall be paid into the child support enforcement fund. Said
17 agreement shall provide for advance payments into the fund by
18 such agencies, from available federal funds, pursuant to Title
19 IV-D of the Social Security Act and in accordance with federal

20 regulations. No expenses incurred under this section shall be a
21 charge against the general funds of the state.

22 (b) Moneys in the special revenue account shall be appro-
23 priated to the department and used exclusively, in accordance
24 with appropriations by the Legislature, to pay costs, fees and
25 expenses incurred, or to be incurred for the following purpose:
26 The provision of child support services authorized pursuant to
27 Title VI, Part D of the Social Security Act and any further duty
28 as set forth in this chapter, including, but not limited to, the
29 duties assigned to the bureau by virtue of its being designated
30 as the single and separate organizational unit within this state
31 to administer the state plan for child and spousal support.

32 (c) Any balance remaining in the special revenue account
33 at the end of any state fiscal year shall not revert to the general
34 revenue fund but shall remain in the special revenue account
35 and shall be used solely in a manner consistent with this
36 section: *Provided*, That for the three succeeding fiscal years
37 after the effective date of this section, any appropriation made
38 to the special revenue account from general revenue shall be
39 repaid to the general revenue fund from moneys available in the
40 special revenue account.

41 (d) Disbursements from the special revenue account shall
42 be authorized by the commissioner.

§48-18-108. Fees.

1 (a) When the bureau for child support enforcement provides
2 child support collection services either to a public assistance
3 recipient or to a party who does not receive public assistance,
4 the bureau for child support enforcement shall, upon written
5 notice to the obligor, charge a monthly collection fee equivalent
6 to the full monthly cost of the services, in addition to the
7 amount of child support which was ordered by the court. The
8 fee shall be deposited in the child support enforcement fund.
9 The service fee assessed may not exceed ten percent of the
10 monthly court ordered child support and may not be assessed
11 against any obligor who is current in payment of the monthly

12 court ordered child support payments: *Provided*, That this fee
13 may not be assessed when the obligor is also a recipient of
14 public assistance.

15 (b) Except for those persons applying for services provided
16 by the bureau for child support enforcement who are applying
17 for or receiving public assistance from the division of human
18 services or persons for whom fees are waived pursuant to a
19 legislative rule promulgated pursuant to this section, all
20 applicants shall pay an application fee of twenty-five dollars.

21 (c) Fees imposed by state and federal tax agencies for
22 collection of overdue support shall be imposed on the person
23 for whom these services are provided. Upon written notice to
24 the obligee the bureau for child support enforcement shall
25 assess a fee of twenty-five dollars to any person not receiving
26 public assistance for each successful federal tax interception.
27 The fee shall be withheld prior to the assistance for each
28 successful federal tax interception. The fee shall be withheld
29 prior to the release of the funds received from each interception
30 and deposited in the child support enforcement fund established
31 pursuant to section 18-107.

32 (d) In any action brought by the bureau for child support
33 enforcement, the family law master shall order that the obligor
34 shall pay attorney fees for the services of the attorney represent-
35 ing the bureau for child support enforcement in an amount
36 calculated at a rate similar to the rate paid to court appointed
37 attorneys paid pursuant to section thirteen-a, article twenty-one,
38 chapter twenty-nine of this code, and all court costs associated
39 with the action: *Provided*, That no such award shall be made
40 when the family law master or circuit judge finds that the award
41 of attorney's fees would create a substantial financial hardship
42 on the obligor or when the obligor is a recipient of public
43 assistance. Further, the bureau for child support enforcement
44 may not collect such fees until the obligor is current in the
45 payment of child support. No court may order the bureau for
46 child support enforcement to pay attorney's fees to any party in
47 any action brought pursuant to this chapter.

48 (e) This section shall not apply to the extent it is inconsis-
49 tent with the requirements of federal law for receiving funds for
50 the program under Title IV-A and Title IV-D of the Social
51 Security Act, United States Code, article three, Title 42,
52 Sections 601 to 613 and United States Code, Title 42, Sections
53 651 to 662.

54 (f) The commission shall, by legislative rule promulgated
55 pursuant to chapter twenty-nine-a of this code, describe the
56 circumstances under which fees charged by the bureau for child
57 support enforcement may be modified or waived, and such rule
58 shall provide for the waiver of any fee, in whole or in part,
59 when such fee would otherwise be required to be paid under the
60 provisions of this chapter. Further, such rule shall initially be
61 promulgated as an emergency rule pursuant to section fifteen,
62 article three, chapter twenty-nine-a of this code.

§48-18-109. Contracts for services.

1 (a) Contracts with persons, firms, partnerships, corpora-
2 tions, associations or other legal entities to provide services to
3 the bureau for child support enforcement shall, at a minimum:

4 (1) Provide for the employment and training of personnel
5 necessary to perform the services;

6 (2) Provide that any federal incentive payment that is
7 payable shall be payable to the fund established pursuant to
8 section 18-107;

9 (3) Delegate responsibility that is consistent with the rules
10 promulgated pursuant to this article;

11 (4) Include any and all provisions required by state or
12 federal law and specifically include terms regarding cancella-
13 tion and renewal of the contract;

14 (5) Provide for the assessment of penalties for the failure to
15 fully or timely provide services included in the agreement;

16 (6) Prohibit the assignment of the contract or the subcon-
 17 tracting of services to be provided under the contract without
 18 first obtaining the express written approval of the commis-
 19 sioner;

20 (7) Provide that the contractor consents to performance
 21 audits of its operations by the performance evaluation and
 22 research division, legislative auditor's office of the West
 23 Virginia Legislature; and

24 (8) Establish reasonable administrative and fiscal require-
 25 ments for providing and continuing services and reimburse-
 26 ment.

27 (b) Prior to entering into such agreement, the commissioner
 28 shall provide all proposals to the members of the commission
 29 who may review and comment on those proposals.

30 (c) The commissioner shall enter into such agreement only
 31 when the commissioner finds that based upon the information
 32 provided to the commissioner and upon the comments made by
 33 members of the commission, that the provider of services is
 34 capable of carrying out the responsibilities of the agreement.

35 (d) All contracts entered into pursuant to this section shall
 36 meet all requirements for such agreements as detailed in article
 37 three, chapter five-a of this code: *Provided*, That when the
 38 commission, after reviewing any contract, finds that the
 39 contract meets all requirements as set forth in this section and
 40 further that the bureau for child support enforcement should
 41 enter into such contract, the contract shall not be subject to the
 42 requirements as detailed in article three, chapter five-a of this
 43 code.

44 (e) Any agreement entered into pursuant to this section may
 45 include a provision relating to the loan of equipment in the
 46 possession of the bureau for child support enforcement.

§48-18-110. Attorneys representing state.

1 (a) Attorneys employed by the bureau for child support
 2 enforcement may represent this state or another state in an
 3 action brought under the authority of federal law of this chapter.

4 (b) An attorney employed by the bureau for child support
5 enforcement or employed by a person or agency or entity
6 pursuant to a contract with the bureau for child support enforce-
7 ment represents the interest of the state or the bureau and not
8 the interest of any other party. The bureau for child support
9 enforcement shall, at the time an application for child support
10 services is made, inform the applicant that any attorney who
11 provides services for the bureau for child support enforcement
12 is the attorney for the state of West Virginia and that the
13 attorney providing those services does not provide legal
14 representation to the applicant.

15 (c) An attorney employed by the bureau for child support
16 enforcement or pursuant to a contract with the bureau for child
17 support enforcement may not be appointed or act as a guardian
18 ad litem or attorney ad litem for a child or another party.

§48-18-111. Establishment of parent locator service.

1 (a) The bureau for child support enforcement shall establish
2 a parent locator service to locate individuals for the purposes of
3 establishing parentage and of establishing, modifying or
4 enforcing child support obligations, utilizing all sources of
5 information and available records and the parent locator service
6 in the federal department of health and human services. For
7 purposes of obtaining information from the parent locator
8 service, any person, agency or entity providing services to the
9 bureau for child support enforcement pursuant to a contract that
10 includes a provision to ensure that the confidentiality of
11 information is maintained shall be deemed to be an agent of the
12 bureau for child support enforcement.

13 (b) Upon entering into an agreement with the secretary of
14 the federal department of health and human services for the use
15 of that department's parent locator service, the bureau for child
16 support enforcement shall accept and transmit to the secretary
17 of the federal department of health and human services requests
18 from authorized persons for information with regard to the
19 whereabouts of a noncustodial obligor to be furnished by such
20 federal parent locator service. For purposes of this subsection,

21 “authorized persons” means: (1) An attorney or agent of the
22 bureau for child support enforcement; (2) a family law master
23 or circuit judge or any agent thereof; or (3) a resident parent,
24 legal guardian, attorney or agent for a child. The bureau for
25 child support enforcement shall charge a reasonable fee
26 sufficient to cover the costs to the state and to the federal
27 department of health and human services incurred by reason of
28 such requests, and shall transfer to that department from time
29 to time, so much of the fees collected as are attributable to the
30 costs incurred by that department.

31 (c) The information obtained by the bureau for child
32 support enforcement from the federal parent locator service
33 shall be used for, but not limited to, the following purposes:

34 (1) Establishing parentage and establishing, setting the
35 amount of, modifying or enforcing child support obligations;

36 (2) Obtaining and transmitting information to any family
37 law master or circuit court or agent thereof or to an attorney or
38 employee of the United States or of any state responsible for
39 enforcing any federal or state law with respect to the unlawful
40 taking or restraint of a child or making or enforcing a child
41 custody or visitation determination.

42 (d) The bureau for child support enforcement may request
43 from the federal parent locator service information:

44 (1) About, or which will facilitate the discovery of informa-
45 tion about, the location of any individual: (A) Who is under an
46 obligation to pay child support; (B) against whom such an
47 obligation is sought; or (C) to whom such an obligation is
48 owed, including the individual’s social security number, or
49 numbers, most recent address, and the name, address and
50 employer identification number of the individual’s employer;

51 (2) Concerning the individual’s wages or other income
52 from, and benefits of, employment, including rights to or
53 enrollment in group health care coverage; and

54 (3) Concerning the type, status, location and amount of any
55 assets of, or debts owed by or to, any such individual.

56 (e) A circuit court shall have jurisdiction to hear and
57 determine, upon a petition by an authorized person, as defined
58 in subsection (b) of this section, whether the release of informa-
59 tion from the federal parent locator service to that person could
60 be harmful to the custodial parent or the child.

**§48-18-112. Cooperation with other states in the enforcement of
child support.**

1 (a) The bureau for child support enforcement shall cooper-
2 ate with any other state in the following:

3 (1) In establishing paternity;

4 (2) In locating an obligor residing temporarily or perma-
5 nently in this state, against whom any action is being taken for
6 the establishment of paternity or the enforcement of child and
7 spousal support;

8 (3) In securing compliance by an obligor residing tempo-
9 rarily or permanently in this state, with an order issued by a
10 court of competent jurisdiction against such obligor for the
11 support and maintenance of a child or children or the parent of
12 such child or children; and

13 (4) In carrying out other functions necessary to a program
14 of child and spousal support enforcement.

15 (b) The commission shall, by legislative rule, establish
16 procedures necessary to extend the bureau for child support
17 enforcements' system of withholding under part 14-401, et seq.,
18 so that such system may include withholding from income
19 derived within this state in cases where the applicable support
20 orders were issued in other states, in order to assure that child
21 support owed by obligors in this state or any other state will be
22 collected without regard to the residence of the child for whom
23 the support is payable or the residence of such child's custodial
24 parent.

§48-18-113. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by the
2 bureau for child support enforcement shall be distributed within
3 two business days after receipt from the employer or other
4 source of periodic income. The amounts collected as child
5 support shall be distributed by the bureau for child support
6 enforcement in accordance with the provisions for distribution
7 set forth in 42 U.S.C. §657. The commission shall promulgate
8 a legislative rule to establish the appropriate distribution as may
9 be required by the federal law.

10 (b) Any payment required to be made under the provisions
11 of this section to a family shall be made to the resident parent,
12 legal guardian or caretaker relative having custody of or
13 responsibility for the child or children.

14 (c) The commission shall establish bonding requirements
15 for employees of the bureau for child support enforcement who
16 receive, disburse, handle or have access to cash.

17 (d) The commissioner shall maintain methods of adminis-
18 tration which are designed to assure that employees of the
19 bureau for child support enforcement or any persons employed
20 pursuant to a contract who are responsible for handling cash
21 receipts do not participate in accounting or operating functions
22 which would permit them to conceal in the accounting records
23 the misuse of cash receipts: *Provided*, That the commissioner
24 may provide for exceptions to this requirement in the case of
25 sparsely populated areas in this state where the hiring of
26 unreasonable additional staff in the local office would otherwise
27 be necessary.

28 (e) No penalty or fee may be collected by or distributed to
29 a recipient of bureau for child support enforcement services
30 from the state treasury or from the child support enforcement
31 fund when child support is not distributed to the recipient in
32 accordance with the time frames established herein.

33 (f) For purposes of this section, “business day” means a day
34 on which state offices are open for regular business.

§48-18-114. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.

1 (a) Where physical custody of the child has been transferred
2 from the custodial parent to another person, the bureau for child
3 support enforcement may redirect disbursement of support
4 payments to such other person, on behalf of the child, in the
5 following circumstances:

6 (1) Where the noncustodial parent has physical custody of
7 the child, excluding visitation, upon filing with the bureau for
8 child support enforcement:

9 (A) An affidavit attesting that the noncustodial parent has
10 obtained physical custody of the child, describing the circum-
11 stances under which the transfer of physical custody took place,
12 and stating that he or she anticipates that his or her physical
13 custody of the child will continue for the foreseeable future; and

14 (B) Documentary proof that the noncustodial parent has
15 instituted proceedings in the circuit court for a modification of
16 legal custody or a certified copy of the custodial parent’s death
17 certificate.

18 (2) Where a person other than the custodial or noncustodial
19 parent has physical custody of the child, excluding visitation,
20 filing with the bureau for child support enforcement:

21 (A) An affidavit attesting that the person has obtained
22 physical custody of the child, describing the circumstances
23 under which the transfer of physical custody took place, and
24 stating that he or she anticipates that his or her physical custody
25 of the child will continue for the foreseeable future; and

26 (B) Documentary proof that the person claiming physical
27 custody is currently the person responsible for the child by
28 producing at least one of the following:

29 (i) School records demonstrating that school authorities
30 consider the person claiming physical custody the adult
31 responsible for the child;

32 (ii) Medical records demonstrating that the person claiming
33 physical custody is empowered to make medical decisions on
34 behalf of the child;

35 (iii) Documents from another public assistance agency
36 showing that the person claiming physical custody is currently
37 receiving other public assistance on behalf of the child;

38 (iv) A notarized statement from the custodial parent
39 attesting to the fact that he or she has transferred physical
40 custody to the person;

41 (v) A verifiable order of a court of competent jurisdiction
42 transferring physical or legal custody to the person;

43 (vi) Documentation that the person claiming physical
44 custody has filed a petition in circuit court to be appointed the
45 child's guardian;

46 (vii) Documentation that the child, if over the age of
47 fourteen, has instituted proceedings in circuit court to have the
48 person claiming physical custody nominated as his or her
49 guardian; or

50 (viii) Any other official documents of a federal, state or
51 local agency or governing body demonstrating that the person
52 currently has physical custody of the child and has taken action
53 indicating that he or she anticipates such physical custody to
54 continue in the foreseeable future.

55 (b) The bureau for child support enforcement shall mail, by
56 first class mail, a copy of the affidavit and supporting documen-
57 tary evidence required under subsection (a) of this section, to
58 the circuit court which issued the support order being enforced

59 by bureau for child support enforcement and to the parties to
60 the order, at their last known addresses, together with a written
61 notice stating that any party has ten days to object to the
62 redirection of support payments by filing an affidavit and
63 evidence showing that the person seeking redirection of the
64 payments does not have physical custody of the child. If no
65 objection is received by the bureau for child support enforce-
66 ment by the end of the ten-day period, the bureau may order
67 payments redirected to the person claiming physical custody for
68 the benefit of the child. If a responsive affidavit and supporting
69 evidence is filed within the ten-day period and, in the opinion
70 of the bureau for child support enforcement, either disproves
71 the claim of the person seeking redirection of support payments
72 or raises a genuine issue of fact as to whether the person has
73 actual physical custody of the child, the bureau for child
74 support enforcement shall continue to forward support pay-
75 ments to the custodial parent. Any person who disagrees with
76 the determination of the bureau for child support enforcement
77 may petition the circuit court for modification of the child
78 support order.

79 (c) Any person who files a false affidavit pursuant to this
80 section shall be guilty of false swearing and, upon conviction
81 thereof, shall be punished as provided by law for such offense.

§48-18-115. Payment of support to the bureau for child support enforcement.

1 All support payments owed to an obligee who is an
2 applicant for or recipient of the services of the bureau for child
3 support enforcement shall be paid to the bureau for child
4 support enforcement. Any other obligee owed a duty of support
5 under the terms of a support order entered by a court of
6 competent jurisdiction may request that the support payments
7 be made to the bureau for child support enforcement. In such
8 case, the bureau for child support enforcement shall proceed to
9 receive and disburse such support payments to or on behalf of
10 the obligee as provided by law.

§48-18-116. Authorization for data processing and retrieval system.

1 In accordance with an initial and annually updated advance
2 data processing planning document approved by the secretary
3 of the federal department of health and human services, the
4 bureau for child support enforcement may establish an auto-
5 matic data processing and retrieval system designed effectively
6 and efficiently to assist the commissioner in carrying out the
7 provisions of this chapter.

§48-18-117. Obtaining support from federal tax refunds.

1 The commission shall, by legislative rule promulgated
2 pursuant to chapter twenty-nine-a of this code, place in effect
3 procedures necessary for the bureau for child support enforce-
4 ment to obtain payment of past due support from federal tax
5 refunds from overpayments made to the secretary of the
6 treasury of the United States. The bureau for child support
7 enforcement shall take all steps necessary to implement and
8 utilize such procedures.

§48-18-118. Obtaining support from state income tax refunds.

1 (a) The tax commissioner shall establish procedures
2 necessary for the bureau for child support enforcement to obtain
3 payment of past due support from state income tax refunds from
4 overpayment made to the tax commissioner pursuant to the
5 provisions of article twenty-one, chapter eleven of this code.

6 (b) The commission shall, by legislative rule promulgated
7 pursuant to chapter twenty-nine-a of this code, establish
8 procedures necessary for the bureau for child support enforce-
9 ment to enforce a support order through a notice to the tax
10 commissioner which will cause any refund of state income tax
11 which would otherwise be payable to an obligor to be reduced
12 by the amount of overdue support owed by such obligor.

13 (1) Such legislative rule shall, at a minimum, prescribe:

14 (A) The time or times at which the bureau for child support
15 enforcement shall serve on the obligor or submit to the tax
16 commissioner notices of past due support;

17 (B) The manner in which such notices shall be served on
18 the obligor or submitted to the tax commissioner;

19 (C) The necessary information which shall be contained in
20 or accompany the notices;

21 (D) The amount of the fee to be paid to the tax commis-
22 sioner for the full cost of applying the procedure whereby past
23 due support is obtained from state income tax refunds; and

24 (E) Circumstances when the bureau for child support
25 enforcement may deduct a twenty-five dollar fee from the
26 obligor's state income tax refund. Such rule may not require a
27 deduction from the state income tax refund of an applicant who
28 is a recipient of assistance from the bureau for children and
29 families in the form of temporary assistance for needy families.

30 (2) Withholding from state income tax refunds may not be
31 pursued unless the bureau for child support enforcement has
32 examined the obligor's pattern of payment of support and the
33 obligee's likelihood of successfully pursuing other enforcement
34 actions, and has determined that the amount of past due support
35 which will be owed, at the time the withholding is to be made,
36 will be one hundred dollars or more. In determining whether the
37 amount of past due support will be one hundred dollars or more,
38 the bureau for child support enforcement shall consider the
39 amount of all unpaid past due support, including that which
40 may have accrued prior to the time that the bureau for child
41 support enforcement first agreed to enforce the support order.

42 (c) The commissioner of the bureau for child support
43 enforcement shall enter into agreements with the secretary of
44 the treasury and the tax commissioner, and other appropriate
45 governmental agencies, to secure information relating to the
46 social security number or numbers and the address or addresses
47 of any obligor, in order to provide notice between such agencies
48 to aid the bureau for child support enforcement in requesting

49 state income tax deductions and to aid the tax commissioner in
50 enforcing such deductions. In each such case, the tax commis-
51 sioner, in processing the state income tax deduction, shall notify
52 the bureau for child support enforcement of the obligor's home
53 address and social security number or numbers. The bureau for
54 child support enforcement shall provide this information to any
55 other state involved in processing the support order.

56 (d) For the purposes of this section, "past due support"
57 means the amount of unpaid past due support owed under the
58 terms of a support order to or on behalf of a child, or to or on
59 behalf of a minor child and the parent with whom the child is
60 living, regardless of whether the amount has been reduced to a
61 judgment or not.

62 (e) The bureau for child support enforcement may, under
63 the provisions of this section, enforce the collection of past due
64 support on behalf of a child who has reached the age of
65 majority.

66 (f) The legislative rule promulgated by the commission
67 pursuant to the provisions of this section and pursuant to
68 chapter twenty-nine-a of this code, shall, at a minimum, provide
69 that prior to notifying the tax commissioner of past due support,
70 a notice to the obligor as prescribed under subsection (a) of this
71 section shall:

72 (1) Notify the obligor that a withholding will be made from
73 any refund otherwise payable to such obligor;

74 (2) Instruct the obligor of the steps which may be taken to
75 contest the determination of the bureau for child support
76 enforcement that past due support is owed or the amount of the
77 past due support; and

78 (3) Provide information with respect to the procedures to be
79 followed, in the case of a joint return, to protect the share of the
80 refund which may be payable to another person.

81 (g) If the bureau for child support enforcement is notified
82 by the tax commissioner that the refund from which withhold-

83 ing is proposed to be made is based upon a joint return, and if
84 the past due support which is involved has not been assigned to
85 the department of health and human resources, the bureau for
86 child support enforcement may delay distribution of the amount
87 withheld until such time as the tax commissioner notifies the
88 bureau for child support enforcement that the other person
89 filing the joint return has received his or her proper share of the
90 refund, but such delay shall not exceed six months.

91 (h) In any case in which an amount is withheld by the tax
92 commissioner under the provisions of this section and paid to
93 the bureau for child support enforcement, if the bureau for child
94 support enforcement subsequently determines that the amount
95 certified as past due was in excess of the amount actually owed
96 at the time the amount withheld is to be distributed, the agency
97 shall pay the excess amount withheld to the obligor thought to
98 have owed the past due support or, in the case of amounts
99 withheld on the basis of a joint return, jointly to the parties
100 filing such return.

101 (i) The amounts received by the bureau for child support
102 enforcement shall be distributed in accordance with the
103 provisions for distribution set forth in 42 U.S.C. §657. The
104 commission shall promulgate a legislative rule to establish the
105 appropriate distribution as may be required by the federal law.

**§48-18-119. Obtaining support from unemployment compensa-
tion benefits.**

1 (a) The commissioner shall determine on a periodic basis
2 whether individuals receiving unemployment compensation
3 owe child support obligations which are being enforced or have
4 been requested to be enforced by the bureau for child support
5 enforcement. If an individual is receiving such compensation
6 and owes any such child support obligation which is not being
7 met, the bureau for child support enforcement shall enter into
8 an agreement with such individual to have specified amounts
9 withheld otherwise payable to such individual, and shall submit
10 a copy of such agreement to the bureau of employment pro-
11 grams. In the absence of such agreement, the bureau for child

12 support enforcement shall bring legal process to require the
13 withholding of amounts from such compensation.

14 (b) The secretary shall enter into a written agreement with
15 the bureau of employment programs for the purpose of with-
16 holding unemployment compensation from individuals with
17 unmet support obligations being enforced by the bureau for
18 child support enforcement. The bureau for child support
19 enforcement shall agree only to a withholding program that it
20 expects to be cost effective, and, as to reimbursement, shall
21 agree only to reimburse the bureau of employment programs for
22 its actual, incremental costs of providing services to the bureau
23 for child support enforcement.

24 (c) The commission shall promulgate a procedural rule for
25 selecting cases to pursue through the withholding of unemploy-
26 ment compensation for support purposes. This rule shall be
27 designed to ensure maximum case selection and minimal
28 discretion in the selection process.

29 (d) The commissioner shall, not less than annually, provide
30 a receipt to an individual who requests a receipt for the support
31 paid through the withholding of unemployment compensation,
32 if receipts are not provided through other means.

33 (e) The commissioner shall, through direct contact with the
34 bureau of employment programs, process cases through the
35 bureau of employment programs in this state, and shall process
36 cases through support enforcement agencies in other states. The
37 commissioner shall receive all amounts withheld by the bureau
38 of employment programs in this state, forwarding any amounts
39 withheld on behalf of support enforcement agencies in other
40 states to those agencies.

41 (f) At least one time per year, the commission shall review
42 and document program operations, including case selection
43 criteria established under subsection (c) of this section, and the
44 costs of the withholding process versus the amounts collected
45 and, as necessary, modify procedures and renegotiate the
46 services provided by the bureau of employment programs to
47 improve program and cost effectiveness.

48 (g) For the purposes of this section:

49 (1) "Legal process" means a writ, order, summons or other
50 similar process in the nature of garnishment which is issued by
51 a court of competent jurisdiction or by an authorized official
52 pursuant to an order to such court or pursuant to state or local
53 law.

54 (2) "Unemployment compensation" means any compensa-
55 tion under state unemployment compensation law (including
56 amounts payable in accordance with agreements under any
57 federal unemployment compensation law). It includes extended
58 benefits, unemployment compensation for federal employees,
59 unemployment compensation for ex-servicemen, trade readjust-
60 ment allowances, disaster unemployment assistance, and
61 payments under the Federal Redwood National Park Expansion
62 Act.

§48-18-120. Statements of account.

1 The bureau for child support enforcement shall provide
2 annual statements of their account to each obligor and obligee
3 without charge. Additional statements of account shall be
4 provided at a fee of five dollars, unless such fee is waived
5 pursuant to a rule promulgated by the commission. Statements
6 provided under this subsection are in addition to statements
7 provided for judicial hearings. The commissioner shall establish
8 procedures whereby an obligor or obligee can contest or correct
9 a statement of account.

**§48-18-121. Providing information to consumer reporting agen-
cies; requesting consumer credit reports for child
support purposes.**

1 (a) For purposes of this section, the term "consumer
2 reporting agency" means any person who, for monetary fees,
3 dues, or on a cooperative nonprofit basis, regularly engages, in
4 whole or in part, in the practice of assembling or evaluating
5 consumer credit information or other information on consumers
6 for the purpose of furnishing consumer reports to third parties.

7 (b) The commission shall propose and adopt a procedural
8 rule in accordance with the provisions of sections four and
9 eight, article three, chapter twenty-nine-a of this code, estab-
10 lishing procedures whereby information regarding the amount
11 of overdue support owed by an obligor will be reported
12 periodically by the bureau for child support enforcement to any
13 consumer reporting agency, after a request by the consumer
14 reporting agency that it be provided with the periodic reports.

15 (1) The procedural rule adopted by the commission shall
16 provide that any information with respect to an obligor shall be
17 made available only after notice has been sent to the obligor of
18 the proposed action, and such obligor has been given a reason-
19 able opportunity to contest the accuracy of the information.

20 (2) The procedural rule adopted shall afford the obligor
21 with procedural due process prior to making information
22 available with respect to the obligor.

23 (c) The information made available to a consumer reporting
24 agency regarding overdue support may only be made available
25 to an entity that has furnished evidence satisfactory to the
26 bureau that the entity is a consumer reporting agency as defined
27 in subsection (a) of this section.

28 (d) The bureau for child support enforcement may impose
29 a fee for furnishing such information, not to exceed the actual
30 cost thereof.

31 (e) The commissioner of the bureau for child support
32 enforcement, or her or his designee, may request a consumer
33 reporting agency to prepare and furnish to the bureau for child
34 support enforcement a consumer report for purposes relating to
35 child support, by certifying to the consumer reporting agency
36 that:

37 (1) The consumer report is needed for the purpose of
38 establishing an individual's capacity to make child support
39 payments or determining the appropriate level of such payments
40 in order to set an initial or modified child support award;

41 (2) The paternity of the child of the individual has been
42 established or acknowledged by the individual in accordance
43 with state law;

44 (3) The individual whose report is being requested has been
45 given at least ten days' prior notice of such request by certified
46 mail to his or her last known address that such report is being
47 requested; and

48 (4) The consumer report will be kept confidential, will be
49 used solely for a purpose described in subdivision (1) of this
50 subsection and will not be used in connection with any other
51 civil, administrative or criminal proceeding or for any other
52 purpose.

§48-18-122. Central state case registry.

1 (a) The bureau for child support enforcement shall establish
2 and maintain a central state case registry of child support
3 orders. All orders in cases when any party receives any service
4 provided by the bureau for child support enforcement shall be
5 included in the registry. Any other support order entered or
6 modified in this state on or after the first day of October, one
7 thousand nine hundred ninety-eight, shall be included in the
8 registry. The bureau for child support enforcement, upon receipt
9 of any information regarding a new hire provided pursuant to
10 section 18-125 of this article shall compare information
11 received to determine if the new hire's income is subject to
12 wage withholding and notify the employer pursuant to that
13 section.

14 (b) Each party to a child support proceeding shall, upon
15 entry of an order awarding or modifying child support, com-
16 plete and file with the clerk of the circuit court issuing the order
17 a form, to be promulgated by the administrative office of the
18 supreme court of appeals, listing information concerning the
19 location and identity of a party including, but not limited to:
20 The party's social security number, residential and mailing
21 address, telephone number and driver's license number; the
22 child's name, birth date and social security number; and the
23 party's employer's name, address and telephone number. The

24 clerk shall promptly forward all such information to the state
25 case registry. The parties are required to notify the state case
26 registry of any change in the information contained on the form,
27 and every order for support shall so state. All information
28 provided to the state case registry shall be subject to the privacy
29 and confidentiality safeguards contained in section 18-131.

30 (c) In any subsequent child support enforcement action
31 between the parties, there shall be a presumption that the
32 requirements for notice and service of process have been met
33 upon a showing that the bureau for child support enforcement
34 has made a diligent effort to ascertain the location of a party by
35 delivery of written notice by certified mail, return receipt
36 requested, to the most recent employer or residential mailing
37 address filed with the state case registry pursuant to subsection
38 (b) of this section.

§48-18-123. Subpoenas.

1 In order to obtain financial and medical insurance or other
2 information pursuant to the establishment, enforcement and
3 modification provisions set forth in this chapter, the bureau for
4 child support enforcement or any out-of-state agency adminis-
5 tering a program under Title IV-D of the Social Security Act
6 may serve, by certified mail or personal service, an administra-
7 tive subpoena on any person, corporation, partnership, financial
8 institution, labor organization or state agency, for an appearance
9 or for production of financial or medical insurance or other
10 information. In case of disobedience to the subpoena, the
11 bureau for child support enforcement may invoke the aid of any
12 circuit court in requiring the appearance or production of
13 records and financial documents. The bureau for child support
14 enforcement may assess a civil penalty of no more than one
15 hundred dollars for the failure of any person, corporation,
16 financial institution, labor organization or state agency to
17 comply with requirements of this section.

§48-18-124. Liability for financial institutions providing financial records to the bureau for child support enforce-

ment; agreements for data match system; encumbrance or surrender of assets.

1 (a) Notwithstanding any other provision of this code, a
2 financial institution shall not be liable under the law of this state
3 to any person for:

4 (1) Disclosing any financial record of an individual to the
5 bureau for child support enforcement in response to a subpoena
6 issued by the bureau pursuant to section 18-123 of this article;

7 (2) Disclosing any financial record of an individual to the
8 bureau for child support enforcement pursuant to the terms of
9 an agreement with such financial institution pursuant to
10 subsection (f) of this section;

11 (3) Encumbering or surrendering assets held by such
12 financial institution in response to a notice of lien or levy issued
13 by the bureau for child support enforcement as provided in
14 subsection (g) of this section; or

15 (4) For any other action taken in good faith to comply with
16 the requirements of this section.

17 (b) The bureau for child support enforcement, after obtain-
18 ing a financial record of an individual from a financial institu-
19 tion, may disclose such financial record only for the purpose of,
20 and to the extent necessary in, establishing, modifying or
21 enforcing a child support obligation of such individual.

22 (c) The civil liability of a person who knowingly, or by
23 reason of negligence, discloses a financial record of an individ-
24 ual in violation of subsection (b) of this section is governed by
25 the provisions of federal law as set forth in 42 U.S.C. §669A.

26 (d) For purposes of this section, the term "financial
27 institution" means:

28 (1) Any bank or savings association;

29 (2) A person who is an institution-affiliated party, as that
30 term is defined in the Federal Deposit Insurance Act, 12 U.S.C.
31 §1813(u);

32 (3) Any federal credit union or state-chartered credit union,
33 including an institution-affiliated party of a credit union; and

34 (4) Any benefit association, insurance company, safe
35 deposit company, money-market mutual fund, or similar entity
36 authorized to do business in this state.

37 (e) For purposes of this section, the term “financial record”
38 means an original of, a copy of, or information known to have
39 been derived from, any record held by a financial institution
40 pertaining to a customer’s relationship with the financial
41 institution.

42 (f) Notwithstanding any provision of this code to the
43 contrary, the bureau for child support enforcement shall enter
44 into agreements with financial institutions doing business in the
45 state to develop and operate, in coordination with such financial
46 institutions, a data match system, using automated data ex-
47 changes, to the maximum extent feasible, in which each
48 financial institution is required to provide for each calendar
49 quarter the name, record address, social security number or
50 other taxpayer identification number, and other identifying
51 information for each obligor, as defined in section 1-235 of this
52 chapter, who maintains an account at such institution and who
53 owes past due support. The bureau for child support enforce-
54 ment will identify to the financial institution an obligor who
55 owes past due support by his or her name and social security
56 number or other taxpayer identification number. The bureau for
57 child support enforcement, upon written request and proof of
58 actual costs incurred, shall pay a reasonable fee to a financial
59 institution for conducting the data matching services not to
60 exceed the actual costs incurred by such financial institution or
61 one hundred dollars per institution per quarter, whichever is
62 less.

63 (g) The financial institution, in response to a notice of a lien
64 or levy, shall encumber or surrender, as the case may be, assets
65 held by such institution on behalf of any noncustodial parent
66 who is subject to a lien for child support.

§48-18-125. Employment and income reporting.

1 (a) For purposes of this section:

2 (1) "Employee" means an individual who is an "employee"
3 for purposes of federal income tax withholding, as defined in 26
4 U.S.C. §3401;

5 (2) "Employer" means the person or entity for whom an
6 individual performs or performed any service of whatever
7 nature and who has control of the payment of the individual's
8 wages for performance of such service or services, as defined
9 in 26 U.S.C. §3401;

10 (3) An individual is considered a "new hire" on the first day
11 in which that individual performs services for remuneration and
12 on which an employer begins to withhold amounts for income
13 tax purposes.

14 (b) Except as provided in subsections (c) and (d) of this
15 section, all employers doing business in the state shall report to
16 the bureau for child support enforcement:

17 (1) The hiring of any person who resides or works in this
18 state to whom the employer anticipates paying earnings; and

19 (2) The rehiring or return to work of any employee who
20 resides or works in this state.

21 (c) Employers are not required to report the hiring, rehiring
22 or return to work of any person who is an employee of a federal
23 or state agency performing intelligence or counterintelligence
24 functions if the head of such agency has determined that
25 reporting could endanger the safety of the employee or compro-
26 mise an ongoing investigation or intelligence mission.

27 (d) An employer that has employees in states other than this
28 state and that transmits reports magnetically or electronically is
29 not required to report to the bureau for child support enforce-
30 ment the hiring, rehiring or return to work of any employee if
31 the employer has filed with the secretary of the federal depart-
32 ment of health and human services, as required by 42 U.S.C.
33 §653A, a written designation of another state in which it has
34 employees as the reporting state.

35 (e) Employers shall report by mailing to the bureau for
36 child support enforcement a copy of the employee's W-4 form;
37 however, an employer may transmit such information through
38 another means if approved in writing by the bureau for child
39 support enforcement prior to the transmittal. The report shall
40 include the employee's name, address and social security
41 number, the employer's name and address, any different
42 address of the payroll office and the employer's federal tax
43 identification number. The employer may report other informa-
44 tion, such as date of birth or income information, if desired.

45 (f) Employers shall submit a report within fourteen days of
46 the date of the hiring, rehiring or return to work of the em-
47 ployee. However, if the employer transmits the reports magneti-
48 cally or electronically by two monthly submissions, the reports
49 shall be submitted not less than twelve days nor more than
50 sixteen days apart.

51 (g) An employer shall provide to the bureau for child
52 support enforcement, upon its written request, information
53 regarding an obligor's employment, wages or salary, medical
54 insurance, and location of employment.

55 (h) Any employer who fails to report in accordance with the
56 provisions of this section shall be assessed a civil penalty of no
57 more than twenty-five dollars per failure. If the failure to report
58 is the result of a conspiracy between the employer and the
59 employee not to supply the required report or to supply a false
60 or incomplete report, the employer shall be assessed a civil
61 penalty of no more than five hundred dollars.

62 (i) Employers required to report under this section may
63 assess each employee so reported one dollar for the administra-
64 tive costs of reporting.

65 (j) Uses for the new hire information include, but are not
66 limited to, the following:

67 (1) The state directory of new hires shall furnish the
68 information to the national directory of new hires;

69 (2) The bureau for child support enforcement shall use
70 information received pursuant to this section to locate individu-
71 als for purposes of establishing paternity and of establishing,
72 modifying and enforcing child support obligations, and may
73 disclose such information to any agent of the agency that is
74 under contract with the bureau to carry out such purposes;

75 (3) State agencies responsible for administering a program
76 specified in 42 U.S.C. §1320b-7(b) shall have access to
77 information reported by employers for purposes of verifying
78 eligibility for the program; and

79 (4) The bureau of employment programs shall have access
80 to information reported by employers for purposes of adminis-
81 tering employment security and workers' compensation
82 programs.

§48-18-126. Review and adjustment of child support orders.

1 (a) Either parent or, if there has been an assignment of
2 support to the department of health and human resources, the
3 bureau for child support enforcement shall have the right to
4 request an administrative review of the child support award in
5 the following circumstances:

6 (1) Where the request for review is received thirty-six
7 months or more after the date of the entry of the order or from
8 the completion of the previous administrative review, which-
9 ever is later, the bureau for child support enforcement shall
10 conduct a review to determine whether the amount of the child
11 support award in such order varies from the amount of child
12 support that would be awarded at the time of the review
13 pursuant to the guidelines for child support awards contained in

14 article 13-101, *et seq.* If the amount of the child support award
15 under the existing order differs by ten percent or more from the
16 amount that would be awarded in accordance with the child
17 support guidelines, the bureau for child support enforcement
18 shall file with the circuit court a motion for modification of the
19 child support order. If the amount of the child support award
20 under the existing order differs by less than ten percent from the
21 amount that would be awarded in accordance with the child
22 support guidelines, the bureau for child support enforcement
23 may, if it determines that such action is in the best interest of
24 the child or otherwise appropriate, file with the circuit court a
25 motion for modification of the child support order.

26 (2) Where the request for review of a child support award
27 is received less than thirty-six months after the date of the entry
28 of the order or from the completion of the previous administra-
29 tive review, the bureau for child support enforcement shall
30 undertake a review of the case only where it is alleged that there
31 has been a substantial change in circumstances. If the bureau
32 for child support enforcement determines that there has been a
33 substantial change in circumstances and if it is in the best
34 interests of the child, the bureau shall file with the circuit court
35 a motion for modification of the child support order in accor-
36 dance with the guidelines for child support awards contained in
37 article 13-101, *et seq.*, of this chapter

38 (b) The bureau for child support enforcement shall notify
39 both parents at least once every three years of their right to
40 request a review of a child support order. The notice may be
41 included in any order granting or modifying a child support
42 award. The bureau for child support enforcement shall give
43 each parent at least thirty days' notice before commencing any
44 review, and shall further notify each parent, upon completion of
45 a review, of the results of the review, whether of a proposal to
46 move for modification or of a proposal that there should be no
47 change.

48 (c) When the result of the review is a proposal to move for
49 modification of the child support order, each parent shall be
50 given thirty days' notice of the hearing on the motion, the

51 notice to be directed to the last known address of each party by
52 first class mail. When the result of the review is a proposal that
53 there be no change, any parent disagreeing with that proposal
54 may, within thirty days of the notice of the results of the review,
55 file with the court a motion for modification setting forth in full
56 the grounds therefor.

57 (d) For the purposes of this section, a “substantial change
58 in circumstances” includes, but is not limited to, a changed
59 financial condition, a temporary or permanent change in
60 physical custody of the child which the court has not ordered,
61 increased need of the child, or other financial conditions.
62 “Changed financial conditions” means increases or decreases in
63 the resources available to either party from any source.
64 Changed financial conditions includes, but is not limited to, the
65 application for or receipt of any form of public assistance
66 payments, unemployment compensation and workers’ compen-
67 sation, or a fifteen percent or more variance from the amount of
68 the existing order and the amount of child support that would be
69 awarded according to the child support guidelines.

§48-18-127. Adoption of form to identify payments.

1 The commission shall recommend to the secretary a form
2 for the purpose of identification of child support payments
3 which shall include, at a minimum, any amount of child support
4 obligation paid under an income withholding order, the name
5 and address of the payee, and the availability of health insur-
6 ance. The form may include other information needed to ensure
7 the proper credit and distribution of such payments. The
8 secretary shall adopt any revised form no later than the first day
9 of July, one thousand nine hundred ninety-six, which shall
10 include all information listed herein. Following the adoption of
11 such form, the commission shall promulgate such legislative
12 rules pursuant to chapter twenty-nine-a as may be necessary to
13 ensure that all information provided on the form is correct. This
14 rule shall constitute an emergency rule within the meaning of
15 section fifteen, article three, chapter twenty-nine-a of this code.

§48-18-128. Billing for fees and costs.

1 (a) When any filing, copying or other service is provided to
2 the bureau for child support enforcement, the state or county
3 official or the clerk of any court providing such fee for a
4 charge, shall bill the bureau for child support enforcement
5 monthly.

6 (b) When any filing, copying or other service is provided to
7 a person, agency or entity who is providing services for the
8 bureau for child support enforcement pursuant to a contract, the
9 state or county official or the clerk of any court providing such
10 fee for a charge, shall bill the entity, agency, person or bureau
11 for child support enforcement monthly, in accord with the terms
12 of the contract. The bureau for child support enforcement shall
13 provide the relevant terms of such agreement to those officials
14 upon implementation of any agreement.

15 (c) A state or county official and the clerk of any court who
16 charges a deposit, library fee, filing fee for filing and copying
17 documents or their service, if the filing, copying or services is
18 for the bureau for child support enforcement or for a person,
19 entity or agency providing services pursuant to a contract as
20 described in this article, shall bill the bureau for child support
21 enforcement monthly or the person, entity or agency providing
22 such services monthly, in accord with the terms of any contract.

**§48-18-129. Acceptance of federal purposes; compliance with
federal requirements and standards.**

1 (a) The state assents to the purposes of the federal laws
2 regarding child support and establishment of paternity and
3 agrees to accept federal appropriations and other forms of
4 assistance made under or pursuant thereto, and authorizes the
5 receipt of such appropriations into the state treasury and the
6 receipt of other forms of assistance by the bureau for child
7 support enforcement for expenditure, disbursement and
8 distribution by the bureau in accordance with the provisions of
9 this chapter and the conditions imposed by applicable federal
10 laws, rules and regulations.

11 (b) Insofar as such actions are consistent with the laws of
12 this state granting authority to the bureau and the commis-
13 sioner, the bureau shall comply with such requirements and
14 standards as the secretary of the federal department of health
15 and human services may have determined, as of the effective
16 date of this section, to be necessary for the establishment of an
17 effective program for locating obligors, establishing paternity,
18 obtaining support orders and collecting support payments.

19 (c) The commissioner shall propose for promulgation a
20 legislative rule in accordance with the provisions of chapter
21 twenty-nine-a of this code, to establish time-keeping require-
22 ments to assure the maximum funding of incentive payments,
23 grants and other funding sources available to the state for the
24 processing of cases filed for the location of absent parents, the
25 establishment of paternity, and the establishment, modification
26 or enforcement of orders of child support.

§48-18-130. Publicizing child support enforcement services.

1 The bureau for child support enforcement shall regularly
2 and frequently publicize, through public service announce-
3 ments, the availability of child support enforcement services
4 under the provisions of this chapter and otherwise, including
5 information as to any application fees for such services and a
6 toll-free telephone number and a postal address at which further
7 information may be obtained.

§48-18-131. Access to records, confidentiality.

1 (a) All records in the possession of the bureau for child
2 support enforcement, including records concerning an individ-
3 ual case of child or spousal support, shall be kept confidential
4 and shall not be released except as provided below:

5 (1) Records shall be disclosed or withheld as required by
6 federal law or regulations promulgated thereunder notwith-
7 standing other provisions of this section.

8 (2) Information as to the whereabouts of a party or the child
9 shall not be released to a person against whom a protective
10 order has been entered with respect to such party or child or
11 where the state has reason to believe that the release of the
12 information to the person making the request may result in
13 physical or emotional harm to the party or the child.

14 (3) The phone number, address, employer and other
15 information regarding the location of the obligor, the obligee
16 and the child shall only be disclosed: (A) Upon his or her
17 written consent, to the person whom the consent designates; or
18 (B) notwithstanding subdivision (4) of this subsection, to the
19 obligee, the obligor, the child or the caretaker or representative
20 of the child, upon order of a court if the court finds that the
21 disclosure is for a bona fide purpose, is not contrary to the best
22 interest of a child and does not compromise the safety of any
23 party: *Provided*, That the identity and location of the employer
24 may be disclosed on the letters, notices and pleadings of the
25 bureau as necessary and convenient for the determination of
26 support amounts and the establishment, investigation, modifica-
27 tion, enforcement, collection and distribution of support.

28 (4) Information and records other than the phone number,
29 address, employer and information regarding the location of the
30 obligor, the obligee and the child shall be disclosed to the
31 obligor, the obligee, the child or the caretaker of the child or his
32 or her duly authorized representative, upon his or her written
33 request: *Provided*, That when the obligor requests records other
34 than collection and distribution records, financial records
35 relevant to the determination of the amount of support pursuant
36 to the guidelines, or records the obligor has supplied, the bureau
37 shall mail a notice by first class mail to the last known address
38 of the obligee notifying him or her of the request. The notice
39 shall advise the obligee of his or her right to object to the
40 release of records on the grounds that the records are not
41 relevant to the determination of the amount of support, or the
42 establishment, modification, enforcement, collection or
43 distribution of support. The notice shall also advise the obligee
44 of his or her right to disclosure of records provided in this

45 section in order to determine what records the bureau for child
46 support enforcement may have. In the event of any objection,
47 the bureau shall determine whether or not the information shall
48 be released.

49 (5) Information in specific cases may be released as is
50 necessary or to determine the identity, location, employment,
51 income and assets of an obligor.

52 (6) Information and records may be disclosed to the bureau
53 of vital statistics, bureau of employment programs, the workers'
54 compensation division, state tax department and the internal
55 revenue service, or other state or federal agencies or depart-
56 ments as may be necessary or desirable in obtaining any
57 address, employment, wage or benefit information for the
58 purpose of determining the amount of support or establishing,
59 enforcing, collecting and distributing support.

60 (b) Any person who willfully violates this section shall be
61 guilty of a misdemeanor and, upon conviction thereof, shall be
62 fined not less than one hundred nor more than one thousand
63 dollars, or confined in the county or regional jail not more than
64 six months, or both fined and imprisoned.

§48-18-132. Access to information.

1 (a) All state, county and municipal agencies' offices and
2 employers, including profit, nonprofit and governmental
3 employers, receiving a request for information and assistance
4 from the bureau for child support enforcement or any out-of-
5 state agency administering a program under Title IV-D of the
6 Social Security Act, shall cooperate with the bureau or with the
7 out-of-state agency in the location of parents who have aban-
8 doned and deserted children and shall provide the bureau or the
9 out-of-state agency with all available pertinent information
10 concerning the location, income and property of those parents.

11 (b) Notwithstanding any other provision of law to the
12 contrary, any entity conducting business in this state or incorpo-
13 rated under the laws of this state shall, upon certification by the

14 bureau or any out-of-state agency administering a program
15 under Title IV-D of the Social Security Act that the information
16 is needed to locate a parent for the purpose of collecting or
17 distributing child support, provide the bureau or the out-of-state
18 agency with the following information about the parent: Full
19 name, social security number, date of birth, home address,
20 wages and number of dependents listed for income tax pur-
21 poses: *Provided*, That no entity may provide any information
22 obtained in the course of providing legal services, medical
23 treatment or medical services.

24 (c)(1) The bureau for child support enforcement shall have
25 access, subject to safeguards on privacy and information
26 security, and to the nonliability of entities that afford such
27 access under this subdivision, to information contained in the
28 following records, including automated access, in the case of
29 records maintained in automated data bases:

30 (A) Records of other state and local government agencies,
31 including, but not limited to:

32 (i) Vital statistics, including records of marriage, birth and
33 divorce;

34 (ii) State and local tax and revenue records, including
35 information on residence address, employer, income and assets;

36 (iii) Records concerning real and titled personal property;

37 (iv) Records of occupational and professional licenses, and
38 records concerning the ownership and control of corporations,
39 partnerships and other business entities;

40 (v) Employment security records;

41 (vi) Records of agencies administering public assistance
42 programs;

43 (vii) Records of the division of motor vehicles; and

44 (viii) Corrections records.

45 (B) Certain records held by private entities with respect to
46 individuals who owe or are owed support or certain individuals
47 against, or with respect to, whom a support obligation is sought,
48 consisting of:

49 (i) The names and addresses of such individuals and the
50 names and addresses of the employers of such individuals, as
51 appearing in the customer records of public utilities and cable
52 television companies, pursuant to an administrative subpoena
53 authorized by section thirty-three, article two of this chapter;
54 and

55 (ii) Information, including information on assets and
56 liabilities, on such individuals held by financial institutions.

57 (2) Out-of-state agencies administering programs under
58 Title IV-D of the Social Security Act shall, without the need for
59 any court order, have the authority to access records in this state
60 by making a request through the bureau for child support
61 enforcement.

62 (d) All federal and state agencies conducting activities
63 under Title IV-D of the Social Security Act shall have access to
64 any system used by this state to locate an individual for
65 purposes relating to motor vehicles or law enforcement.

66 (e) Out-of-state agencies administering programs under
67 Title IV-D of the Social Security Act shall have the authority
68 and right to access and use, for the purpose of establishing or
69 enforcing a support order, the state law-enforcement and motor
70 vehicle data bases.

71 (f) The bureau for child support enforcement and out-of-
72 state agencies administering programs under Title IV-D of the
73 Social Security Act shall have the authority and right to access
74 and use, for the purpose of establishing or enforcing a support
75 order, interstate networks that state law-enforcement agencies
76 and motor vehicle agencies subscribe to or participate in, such
77 as the national law-enforcement telecommunications system

78 (NLETS) and the American association of motor vehicle
79 administrators (AAMVA) networks.

80 (g) No state, county or municipal agency or licensing board
81 required to release information pursuant to the provisions of
82 this section to the bureau for child support enforcement or to
83 any out-of-state agency administering programs under Title IV-
84 D of the Social Security Act may require the bureau for child
85 support enforcement or any out-of-state agency to obtain a
86 court order prior to the release of the information.

87 (h) Any information received pursuant to the provisions of
88 this section is subject to the confidentiality provisions set forth
89 in section 18-131 of this chapter.

§48-18-133. Recording of social security numbers in certain family matters.

1 (a) The social security number, if any, of any applicant for
2 a professional license, driver's license, occupational license,
3 recreational license, or marriage license must be recorded on
4 the application for such license.

5 (b) The social security number of any individual who is
6 subject to a divorce decree, support order, or paternity determi-
7 nation or acknowledgment must be placed in the records
8 relating to the matter.

9 (c) For the purposes of subsection (a) of this section, if the
10 licensing authority allows the use of a number other than the
11 social security number on the face of the document while the
12 social security number is kept on file at the agency, the appli-
13 cant shall be so advised by such authority.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.

§48-19-101. Purposes; how article to be construed.

1 (a) The purposes of this article are:

2 (1) To enumerate and describe the functions and duties of
3 the bureau for child support enforcement attorney as an
4 employee of the bureau for child support enforcement;

5 (2) To ensure that procedures followed by the bureau for
6 child support enforcement attorney will protect the best
7 interests of children in domestic relations matters; and

8 (3) To compel the enforcement of support orders, thereby
9 ensuring that persons legally responsible for the care and
10 support of children assume their legal obligations and reduce
11 the financial cost to this state of providing public assistance
12 funds for the care of children.

13 (b) This article shall be construed to facilitate the resolution
14 of domestic relations matters.

**§48-19-102. Placement of bureau for child support enforcement
attorneys throughout the state; supervision; office
procedures.**

1 (a) The bureau for child support enforcement shall employ
2 twenty-one employees in the position of bureau for child
3 support enforcement attorney, and the offices of the bureau for
4 child support enforcement attorneys shall be distributed
5 geographically so as to provide an office for each of the
6 following areas of the state:

7 (1) The counties of Brooke, Hancock and Ohio;

8 (2) The counties of Marshall, Tyler and Wetzel;

9 (3) The counties of Pleasants, Ritchie, Wirt and Wood;

10 (4) The counties of Calhoun, Jackson and Roane;

11 (5) The counties of Mason and Putnam;

12 (6) The county of Cabell;

13 (7) The counties of McDowell and Wyoming;

- 14 (8) The counties of Logan and Mingo;
- 15 (9) The county of Kanawha;
- 16 (10) The county of Raleigh;
- 17 (11) The counties of Mercer, Monroe and Summers;
- 18 (12) The counties of Fayette and Nicholas;
- 19 (13) The counties of Greenbrier and Pocahontas;
- 20 (14) The counties of Braxton, Clay, Gilmer and Webster;
- 21 (15) The counties of Doddridge, Harrison, Lewis and
22 Upshur;
- 23 (16) The counties of Marion and Taylor;
- 24 (17) The counties of Monongalia and Preston;
- 25 (18) The counties of Barbour, Randolph and Tucker;
- 26 (19) The counties of Grant, Hampshire, Hardy, Mineral and
27 Pendleton;
- 28 (20) The counties of Berkeley, Jefferson and Morgan; and
- 29 (21) The counties of Boone, Lincoln and Wayne.

30 (b) Each bureau for child support enforcement attorney
31 shall be appointed by the commissioner of the bureau for child
32 support enforcement. The bureau for child support enforcement
33 attorneys shall be duly qualified attorneys licensed to practice
34 in the courts of this state. Bureau for child support enforcement
35 attorneys shall be exempted from the appointments in the
36 indigent cases which would otherwise be required pursuant to
37 article twenty-one, chapter twenty-nine of this code.

38 (c) Nothing contained herein shall prohibit the commis-
39 sioner from temporarily assigning, from time to time as

40 caseload may dictate, a bureau for child support enforcement
41 attorney from one geographical area to another geographical
42 area.

43 (d) The bureau for child support enforcement attorney is an
44 employee of the bureau for child support enforcement.

§48-19-103. Duties of the bureau for support enforcement attorneys.

1 Subject to the control and supervision of the commissioner:

2 (a) The bureau for child support enforcement attorney shall
3 supervise and direct the secretarial, clerical and other employ-
4 ees in his or her office in the performance of their duties as such
5 performance affects the delivery of legal services. The bureau
6 for child support enforcement attorney will provide appropriate
7 instruction and supervision to employees of his or her office
8 who are nonlawyers, concerning matters of legal ethics and
9 matters of law, in accordance with applicable state and federal
10 statutes, rules and regulations.

11 (b) In accordance with the requirements of rule 5.4(c) of the
12 rules of professional conduct as promulgated and adopted by
13 the supreme court of appeals, the bureau for child support
14 enforcement attorney shall not permit a nonlawyer who is
15 employed by the department of health and human resources in
16 a supervisory position over the bureau for child support
17 enforcement attorney to direct or regulate the attorney's
18 professional judgment in rendering legal services to recipients
19 of services in accordance with the provisions of this chapter;
20 nor shall any nonlawyer employee of the department attempt to
21 direct or regulate the attorney's professional judgment.

22 (c) The bureau for child support enforcement attorney shall
23 make available to the public an informational pamphlet,
24 designed in consultation with the commissioner. The informa-
25 tional pamphlet shall explain the procedures of the court and the
26 bureau for child support enforcement attorney; the duties of the
27 bureau for child support enforcement attorney; the rights and

28 responsibilities of the parties; and the availability of human
29 services in the community. The informational pamphlet shall be
30 provided as soon as possible after the filing of a complaint or
31 other initiating pleading. Upon request, a party to a domestic
32 relations proceeding shall receive an oral explanation of the
33 informational pamphlet from the office of the bureau for child
34 support enforcement attorney.

35 (d) The bureau for child support enforcement shall act to
36 establish the paternity of every child born out of wedlock for
37 whom paternity has not been established, when the child's
38 caretaker is an applicant for or recipient of temporary assistance
39 for needy families, and when the caretaker has assigned to the
40 division of human services any rights to support for the child
41 which might be forthcoming from the putative father: *Provided,*
42 That if the bureau for child support enforcement attorney is
43 informed by the secretary of the department of health and
44 human resources or his or her authorized employee that it has
45 been determined that it is against the best interest of the child
46 to establish paternity, the bureau for child support enforcement
47 attorney shall decline to so act. The bureau for child support
48 enforcement attorney, upon the request of the mother, alleged
49 father or the caretaker of a child born out of wedlock, regardless
50 of whether the mother, alleged father or the caretaker is an
51 applicant or recipient of temporary assistance for needy
52 families, shall undertake to establish the paternity of such child.

53 (e) The bureau for child support enforcement attorney shall
54 undertake to secure support for any individual who is receiving
55 temporary assistance for needy families when such individual
56 has assigned to the division of human services any rights to
57 support from any other person such individual may have:
58 *Provided,* That if the bureau for child support enforcement
59 attorney is informed by the secretary of the department of
60 health and human resources or his or her authorized employee
61 that it has been determined that it is against the best interests of
62 a child to secure support on the child's behalf, the bureau for
63 child support enforcement attorney shall decline to so act. The
64 bureau for child support enforcement attorney, upon the request

65 of any individual, regardless of whether such individual is an
66 applicant or recipient of temporary assistance for needy
67 families, shall undertake to secure support for the individual. If
68 circumstances require, the bureau for child support enforcement
69 attorney shall utilize the provisions of article 16-101, et seq. of
70 this code and any other reciprocal arrangements which may be
71 adopted with other states for the establishment and enforcement
72 of support obligations, and if such arrangements and other
73 means have proven ineffective, the bureau for child support
74 enforcement attorney may utilize the federal courts to obtain
75 and enforce court orders for support.

76 (f) The bureau for child support enforcement attorney shall
77 pursue the enforcement of support orders through the withhold-
78 ing from income of amounts payable as support:

79 (1) Without the necessity of an application from the obligee
80 in the case of a support obligation owed to an obligee to whom
81 services are already being provided under the provisions of this
82 chapter; and

83 (2) On the basis of an application for services in the case of
84 any other support obligation arising from a support order
85 entered by a court of competent jurisdiction.

86 (g) The bureau for child support enforcement attorney may
87 decline to commence an action to obtain an order of support
88 under the provisions of article 14-101, et seq., if an action for
89 divorce, annulment or separate maintenance is pending, or the
90 filing of such action is imminent, and such action will deter-
91 mine the issue of support for the child: *Provided*, That such
92 action shall be deemed to be imminent if it is proposed by the
93 obligee to be commenced within the twenty-eight days next
94 following a decision by the bureau for child support enforce-
95 ment attorney that an action should properly be brought to
96 obtain an order for support.

97 (h) If the bureau for child support enforcement office,
98 through the bureau for child support enforcement attorney, shall
99 undertake paternity determination services, child support

100 collection or support collection services for a spouse or former
 101 spouse upon the written request of an individual who is not an
 102 applicant or recipient of assistance from the division of human
 103 services, the office may impose an application fee for furnish-
 104 ing such services. Such application fee shall be in a reasonable
 105 amount, not to exceed twenty-five dollars, as determined by the
 106 commissioner: *Provided*, That the commissioner may fix such
 107 amount at a higher or lower rate which is uniform for this state
 108 and all other states if the secretary of the federal department of
 109 health and human services determines that a uniform rate is
 110 appropriate for any fiscal year to reflect increases or decreases
 111 in administrative costs. Any cost in excess of the application fee
 112 so imposed may be collected from the obligor who owes the
 113 child or spousal support obligation involved.

**§48-19-104. Vacancies; interim bureau for child support enforce-
 ment attorney.**

1 (a) If the position of bureau for child support enforcement
 2 attorney becomes vacant for any reason, the commissioner shall
 3 appoint a person to the position of bureau for child support
 4 enforcement attorney not later than six months after the
 5 vacancy occurs.

6 (b) If necessary, the commissioner may appoint an interim
 7 bureau for child support enforcement attorney to serve for not
 8 longer than six months until a bureau for child support enforce-
 9 ment attorney is appointed pursuant to this section.

§48-19-105. Compensation; expenses.

1 The salary of a bureau for child support enforcement
 2 attorney shall be not less than thirty-five thousand dollars per
 3 year, and shall be fixed by the commissioner, who shall take
 4 into consideration ability, performance of duty and experience.
 5 The compensation and expenses of the employees of the office
 6 and all operating expenses incurred by the office shall be fixed
 7 by the commissioner and paid by the bureau for child support
 8 enforcement.

ARTICLE 20. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

PART 1. GENERAL PROVISIONS.

§48-20-101. Short title.

1 This article may be cited as the “Uniform Child Custody
2 Jurisdiction and Enforcement Act”.

§48-20-102. Definitions.

1 (a) “Abandoned” means left without provision for reason-
2 able and necessary care or supervision.

3 (b) “Child” means an individual who has not attained
4 eighteen years of age.

5 (c) “Child custody determination” means a judgment,
6 decree or other order of a court providing for the legal custody,
7 physical custody or visitation with respect to a child. The term
8 includes a permanent, temporary, initial and modification order.
9 The term does not include an order relating to child support or
10 other monetary obligation of an individual.

11 (d) “Child custody proceeding” means a proceeding in
12 which legal custody, physical custody or visitation with respect
13 to a child is an issue. The term includes a proceeding for
14 divorce, separation, neglect, abuse, dependency, guardianship,
15 paternity, termination of parental rights and protection from
16 domestic violence, in which the issue may appear. The term
17 does not include a proceeding involving juvenile delinquency,
18 contractual emancipation or enforcement under part 20-301, et
19 seq.

20 (e) “Commencement” means the filing of the first pleading
21 in a proceeding.

22 (f) “Court” means an entity authorized under the law of a
23 state to establish, enforce or modify a child custody determina-

24 tion. Reference to a court of West Virginia means a court of
25 record.

26 (g) "Home state" means the state in which a child lived
27 with a parent or a person acting as a parent for at least six
28 consecutive months immediately before the commencement of
29 a child custody proceeding. In the case of a child less than six
30 months of age, the term means the state in which the child lived
31 from birth with any of the persons mentioned. A period of
32 temporary absence of any of the mentioned persons is part of
33 the period.

34 (h) "Initial determination" means the first child custody
35 determination concerning a particular child.

36 (i) "Issuing court" means the court that makes a child
37 custody determination for which enforcement is sought under
38 this chapter.

39 (j) "Issuing state" means the state in which a child custody
40 determination is made.

41 (k) "Modification" means a child custody determination
42 that changes, replaces, supersedes or is otherwise made after a
43 previous determination concerning the same child, whether or
44 not it is made by the court that made the previous determina-
45 tion.

46 (l) "Person" means an individual; corporation; business
47 trust; estate; trust; partnership; limited liability company;
48 association; joint venture; government, governmental subdivi-
49 sion, agency or instrumentality; public corporation; or any other
50 legal or commercial entity.

51 (m) "Person acting as a parent" means a person, other than
52 a parent, who:

53 (1) Has physical custody of the child or has had physical
54 custody for a period of six consecutive months, including any
55 temporary absence, within one year immediately before the
56 commencement of a child custody proceeding; and

57 (2) Has been awarded legal custody by a court or claims a
58 right to legal custody under the law of this state.

59 (n) "Physical custody" means the physical care and
60 supervision of a child.

61 (o) "State" means a state of the United States, the District
62 of Columbia, Puerto Rico, the United States Virgin Islands, or
63 any territory or insular possession subject to the jurisdiction of
64 the United States.

65 (p) "Tribe" means an Indian tribe or band, or Alaskan
66 Native village, which is recognized by federal law or formally
67 acknowledged by a state.

68 (q) "Warrant" means an order issued by a court authorizing
69 law-enforcement officers to take physical custody of a child.

§48-20-103. Proceedings governed by other law.

1 This chapter does not govern an adoption proceeding or a
2 proceeding pertaining to the authorization of emergency
3 medical care for a child.

§48-20-104. Application to Indian tribes.

1 (a) A child custody proceeding that pertains to an Indian
2 child as defined in the Indian Child Welfare Act, 25 U.S.C. §
3 1901 et seq., is not subject to this chapter to the extent that it is
4 governed by the Indian Child Welfare Act.

5 (b) A court of this state shall treat a tribe as if it were a state
6 of the United States for purposes of applying parts 1 and 2.

7 (c) A child custody determination made by a tribe under
8 factual circumstances in substantial conformity with the
9 jurisdictional standards of this chapter must be recognized and
10 enforced under part 3.

§48-20-105. International application of chapter.

1 (a) A court of this state shall treat a foreign country as if it
2 were a state of the United States for purpose of applying parts
3 1 and 2.

4 (b) Except as otherwise provided in subsection (c) of this
5 section, a child custody determination made in a foreign
6 country under factual circumstances in substantial conformity
7 with the jurisdictional standards of this chapter must be
8 recognized and enforced under article three of this chapter.

9 (c) A court of this state need not apply this chapter if the
10 child custody law of a foreign country violates fundamental
11 principles of human rights.

§48-20-106. Effect of child custody determination.

1 A child custody determination made by a court of this state
2 that had jurisdiction under this chapter binds all persons who
3 have been served in accordance with the laws of this state or
4 notified in accordance with section 20-108 or who have
5 submitted to the jurisdiction of the court, and who have been
6 given an opportunity to be heard. As to those persons the
7 determination is conclusive as to all decided issues of law and
8 fact except to the extent the determination is modified.

§48-20-107. Priority.

1 If a question of existence or exercise of jurisdiction under
2 this chapter is raised in a child custody proceeding, the ques-
3 tion, upon request of a party, must be given priority on the
4 calendar and handled expeditiously.

§48-20-108. Notice to persons outside state.

1 (a) Notice required for the exercise of jurisdiction when a
2 person is outside this state may be given in a manner prescribed
3 by the law of this state for service of process or by the law of
4 the state in which the service is made. Notice must be given in
5 a manner reasonably calculated to give actual notice but may be
6 by publication if other means are not effective.

7 (b) Proof of service may be made in the manner prescribed
8 by the law of this state or by the law of the state in which the
9 service is made.

10 (c) Notice is not required for the exercise of jurisdiction
11 with respect to a person who submits to the jurisdiction of the
12 court.

§48-20-109. Appearance and limited immunity.

1 (a) A party to a child custody proceeding, including a
2 modification proceeding, or a petitioner or respondent in a
3 proceeding to enforce or register a child custody determination
4 is not subject to personal jurisdiction in this state for another
5 proceeding or purpose solely by reason of having participated,
6 or having been physically present for the purpose of participat-
7 ing, in the proceeding.

8 (b) A person who is subject to personal jurisdiction in this
9 state on a basis other than physical presence is not immune
10 from service of process in this state. A party present in this state
11 who is subject to the jurisdiction of another state is not immune
12 from service of process allowable under the laws of that state.

13 (c) The immunity granted by subsection (a) of this section
14 does not extend to civil litigation based on acts unrelated to the
15 participation in a proceeding under this chapter committed by
16 an individual while present in this state.

§48-20-110. Communication between courts.

1 (a) A court of this state may communicate with a court in
2 another state concerning a proceeding arising under this
3 chapter.

4 (b) The court may allow the parties to participate in the
5 communication. If the parties are not able to participate in the
6 communication, they must be given the opportunity to present
7 facts and legal arguments before a decision on jurisdiction is
8 made.

9 (c) Communication between courts on schedules, calendars,
10 court records and similar matters may occur without informing
11 the parties. A record need not be made of the communication.

12 (d) Except as otherwise provided in subsection (c) of this
13 section, a record must be made of a communication under this
14 section. The parties must be informed promptly of the commu-
15 nication and granted access to the record.

16 (e) For the purposes of this section, “record” means
17 information that is inscribed on a tangible medium or that is
18 stored in an electronic or other medium and is retrievable in
19 perceivable form.

§48-20-111. Taking testimony in another state.

1 (a) In addition to other procedures available to a party, a
2 party to a child custody proceeding may offer testimony of
3 witnesses who are located in another state, including testimony
4 of the parties and the child, by deposition or other means
5 allowable in this state for testimony taken in another state. The
6 court on its own motion may order that the testimony of a
7 person be taken in another state and may prescribe the manner
8 in which and the terms upon which the testimony is taken.

9 (b) A court of this state may permit an individual residing
10 in another state to be deposed or to testify by telephone,
11 audiovisual means, or other electronic means before a desig-
12 nated court or at another location in that state. A court of this
13 state shall cooperate with courts of other states in designating
14 an appropriate location for the deposition or testimony.

15 (c) Documentary evidence transmitted from another state
16 to a court of this state by technological means that do not
17 produce an original writing may not be excluded from evidence
18 on an objection based on the means of transmission.

§48-20-112. Cooperation between courts; preservation of records.

1 (a) A court of this state may request the appropriate court
2 of another state to:

3 (1) Hold an evidentiary hearing;

4 (2) Order a person to produce or give evidence pursuant to
5 procedures of that state;

6 (3) Order that an evaluation be made with respect to the
7 custody of a child involved in a pending proceeding;

8 (4) Forward to the court of this state a certified copy of the
9 transcript of the record of the hearing, the evidence otherwise
10 presented and any evaluation prepared in compliance with the
11 request; and

12 (5) Order a party to a child custody proceeding or any
13 person having physical custody of the child to appear in the
14 proceeding with or without the child.

15 (b) Upon request of a court of another state, a court of this
16 state may hold a hearing or enter an order described in subsec-
17 tion (a) of this section .

18 (c) Travel and other necessary and reasonable expenses
19 incurred under subsections (a) and (b) of this section may be
20 assessed against the parties according to the law of this state.

21 (d) A court of this state shall preserve the pleadings, orders,
22 decrees, records of hearings, evaluations and other pertinent
23 records with respect to a child custody proceeding until the
24 child attains eighteen years of age. Upon appropriate request by
25 a court or law-enforcement official of another state, the court
26 shall forward a certified copy of those records.

PART 2. JURISDICTION.

§48-20-201. Initial child custody jurisdiction.

1 (a) Except as otherwise provided in section 20-204, a court
2 of this state has jurisdiction to make an initial child custody
3 determination only if:

4 (1) This state is the home state of the child on the date of
5 the commencement of the proceeding, or was the home state of
6 the child within six months before the commencement of the

7 proceeding, and the child is absent from this state but a parent
8 or person acting as a parent continues to live in this state;

9 (2) A court of another state does not have jurisdiction under
10 subdivision (1) of this subsection, or a court of the home state
11 of the child has declined to exercise jurisdiction on the ground
12 that this state is the more appropriate forum under section 20-
13 207 or 20-208, and:

14 (A) The child and the child's parents, or the child and at
15 least one parent or a person acting as a parent, have a signifi-
16 cant connection with this state other than mere physical
17 presence; and

18 (B) Substantial evidence is available in this state concern-
19 ing the child's care, protection, training and personal relation-
20 ships;

21 (3) All courts having jurisdiction under subdivision (1) or
22 (2) of this subdivision have declined to exercise jurisdiction on
23 the ground that a court of this state is the more appropriate
24 forum to determine the custody of the child under section 20-
25 207 or 20-208; or

26 (4) No court of any other state would have jurisdiction
27 under the criteria specified in subdivision (1), (2) or (3) of this
28 subsection.

29 (b) Subsection (a) of this section is the exclusive jurisdic-
30 tional basis for making a child custody determination by a court
31 of this state.

32 (c) Physical presence of, or personal jurisdiction over, a
33 party or a child is not necessary or sufficient to make a child
34 custody determination.

§48-20-202. Exclusive, continuing jurisdiction.

1 (a) Except as otherwise provided in section 20-204, a court
2 of this state which has made a child custody determination

3 consistent with section 20-201 or 20-203 has exclusive,
4 continuing jurisdiction over the determination until:

5 (1) A court of this state determines that neither the child,
6 the child and one parent, nor the child and a person acting as a
7 parent have a significant connection with this state and that
8 substantial evidence is no longer available in this state concern-
9 ing the child's care, protection, training and personal relation-
10 ships; or

11 (2) A court of this state or a court of another state deter-
12 mines that the child, the child's parents and any person acting
13 as a parent do not presently reside in this state.

14 (b) A court of this state which has made a child custody
15 determination and does not have exclusive, continuing jurisdic-
16 tion under this section may modify that determination only if it
17 has jurisdiction to make an initial determination under section
18 20-201.

§48-20-203. Jurisdiction to modify determination.

1 Except as otherwise provided in section 20-204, a court of
2 this state may not modify a child custody determination made
3 by a court of another state unless a court of this state has
4 jurisdiction to make an initial determination under subdivision
5 (1) or (2), subsection (a), section 20-201 and:

6 (1) The court of the other state determines it no longer has
7 exclusive, continuing jurisdiction under section 20-202 or that
8 a court of this state would be a more convenient forum under
9 section 20-207; or

10 (2) A court of this state or a court of the other state deter-
11 mines that the child, the child's parents and any person acting
12 as a parent do not presently reside in the other state.

§48-20-204. Temporary emergency jurisdiction.

1 (a) A court of this state has temporary emergency jurisdic-
2 tion if the child is present in this state and the child has been
3 abandoned or it is necessary in an emergency to protect the
4 child because the child, or a sibling or parent of the child, is
5 subjected to or threatened with mistreatment or abuse.

6 (b) If there is no previous child custody determination that
7 is entitled to be enforced under this chapter and a child custody
8 proceeding has not been commenced in a court of a state having
9 jurisdiction under sections 20-201 through 20-203, inclusive, of
10 this article, a child custody determination made under this
11 section remains in effect until an order is obtained from a court
12 of a state having jurisdiction under sections 20-201 through 20-
13 203, inclusive, of this article. If a child custody proceeding has
14 not been or is not commenced in a court of a state having
15 jurisdiction under sections 20-201 through 20-203, inclusive, of
16 this article, a child custody determination made under this
17 section becomes a final determination, if it so provides and this
18 state becomes the home state of the child.

19 (c) If there is a previous child custody determination that is
20 entitled to be enforced under this chapter, or a child custody
21 proceeding has been commenced in a court of a state having
22 jurisdiction under sections 20-201 through 20-203, inclusive, of
23 this article, any order issued by a court of this state under this
24 section must specify in the order a period that the court consid-
25 ers adequate to allow the person seeking an order to obtain an
26 order from the state having jurisdiction under sections 20-201
27 through 20-203, inclusive, of this article. The order issued in
28 this state remains in effect until an order is obtained from the
29 other state within the period specified or the period expires.

30 (d) A court of this state which has been asked to make a
31 child custody determination under this section, upon being
32 informed that a child custody proceeding has been commenced
33 in, or a child custody determination has been made by, a court
34 of a state having jurisdiction under sections 20-201 through 20-
35 203, shall immediately communicate with the other court. A

36 court of this state which is exercising jurisdiction pursuant to
37 sections 20-201 through 20-203, upon being informed that a
38 child custody proceeding has been commenced in, or a child
39 custody determination has been made by, a court of another
40 state under a statute similar to this section shall immediately
41 communicate with the court of that state to resolve the emer-
42 gency, protect the safety of the parties and the child, and
43 determine a period for the duration of the temporary order.

§48-20-205. Notice; opportunity to be heard; joinder.

1 (a) Before a child custody determination is made under this
2 chapter, notice and an opportunity to be heard in accordance
3 with the standards of section 20-108, must be given to all
4 persons entitled to notice under the law of this state as in child
5 custody proceedings between residents of this state, any parent
6 whose parental rights have not been previously terminated and
7 any person having physical custody of the child.

8 (b) This chapter does not govern the enforceability of a
9 child custody determination made without notice or an opportu-
10 nity to be heard.

11 (c) The obligation to join a party and the right to intervene
12 as a party in a child custody proceeding under this chapter are
13 governed by the law of this state as in child custody proceed-
14 ings between residents of this state.

§48-20-206. Simultaneous proceedings.

1 (a) Except as otherwise provided in section 20-204, a court
2 of this state may not exercise its jurisdiction under this article
3 if, at the time of the commencement of the proceeding, a
4 proceeding concerning the custody of the child has been
5 commenced in a court of another state having jurisdiction
6 substantially in conformity with this chapter, unless the
7 proceeding has been terminated or is stayed by the court of the
8 other state because a court of this state is a more convenient
9 forum under 20-207.

10 (b) Except as otherwise provided in section 20-204, a court
11 of this state, before hearing a child custody proceeding, shall
12 examine the court documents and other information supplied by
13 the parties pursuant to section 20-209. If the court determines
14 that a child custody proceeding has been commenced in a court
15 in another state having jurisdiction substantially in accordance
16 with this chapter, the court of this state shall stay its proceeding
17 and communicate with the court of the other state. If the court
18 of the state having jurisdiction substantially in accordance with
19 this chapter does not determine that the court of this state is a
20 more appropriate forum, the court of this state shall dismiss the
21 proceeding.

22 (c) In a proceeding to modify a child custody determina-
23 tion, a court of this state shall determine whether a proceeding
24 to enforce the determination has been commenced in another
25 state. If a proceeding to enforce a child custody determination
26 has been commenced in another state, the court may:

27 (1) Stay the proceeding for modification pending the entry
28 of an order of a court of the other state enforcing, staying,
29 denying, or dismissing the proceeding for enforcement;

30 (2) Enjoin the parties from continuing with the proceeding
31 for enforcement; or

32 (3) Proceed with the modification under conditions it
33 considers appropriate.

§48-20-207. Inconvenient forum.

1 (a) A court of this state which has jurisdiction under this
2 chapter to make a child custody determination may decline to
3 exercise its jurisdiction at any time if it determines that it is an
4 inconvenient forum under the circumstances and that a court of
5 another state is a more appropriate forum. The issue of inconve-
6 nient forum may be raised upon the motion of a party, the
7 court's own motion or request of another court.

8 (b) Before determining whether it is an inconvenient forum,
9 a court of this state shall consider whether it is appropriate for
10 a court of another state to exercise jurisdiction. For this
11 purpose, the court shall allow the parties to submit information
12 and shall consider all relevant factors, including:

13 (1) Whether domestic violence has occurred and is likely to
14 continue in the future and which state could best protect the
15 parties and the child;

16 (2) The length of time the child has resided outside this
17 state;

18 (3) The distance between the court in this state and the
19 court in the state that would assume jurisdiction;

20 (4) The relative financial circumstances of the parties;

21 (5) Any agreement of the parties as to which state should
22 assume jurisdiction;

23 (6) The nature and location of the evidence required to
24 resolve the pending litigation, including testimony of the child;

25 (7) The ability of the court of each state to decide the issue
26 expeditiously and the procedures necessary to present the
27 evidence; and

28 (8) The familiarity of the court of each state with the facts
29 and issues in the pending litigation.

30 (c) If a court of this state determines that it is an inconve-
31 nient forum and that a court of another state is a more appropri-
32 ate forum, it shall stay the proceedings upon condition that a
33 child custody proceeding be promptly commenced in another
34 designated state and may impose any other condition the court
35 considers just and proper.

36 (d) A court of this state may decline to exercise its jurisdic-
37 tion under this chapter if a child custody determination is

38 incidental to an action for divorce or another proceeding while
39 still retaining jurisdiction over the divorce or other proceeding.

§48-20-208. Jurisdiction declined by reason of conduct.

1 (a) Except as otherwise provided in section 20-204 or by
2 other law of this state, if a court of this state has jurisdiction
3 under this chapter because a person seeking to invoke its
4 jurisdiction has engaged in unjustifiable conduct, the court shall
5 decline to exercise its jurisdiction unless:

6 (1) The parents and all persons acting as parents have
7 acquiesced in the exercise of jurisdiction;

8 (2) A court of the state otherwise having jurisdiction under
9 sections 20-201 through 20-203, inclusive, of this article
10 determines that this state is a more appropriate forum under
11 section 20-207; or

12 (3) No court of any other state would have jurisdiction
13 under the criteria specified in sections 20-201 through 20-203,
14 inclusive, of this article.

15 (b) If a court of this state declines to exercise its jurisdiction
16 pursuant to subsection (a) of this section, it may fashion an
17 appropriate remedy to ensure the safety of the child and prevent
18 a repetition of the unjustifiable conduct, including staying the
19 proceeding until a child custody proceeding is commenced in
20 a court having jurisdiction under sections 20-201 through 20-
21 203, inclusive, of this article.

22 (c) If a court dismisses a petition or stays a proceeding
23 because it declines to exercise its jurisdiction pursuant to
24 subsection (a) of this section, it shall assess against the party
25 seeking to invoke its jurisdiction necessary and reasonable
26 expenses including costs, communication expenses, attorney's
27 fees, investigative fees, expenses for witnesses, travel expenses
28 and child care during the course of the proceedings, unless the
29 party from whom fees are sought establishes that the assess-
30 ment would be clearly inappropriate. The court may not assess

31 fees, costs or expenses against this state unless authorized by
32 law other than this chapter.

§48-20-209. Information to be submitted to court.

1 (a) Subject to local law providing for the confidentiality of
2 procedures, addresses and other identifying information in a
3 child custody proceeding, each party, in its first pleading or in
4 an attached affidavit, shall give information, if reasonably
5 ascertainable, under oath as to the child's present address or
6 whereabouts, the places where the child has lived during the
7 last five years and the names and present addresses of the
8 persons with whom the child has lived during that period. The
9 pleading or affidavit must state whether the party:

10 (1) Has participated, as a party or witness or in any other
11 capacity, in any other proceeding concerning the custody of or
12 visitation with the child and, if so, identify the court, the case
13 number and the date of the child custody determination, if any;

14 (2) Knows of any proceeding that could affect the current
15 proceeding, including proceedings for enforcement and
16 proceedings relating to domestic violence, protective orders,
17 termination of parental rights and adoptions, and, if so, identify
18 the court, the case number and the nature of the proceeding; and

19 (3) Knows the names and addresses of any person not a
20 party to the proceeding who has physical custody of the child
21 or claims rights of legal custody or physical custody of, or
22 visitation with, the child and, if so, the names and addresses of
23 those persons.

24 (b) If the information required by subsection (a) of this
25 section is not furnished, the court, upon motion of a party or its
26 own motion, may stay the proceeding until the information is
27 furnished.

28 (c) If the declaration as to any of the items described in
29 subdivision (1) through (3), inclusive, subsection (a) of this
30 section is in the affirmative, the declarant shall give additional

31 information under oath as required by the court. The court may
32 examine the parties under oath as to details of the information
33 furnished and other matters pertinent to the court's jurisdiction
34 and the disposition of the case.

35 (d) Each party has a continuing duty to inform the court of
36 any proceeding in this or any other state that could affect the
37 current proceeding.

38 (e) If a party alleges in an affidavit or a pleading under oath
39 that the health, safety or liberty of a party or child would be
40 jeopardized by disclosure of identifying information, the
41 information must be sealed and may not be disclosed to the
42 other party or the public unless the court orders the disclosure
43 to be made after a hearing in which the court takes into consid-
44 eration the health, safety or liberty of the party or child and
45 determines that the disclosure is in the interest of justice.

§48-20-210. Appearance of parties and child.

1 (a) In a child custody proceeding in this state, the court may
2 order a party to the proceeding who is in this state to appear
3 before the court in person with or without the child. The court
4 may order any person who is in this state and who has physical
5 custody or control of the child to appear in person with the
6 child.

7 (b) If a party to a child custody proceeding whose presence
8 is desired by the court is outside this state, the court may order
9 that a notice given pursuant to section 20-108 include a
10 statement directing the party to appear in person with or without
11 the child and informing the party that failure to appear may
12 result in a decision adverse to the party.

13 (c) The court may enter any orders necessary to ensure the
14 safety of the child and of any person ordered to appear under
15 this section.

16 (d) If a party to a child custody proceeding who is outside
17 this state is directed to appear under subsection (b) of this

18 section or desires to appear personally before the court with or
19 without the child, the court may require another party to pay
20 reasonable and necessary travel and other expenses of the party
21 so appearing and of the child.

PART 3. ENFORCEMENT.

§48-20-301. Definitions.

1 (a) "Petitioner" means a person who seeks enforcement of
2 an order for return of a child under the Hague Convention on
3 the Civil Aspects of International Child Abduction or enforce-
4 ment of a child custody determination.

5 (b) "Respondent" means a person against whom a proceed-
6 ing has been commenced for enforcement of an order for return
7 of a child under the Hague Convention on the Civil Aspects of
8 International Child Abduction or enforcement of a child
9 custody determination.

§48-20-302. Enforcement under Hague convention.

1 Under this article a court of this state may enforce an order
2 for the return of the child made under the Hague Convention on
3 the Civil Aspects of International Child Abduction as if it were
4 a child custody determination.

§48-20-303. Duty to enforce.

1 (a) A court of this state shall recognize and enforce a child
2 custody determination of a court of another state if the latter
3 court exercised jurisdiction in substantial conformity with this
4 chapter or the determination was made under factual circum-
5 stances meeting the jurisdictional standards of this article and
6 the determination has not been modified in accordance with this
7 article.

8 (b) A court of this state may utilize any remedy available
9 under other law of this state to enforce a child custody determi-
10 nation made by a court of another state. The remedies provided

11 in this article are cumulative and do not affect the availability
12 of other remedies to enforce a child custody determination.

§48-20-304. Temporary visitation.

1 (a) A court of this state which does not have jurisdiction to
2 modify a child custody determination may issue a temporary
3 order enforcing:

4 (1) A visitation schedule made by a court of another state;
5 or

6 (2) The visitation provisions of a child custody determina-
7 tion of another state that does not provide for a specific
8 visitation schedule.

9 (b) If a court of this state makes an order under subdivision
10 (2), subsection (a) of this section, it shall specify in the order a
11 period that it considers adequate to allow the petitioner to
12 obtain an order from a court having jurisdiction under the
13 criteria specified in part 2 of this article. The order remains in
14 effect until an order is obtained from the other court or the
15 period expires.

§48-20-305. Registration of child custody determination.

1 (a) A child custody determination issued by a court of
2 another state may be registered in this state, with or without a
3 simultaneous request for enforcement, by sending to the
4 appropriate court in this state:

5 (1) A letter or other document requesting registration;

6 (2) Two copies, including one certified copy, of the
7 determination sought to be registered, and a statement under
8 penalty of perjury that to the best of the knowledge and belief
9 of the person seeking registration the order has not been
10 modified; and

11 (3) Except as otherwise provided in section 20-209, the
12 name and address of the person seeking registration and any

13 parent or person acting as a parent who has been awarded
14 custody or visitation in the child custody determination sought
15 to be registered.

16 (b) On receipt of the documents required by subsection (a)
17 of this section, the registering court shall:

18 (1) Cause the determination to be filed as a foreign judg-
19 ment, together with one copy of any accompanying documents
20 and information, regardless of their form; and

21 (2) Serve notice upon the persons named pursuant to
22 subdivision (3), subsection (a) of this section and provide them
23 with an opportunity to contest the registration in accordance
24 with this section.

25 (c) The notice required by subdivision two, subsection (b)
26 of this section must state that:

27 (1) A registered determination is enforceable as of the date
28 of the registration in the same manner as a determination issued
29 by a court of this state;

30 (2) A hearing to contest the validity of the registered
31 determination must be requested in writing to the court within
32 twenty days after service of notice; and

33 (3) Failure to contest the registration will result in confir-
34 mation of the child custody determination and preclude further
35 contest of that determination with respect to any matter that
36 could have been asserted.

37 (d) A person seeking to contest the validity of a registered
38 order must request a hearing within twenty days after service of
39 the notice. At that hearing, the court shall confirm the registered
40 order unless the person contesting registration establishes that:

41 (1) The issuing court did not have jurisdiction under part 2
42 of this article;

43 (2) The child custody determination sought to be registered
44 has been vacated, stayed, or modified by a court having
45 jurisdiction to do so under 20-201, et seq.; or

46 (3) The person contesting registration was entitled to notice,
47 but notice was not given in accordance with the standards of
48 section 20-108 in the proceedings before the court that issued
49 the order for which registration is sought.

50 (e) If a timely request for a hearing to contest the validity
51 of the registration is not made, the registration is confirmed as
52 a matter of law and the person requesting registration and all
53 persons served must be notified of the confirmation.

54 (f) Confirmation of a registered order, whether by operation
55 of law or after notice and hearing, precludes further contest of
56 the order with respect to any matter that could have been
57 asserted at the time of registration.

§48-20-306. Enforcement of registered determination.

1 (a) A court of this state may grant any relief normally
2 available under the law of this state to enforce a registered child
3 custody determination made by a court of another state.

4 (b) A court of this state shall recognize and enforce, but
5 may not modify, except in accordance with article two of this
6 chapter, a registered child custody determination of a court of
7 another state.

§48-20-307. Simultaneous proceedings.

1 If a proceeding for enforcement under this article is
2 commenced in a court of this state and the court determines that
3 a proceeding to modify the determination is pending in a court
4 of another state having jurisdiction to modify the determination
5 under part two of this article, the enforcing court shall immedi-
6 ately communicate with the modifying court. The proceeding
7 for enforcement continues unless the enforcing court, after

8 consultation with the modifying court, stays or dismisses the
9 proceeding.

**§48-20-308. Expedited enforcement of child custody determina-
tion.**

1 (a) A petition under this article must be verified. Certified
2 copies of all orders sought to be enforced and of any order
3 confirming registration must be attached to the petition. A copy
4 of a certified copy of an order may be attached instead of the
5 original.

6 (b) A petition for enforcement of a child custody determina-
7 tion must state:

8 (1) Whether the court that issued the determination identi-
9 fied the jurisdictional basis it relied upon in exercising jurisdic-
10 tion and, if so, what the basis was;

11 (2) Whether the determination for which enforcement is sought
12 has been vacated, stayed or modified by a court whose decision
13 must be enforced under this chapter and, if so, identify the
14 court, the case number and the nature of the proceeding;

15 (3) Whether any proceeding has been commenced that
16 could affect the current proceeding, including proceedings
17 relating to domestic violence, protective orders, termination of
18 parental rights and adoptions and, if so, identify the court, the
19 case number and the nature of the proceeding;

20 (4) The present physical address of the child and the
21 respondent, if known;

22 (5) Whether relief in addition to the immediate physical
23 custody of the child and attorney's fees is sought, including a
24 request for assistance from law-enforcement officials and, if so,
25 the relief sought; and

26 (6) If the child custody determination has been registered
27 and confirmed under section 20-305 of this article, the date and
28 place of registration.

29 (c) Upon the filing of a petition, the court shall issue an
30 order directing the respondent to appear in person with or
31 without the child at a hearing and may enter any order neces-
32 sary to ensure the safety of the parties and the child. The
33 hearing must be held on the judicial day after service of the
34 order unless that date is impossible. In that event, the court shall
35 hold the hearing on the first judicial day possible. The court
36 may extend the date of hearing at the request of the petitioner.

37 (d) An order issued under subsection (c) of this section
38 must state the time and place of the hearing and advise the
39 respondent that at the hearing the court will order that the
40 petitioner may take immediate physical custody of the child and
41 the payment of fees, costs and expenses under section 20-312,
42 and may schedule a hearing to determine whether further relief
43 is appropriate, unless the respondent appears and establishes
44 that:

45 (1) The child custody determination has not been registered
46 and confirmed under section 20-305, and that:

47 (A) The issuing court did not have jurisdiction under part
48 20-201, et seq.;

49 (B) The child custody determination for which enforcement
50 is sought has been vacated, stayed or modified by a court
51 having jurisdiction to do so under part 20-201, et seq.;

52 (C) The respondent was entitled to notice, but notice was
53 not given in accordance with the standards of section 20-108,
54 in the proceedings before the court that issued the order for
55 which enforcement is sought; or

56 (2) The child custody determination for which enforcement
57 is sought was registered and confirmed under section 20-305,
58 but has been vacated, stayed or modified by a court of a state
59 having jurisdiction to do so under article two of this chapter; or

60 (3) There is credible evidence of abuse or neglect of the
61 child or children who are the subject of the petition and the
62 credible evidence has been reported to a child welfare agency,

63 a law-enforcement officer, a licensed physician, a licensed
64 social worker, or a licensed mental health professional and an
65 investigation or other proceeding has not been concluded:
66 *Provided*, That the court may continue the hearing to a day
67 certain to monitor the investigation or proceedings or take any
68 further action as the circumstances and the best interest of the
69 child may warrant.

§48-20-309. Service of petition and order.

1 Except as otherwise provided in section 20-311, the petition
2 and order must be served, by any method authorized by the law
3 of this state, upon respondent and any person who has physical
4 custody of the child.

§48-20-310. Hearing and order.

1 (a) Unless the court issues a temporary emergency order
2 pursuant to section 20-204, upon a finding that a petitioner is
3 entitled to immediate physical custody of the child, the court
4 shall order that the petitioner may take immediate physical
5 custody of the child unless the respondent establishes that:

6 (1) The child custody determination has not been registered
7 and confirmed under section 20-305 and that:

8 (A) The issuing court did not have jurisdiction under part
9 20-201 et seq., of this chapter;

10 (B) The child custody determination for which enforcement
11 is sought has been vacated, stayed or modified by a court of a
12 state having jurisdiction to do so under part 20-201, et seq.; or

13 (C) The respondent was entitled to notice, but notice was
14 not given in accordance with the standards of section 20-108,
15 in the proceedings before the court that issued the order for
16 which enforcement is sought; or

17 (2) The child custody determination for which enforcement
18 is sought was registered and confirmed under section 20-305,

19 but has been vacated, stayed or modified by a court of a state
20 having jurisdiction to do so under part 20-201, et seq.; or

21 (3) There is credible evidence of abuse or neglect of the
22 child or children who are the subject of the petition and the
23 credible evidence has been reported to a child welfare agency,
24 a law-enforcement officer, a licensed physician, a licensed
25 social worker, or a licensed mental health professional and an
26 investigation or other proceeding has not been concluded:
27 *Provided*, That the court may continue the hearing to a day
28 certain to monitor the investigation or proceedings or take any
29 further action as the circumstances and the best interest of the
30 child may warrant.

31 (b) The court shall award the fees, costs and expenses
32 authorized under section 20-312 and may grant additional
33 relief, including a request for the assistance of law-enforcement
34 officials, and set a further hearing to determine whether
35 additional relief is appropriate.

36 (c) If a party called to testify refuses to answer on the
37 ground that the testimony may be self-incriminating, the court
38 may draw an adverse inference from the refusal.

39 (d) A privilege against disclosure of communications
40 between spouses and a defense of immunity based on the
41 relationship of husband and wife or parent and child may not be
42 invoked in a proceeding under this article.

§48-20-311. Warrant to take physical custody of child.

1 (a) Upon the filing of a petition seeking enforcement of a
2 child custody determination, the petitioner may file a verified
3 application for the issuance of a warrant to take physical
4 custody of the child if the child is imminently likely to suffer
5 serious physical harm or be removed from this state.

6 (b) If the court, upon the testimony of the petitioner or other
7 witness, finds that the child is imminently likely to suffer
8 serious physical harm or be removed from this state, it may

9 issue a warrant to take physical custody of the child. The
10 petition must be heard on the next judicial day after the warrant
11 is executed unless that date is impossible. In that event, the
12 court shall hold the hearing on the first judicial day possible.
13 The application for the warrant must include the statements
14 required by subsection 20-308(b).

15 (c) A warrant to take physical custody of a child must:

16 (1) Recite the facts upon which a conclusion of imminent
17 serious physical harm or removal from the jurisdiction is based;

18 (2) Direct law-enforcement officers to take physical
19 custody of the child immediately; and

20 (3) Provide for the placement of the child pending final
21 relief.

22 (d) The respondent must be served with the petition,
23 warrant and order immediately after the child is taken into
24 physical custody.

25 (e) A warrant to take physical custody of a child is enforce-
26 able throughout this state. If the court finds on the basis of the
27 testimony of the petitioner or other witness that a less intrusive
28 remedy is not effective, it may authorize law-enforcement
29 officers to enter private property to take physical custody of the
30 child. If required by exigent circumstances of the case, the court
31 may authorize law-enforcement officers to make a forcible
32 entry at any hour.

33 (f) The court may impose conditions upon placement of a
34 child to ensure the appearance of the child and the child's
35 custodian.

§48-20-312. Costs, fees and expenses.

1 (a) The court shall award the prevailing party, including a
2 state, necessary and reasonable expenses incurred by or on
3 behalf of the party, including costs, communication expenses,
4 attorney's fees, investigative fees, expenses for witnesses,

5 travel expenses and child care during the course of the proceed-
6 ings, unless the party from whom fees or expenses are sought
7 establishes that the award would be clearly inappropriate.

8 (b) The court may not assess fees, costs or expenses against
9 a state unless authorized by law other than this chapter.

§48-20-313. Recognition and enforcement.

1 A court of this state shall accord full faith and credit to an
2 order issued by another state and consistent with this chapter
3 which enforces a child custody determination by a court of
4 another state unless the order has been vacated, stayed or
5 modified by a court having jurisdiction to do so under part 20-
6 201, et seq.

§48-20-314. Appeals.

1 An appeal may be taken from a final order in a proceeding
2 under this article in accordance with expedited appellate
3 procedures in other civil cases. Unless the court enters a
4 temporary emergency order under section 20-204, the enforcing
5 court may not stay an order enforcing a child custody determi-
6 nation pending appeal.

§48-20-315. Role of prosecutor or public official.

1 (a) In a case arising under this chapter or involving the
2 Hague Convention on the Civil Aspects of International Child
3 Abduction, the prosecutor or other appropriate public official
4 may take any lawful action, including resort to a proceeding
5 under this article or any other available civil proceeding, to
6 locate a child, obtain the return of a child or enforce a child
7 custody determination if there is:

8 (1) An existing child custody determination;

9 (2) A request to do so from a court in a pending child
10 custody proceeding;

11 (3) A reasonable belief that a criminal statute has been
12 violated; or

13 (4) A reasonable belief that the child has been wrongfully
14 removed or retained in violation of the Hague Convention on
15 the Civil Aspects of International Child Abduction.

16 (b) A prosecutor or appropriate public official acting under
17 this section acts on behalf of the court and may not represent
18 any party.

§48-20-316. Role of law enforcement.

1 At the request of a prosecutor or other appropriate public
2 official acting under section 20-315, a law-enforcement officer
3 may take any lawful action reasonably necessary to locate a
4 child or a party and assist a prosecutor or appropriate public
5 official with responsibilities under said section.

§48-20-317. Costs and expenses.

1 If the respondent is not the prevailing party, the court may
2 assess against the respondent all direct expenses and costs
3 incurred by the prosecutor or other appropriate public official
4 and law-enforcement officers under section 20-315 or 20-316.

PART 4. MISCELLANEOUS PROVISIONS.

§48-20-401. Application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§48-20-402. Severability clause.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this article which can
4 be given effect without the invalid provision or application, and
5 to this end the provisions of this article are severable.

§48-20-403. Effective date.

1 This article takes effect on the first day of July, two
2 thousand.

§48-20-404. Transitional provision.

1 A motion or other request for relief made in a child custody
2 proceeding or to enforce a child custody determination which
3 was commenced before the first day of July, two thousand, is
4 governed by the law in effect at the time the motion or other
5 request was made.

ARTICLE 21. [Reserved.]

ARTICLE 22. ADOPTION.

PART 1. DEFINITIONS.

§48-22-101. Applicability of definitions.

1 For the purposes of this article the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

§48-22-102. Abandonment defined.

1 “Abandonment” means any conduct by the birth mother,
2 legal father, determined father, outsider father, unknown father
3 or putative father that demonstrates a settled purpose to forego
4 all duties and relinquish all parental claims to the child.

§48-22-103. Adoptive parents, adoptive mother or adoptive father defined.

1 “Adoptive parents” or “adoptive mother” or “adoptive
2 father” means those persons who, after adoption, are the mother
3 and father of the child.

§48-22-104. Agency defined.

1 "Agency" means a public or private entity, including the
2 department of health and human resources, that is authorized by
3 law to place children for adoption.

§48-22-105. Birth father defined.

1 "Birth father" means the biological father of the child.

§48-22-106. Birth mother defined.

1 "Birth mother" means the biological mother of the child.

§48-22-107. Birth parents defined.

1 "Birth parents" mean both the biological father and the
2 biological mother of the child.

§48-22-108. Consent defined.

1 "Consent" means the voluntary surrender to an individual,
2 not an agency, by a minor child's parent or guardian, for
3 purposes of the child's adoption, of the rights of the parent or
4 guardian with respect to the child, including the legal and
5 physical custody of the child.

§48-22-109. Determined father defined.

1 "Determined father" means, before adoption, a person: (1)
2 In whom paternity has been established pursuant to the provi-
3 sions of article 24-101, et seq., and section 16-5-12, whether by
4 adjudication or acknowledgment as set forth therein; or (2) who
5 has been otherwise judicially determined to be the biological
6 father of the child entitled to parental rights; or (3) who has
7 asserted his paternity of the child in an action commenced
8 pursuant to the provisions of article 24-101, et seq., that is
9 pending at the time of the filing of the adoption petition.

§48-22-110. Legal father defined.

1 “Legal father” means, before adoption, the male person
2 having the legal relationship of parent to a child: (1) Who is
3 married to its mother at the time of conception; or (2) who is
4 married to its mother at the time of birth of the child; or (3) who
5 is the biological father of the child and who marries the mother
6 before an adoption of the child.

§48-22-111. Marital child defined.

1 “Marital child” means a child born or conceived during
2 marriage.

§48-22-112. Nonmarital child defined.

1 “Nonmarital child” means a child not born or conceived
2 during marriage.

§48-22-113. Outsider father defined.

1 “Outsider father” means the biological father of a child
2 born to or conceived by the mother while she is married to
3 another man who is not the biological father of the child.

§48-22-114. Putative father defined.

1 “Putative father” means, before adoption, any man named
2 by the mother as a possible biological father of the child
3 pursuant to the provisions of section 22-502, who is not a legal
4 or determined father.

§48-22-115. Relinquishment defined.

1 “Relinquishment” means the voluntary surrender to an
2 agency by a minor child’s parent or guardian, for purposes of
3 the child’s adoption, of the rights of the parent or guardian with
4 respect to the child, including the legal and physical custody of
5 the child.

§48-22-116. Stepparent adoption defined.

1 "Stepparent adoption" means an adoption in which the
2 petitioner for adoption is married to one of the birth parents of
3 the child or to an adoptive parent of the child.

§48-22-117. Unknown father defined.

1 "Unknown father" means a biological father whose identity
2 the biological mother swears is unknown to her before adop-
3 tion, pursuant to the provisions of section 22-502.

PART 2. PERSONS WHO MAY ADOPT.

§48-22-201. Persons who may petition for decree of adoption.

1 Any person not married or any person, with his or her
2 spouse's consent, or any husband and wife jointly, may petition
3 a circuit court of the county wherein such person or persons
4 reside for a decree of adoption of any minor child or person
5 who may be adopted by the petitioner or petitioners.

PART 3. CONSENT OR RELINQUISHMENT; ABANDONMENT.

**§48-22-301. Persons whose consent or relinquishment is required;
exceptions.**

1 (a) Subject to the limitations hereinafter set forth, consent
2 to or relinquishment for adoption of a minor child is required
3 of:

4 (1) The parents or surviving parent, whether adult or infant,
5 of a marital child;

6 (2) The outsider father of a marital child who has been
7 adjudicated to be the father of the child or who has filed a
8 paternity action which is pending at the time of the filing of the
9 petition for adoption;

10 (3) The birth mother, whether adult or infant, of a
11 nonmarital child; and

12 (4) The determined father.

13 (b) Consent or relinquishment shall not be required of a
14 parent or of any other person having custody of the adoptive
15 child:

16 (1) Whose parental rights have been terminated pursuant to
17 the provisions of article three, chapter forty-nine of this code;

18 (2) Whom the court finds has abandoned the child as set
19 forth in 22-306; or

20 (3) Who, in a stepparent adoption, is the birth parent or
21 adoptive parent of the child and is married to the petitioning
22 adoptive parent. In such stepparent adoption, the parent must
23 assent to the adoption by joining as a party to the petition for
24 adoption.

25 (c) If the mother, legal father or determined father is under
26 disability, the court may order the adoption if it finds:

27 (1) The parental rights of the person are terminated,
28 abandoned or permanently relinquished;

29 (2) The person is incurably insane; or

30 (3) The disability arises solely because of age and an
31 otherwise valid consent or relinquishment has been given.

32 (d) If all persons entitled to parental rights of the child
33 sought to be adopted are deceased or have been deprived of the
34 custody of the child by law, then consent or relinquishment is
35 required of the legal guardian or of any other person having
36 legal custody of the child at the time. If there is no legal
37 guardian nor any person who has legal custody of the child,
38 then consent or relinquishment is required from some discreet
39 and suitable person appointed by the court to act as the next
40 friend of the child in the adoption proceedings.

41 (e) If one of the persons entitled to parental rights of the
42 child sought to be adopted is deceased, only the consent or
43 relinquishment of the surviving person entitled to parental
44 rights is required.

45 (f) If the child to be adopted is twelve years of age or over,
46 the consent of the child is required to be given in the presence
47 of a judge of a court of competent jurisdiction, unless for
48 extraordinary cause, the requirement of such consent is waived
49 by the court.

50 (g) Any consent to adoption or relinquishment of parental
51 rights shall have the effect of authorizing the prospective
52 adoptive parents or the agency to consent to medical treatment
53 for the child, whether or not such authorization is expressly
54 stated in the consent or relinquishment.

§48-22-302. Timing and execution of consent or relinquishment.

1 (a) No consent or relinquishment may be executed before
2 the expiration of seventy-two hours after the birth of the child
3 to be adopted.

4 (b) A consent or relinquishment executed by a parent or
5 guardian as required by the provisions of section three of this
6 article must be signed and acknowledged in the presence of one
7 of the following:

8 (1) A judge of a court of record;

9 (2) A person whom a judge of a court of record designates
10 to take consents or relinquishments;

11 (3) A notary public;

12 (4) A commissioned officer on active duty in the military
13 service of the United States, if the person executing the consent
14 or relinquishment is in military service; or

15 (5) An officer of the foreign service or a consular officer of
16 the United States in another country, if the person executing the
17 consent or relinquishment is in that country.

§48-22-303. Content of consent or relinquishment.

1 (a) A consent or relinquishment as required by the provi-
2 sions of section 22-301 must be written in plain English or, if
3 the person executing the consent or relinquishment does not
4 understand English, in the person's primary language. The form
5 of the consent or relinquishment shall include the following, as
6 appropriate:

7 (1) The date, place and time of the execution of the consent
8 or relinquishment;

9 (2) The name, date of birth and current mailing address of
10 the person executing the consent or relinquishment;

11 (3) The date, place of birth and the name or pseudonym
12 ("Baby Boy _____ or Baby Girl _____") of the minor child;

13 (4) The fact that the document is being executed more than
14 seventy-two hours after the birth of the child;

15 (5) If a consent, that the person executing the document is
16 voluntarily and unequivocally consenting to the transfer of legal
17 and physical custody to, and the adoption of the child by, an
18 adoptive parent or parents whose name or names may, but need
19 not be, specified;

20 (6) If a relinquishment, that the person executing the
21 relinquishment voluntarily consents to the permanent transfer
22 of legal and physical custody of the child to the agency for the
23 purposes of adoption;

24 (7) If a consent, that it authorizes the prospective adoptive
25 parents, or if a relinquishment, that it authorizes the agency, to
26 consent to medical treatment of the child pending any adoption
27 proceeding;

28 (8) That after the consent or relinquishment is signed and
29 acknowledged, it is final and, unless revoked in accordance
30 with the provisions of section 22-305, it may not be revoked or
31 set aside for any other reason;

32 (9) That the adoption will forever terminate all parental
33 rights, including any right to visit or communicate with the
34 child and any right of inheritance;

35 (10) That the adoption will forever terminate all parental
36 obligations of the person executing the consent or relinquish-
37 ment;

38 (11) That the termination of parental rights and obligations
39 is permanent whether or not any agreement for visitation or
40 communication with the child is subsequently performed;

41 (12) That the person executing the consent or relinquish-
42 ment does so of his or her own free will and the consent or
43 relinquishment has not been obtained by fraud or duress;

44 (13) That the person executing the consent or relinquish-
45 ment has:

46 (i) Received a copy of the consent or relinquishment;

47 (ii) Been provided the information and afforded the
48 opportunity to participate in the voluntary adoption registry,
49 pursuant to the provisions of article 23-101, et seq.;

50 (iii) Been advised of the availability of counseling;

51 (iv) Been advised of the consequences of misidentifying the
52 other birth parent; and

53 (v) If a birth mother, been advised of the obligation to
54 provide the information required by the provisions of section
55 seven of this article in the case of an unknown father;

56 (14) That the person executing the consent or relinquish-
57 ment has not received or been promised any money or anything
58 of value for the consent or relinquishment, other than payments
59 authorized by the provisions of section 22-803;

60 (15) Whether the child is an "Indian child" as defined in the
61 Indian Child Welfare Act, 25 U.S.C. §1903;

62 (16) That the person believes the adoption of the child is in
63 the child's best interest; and

64 (17) That the person who is consenting or relinquishing
65 expressly waives notice of any proceeding for adoption unless
66 the adoption is contested, appealed or denied.

67 (b) A consent or relinquishment may provide explicitly for
68 its conditional revocation if:

69 (1) Another person whose consent or relinquishment is
70 required does not execute the same within a specified period;

71 (2) A court determines not to terminate another person's
72 parental relationship to the child; or

73 (3) In a direct placement for adoption, a petition for
74 adoption by a prospective adoptive parent, named or described
75 in the consent, is denied or withdrawn.

76 (c) A consent or relinquishment shall also include:

77 (1) If a consent, the name, address, telephone and facsimile
78 numbers of the lawyer representing the prospective adoptive
79 parents; or

80 (2) If a relinquishment, the name, address, telephone and
81 facsimile numbers of the agency to which the child is being
82 relinquished; and

83 (3) Specific instructions on how to revoke the consent or
84 relinquishment.

§48-22-304. Consent or relinquishment by infants.

1 If a person who has executed a consent to or relinquishment
2 for adoption is under eighteen years of age at the time of the
3 filing of the petition, and such infant parent is a resident of the
4 state, the consent or relinquishment shall be specifically
5 reviewed and approved by the court and a guardian ad litem
6 may be appointed to represent the interests of the infant parent.
7 The guardian ad litem shall conduct a discreet inquiry regarding
8 the consent or relinquishment given, and may inquire of any
9 person having knowledge of the consent or relinquishment. If
10 the guardian ad litem finds reasonable cause to believe that the
11 consent or relinquishment was obtained by fraud or duress, the
12 court may request the infant parent to appear before the court or
13 at a deposition, so that inquiry may be made regarding the
14 circumstances surrounding the execution of the consent or
15 relinquishment. The failure of the court to appoint a guardian ad
16 litem is not grounds for setting aside a decree of adoption.

§48-22-305. Revocation of consent or relinquishment for adoption.

1 (a) Parental consent or relinquishment, whether given by an
2 adult or minor, may be revoked only if:

3 (1) The person who executed the consent or relinquishment
4 and the prospective adoptive parent named or described in the
5 consent or the lawyer for said adoptive parent, or the agency in
6 case of relinquishment, agree to its revocation prior to the entry
7 of an adoption order; or

8 (2) The person who executed the consent or relinquishment
9 proves by clear and convincing evidence, in an action filed
10 either within six months of the date of the execution of the
11 consent or relinquishment or prior to the date an adoption order
12 is final, whichever date is later, that the consent or relinquish-
13 ment was obtained by fraud or duress; or

14 (3) The person who executed the consent or relinquishment
15 proves by a preponderance of the evidence, prior to the entry of

16 an adoption order, that a condition allowing revocation as
17 expressly set forth in the consent or relinquishment has oc-
18 curred; or

19 (4) The person who executed the consent or relinquishment
20 proves by clear and convincing evidence, prior to the entry of
21 an adoption order, that the consent or relinquishment does not
22 comply with the requirements set forth in this article.

23 (b) If the custody of a child during the pendency of a
24 petition to revoke a consent or relinquishment is in issue, the
25 court shall conduct a hearing, within thirty days of service of
26 notice upon the respondent, to determine the issue of temporary
27 custody. The court shall award such custody based upon the
28 best interests of the child.

§48-22-306. Conduct presumptively constituting abandonment.

1 (a) Abandonment of a child over the age of six months shall
2 be presumed when the birth parent:

3 (1) Fails to financially support the child within the means
4 of the birth parent; and

5 (2) Fails to visit or otherwise communicate with the child
6 when he or she knows where the child resides, is physically and
7 financially able to do so and is not prevented from doing so by
8 the person or authorized agency having the care or custody of
9 the child: *Provided*, That such failure to act continues uninter-
10 rupted for a period of six months immediately preceding the
11 filing of the adoption petition.

12 (b) Abandonment of a child under the age of six months
13 shall be presumed when the birth father:

14 (1) Denounces the child's paternity any time after concep-
15 tion;

16 (2) Fails to contribute within his means toward the expense
17 of the prenatal and postnatal care of the mother and the
18 postnatal care of the child;

19 (3) Fails to financially support the child within father's
20 means; and

21 (4) Fails to visit the child when he knows where the child
22 resides: *Provided*, That such denunciations and failure to act
23 continue uninterrupted from the time that the birth father was
24 told of the conception of the child until the time the petition for
25 adoption was filed.

26 (c) Abandonment of a child shall be presumed when the
27 unknown father fails, prior to the entry of the final adoption
28 order, to make reasonable efforts to discover that a pregnancy
29 and birth have occurred as a result of his sexual intercourse
30 with the birth mother.

31 (d) Notwithstanding any provision in this section to the
32 contrary, any birth parent shall have the opportunity to demon-
33 strate to the court the existence of compelling circumstances
34 preventing said parent from supporting, visiting or otherwise
35 communicating with the child: *Provided*, That in no event may
36 incarceration provide such a compelling circumstance if the
37 crime resulting in the incarceration involved a rape in which the
38 child was conceived.

PART 4. DELIVERY OF CHILD FOR ADOPTION.

§48-22-401. Delivery of child for adoption; written recital of circumstances.

1 Whenever a person delivers a child for adoption the person
2 first receiving such child and the prospective adopting parent or
3 parents shall be entitled to receive from such person a written
4 recital of all known circumstances surrounding the birth,
5 medical and family medical history of the child, and an
6 itemization of any facts or circumstances unknown concerning

7 the child's parentage or that may require further development
8 in the form of an affidavit from the birth mother consistent with
9 the provisions of section 22-502.

PART 5. PETITION FOR ADOPTION.

§48-22-501. Filing of petition for adoption.

1 The petition for adoption may be filed at any time after the
2 child who is the subject of the adoption is born, the adoptive
3 placement determined and all consents or relinquishments that
4 can be obtained have been executed. The hearing on the petition
5 may be held no sooner than forty-five days after the filing of the
6 petition and only after the child has lived with the adoptive
7 parent or parents for a period of six months, proper notice of the
8 petition has been given and all necessary consents or relinquish-
9 ments have been executed and submitted or the rights of all
10 nonconsenting birth parents have otherwise been terminated.

§48-22-502. Petition and appendix.

1 (a) The petition shall be verified and set forth:

2 (1) The name, age and place of residence of the petitioner
3 or petitioners, and of the child, and the name by which the child
4 shall be known;

5 (2) Whether such child is possessed of any property and a
6 full description of the same, if any;

7 (3) Whether the petitioner or petitioners know the identity
8 of the persons entitled to parental rights or, that the same are
9 unknown to the petitioner or petitioners; and

10 (4) Whether and on what basis the parental rights of any
11 birth parents should be terminated during the pendency of the
12 adoption petition.

13 (b) In the case of an unknown father, an affidavit signed by
14 the birth mother setting forth the following information must be
15 attached to the petition:

16 (1) Whether the birth mother was married at the probable
17 time of conception of the child, or at a later time, and if so, the
18 identity and last known address of such man;

19 (2) Whether the birth mother was cohabiting with a man at
20 the probable time of conception of the child, and if so, the
21 identity of such man, his last known address and why the
22 woman contends that such man is not the biological father of
23 the child;

24 (3) Whether the birth mother has received payments or
25 promise of support from any man with respect to the child or
26 her pregnancy, and if so, the identity of such man, his last
27 known address and why the birth mother contends that such
28 man is not the biological father of the child;

29 (4) Whether the birth mother has named any man as the
30 father on the birth certificate of the child or in connection with
31 applying for or receiving public assistance, and if so, the
32 identity of such man, his last known address and why the birth
33 mother contends such man is not the biological father of the
34 child;

35 (5) Whether the birth mother identified any man as the
36 father to any hospital personnel, and if so, the identity of such
37 man, his last known address, the name and address of the
38 hospital and why the birth mother now contends such man is
39 not the biological father of the child;

40 (6) Whether the birth mother has informed any man that he
41 may be the biological father of the child, and if so, the identity
42 of such man, his last known address and why the birth mother
43 now contends such man is not the biological father of the child;

44 (7) Whether any man has formally or informally acknowl-
45 edged or claimed paternity of the child in any jurisdiction at the

46 time of the inquiry, and if so, the identity of such man, his last
47 known address and why the birth mother contends such man is
48 not the biological father of the child;

49 (8) That the birth mother has been advised that the failure
50 to identify or the misidentification of the birth father can result
51 in delays and disruptions in the processing of the adoption
52 petition;

53 (9) That the birth mother has been informed that her
54 statement concerning the identity of the father will be used only
55 for the limited purposes of adoption and that once the adoption
56 is complete, such identity will be sealed; and

57 (10) That the birth mother has been advised of the remedies
58 available to her for protection against domestic violence
59 pursuant to the provisions of article 27-101, et seq., of this
60 chapter.

61 (c) In the event the birth mother is deceased or her identity
62 or whereabouts are unknown, no such affidavit shall be
63 required.

64 (d) The affidavit of the birth mother in the case of an
65 unknown father shall be executed before any person authorized
66 to witness a consent or relinquishment pursuant to the provi-
67 sions of section 22-302. Any affidavit filed with the petition
68 pursuant to the provisions of this section shall be sealed in the
69 court file and may not be opened except by court order upon a
70 showing of good cause.

71 (e) If the person petitioning for adoption is less than fifteen
72 years older than the child sought to be adopted, such fact shall
73 be set forth specifically in the petition. In such case, the court
74 shall grant the adoption only upon a specific finding that
75 notwithstanding the differences in age of the petitioner and the
76 child, such adoption is in the best interest of the child: *Pro-*
77 *vided*, That in the case of a stepparent adoption, such specific

78 finding shall not be required and an adoption shall not be
79 denied on the sole basis of proximity in age.

80 (f) The petition shall set forth any facts concerning the
81 circumstances of the birth of the child known to the petitioner
82 or petitioners. An effort shall be made to obtain medical and
83 social information, which information, along with all
84 nonidentifying information about the birth, shall accompany the
85 petition and be made a part of the nonidentifying information
86 to be sealed in the court file.

87 (g) Either the petition, the various consents or relinquish-
88 ments attached thereto or filed in the cause, the affidavit of the
89 birth mother as set forth herein or in an appendix signed by
90 counsel or other credible persons shall fully disclose all that is
91 known about the parentage of the child.

PART 6. NOTICE OF PROCEEDING FOR ADOPTION.

§48-22-601. Who shall receive notice.

1 (a) Unless notice has been waived, notice of a proceeding
2 for adoption of a child must be served, within twenty days after
3 a petition for adoption is filed, upon:

4 (1) Any person whose consent to the adoption is required
5 pursuant to the provisions of section 22-301, but notice need
6 not be served upon a person whose parental relationship to the
7 child or whose status as a guardian has been terminated;

8 (2) Any person whom the petitioner knows is claiming to
9 be the father of the child and whose paternity of the child has
10 been established pursuant to the provisions of 24-101, et seq.;

11 (3) Any person other than the petitioner who has legal or
12 physical custody of the child or who has visitation rights with
13 the child under an existing court order issued by a court in this
14 or another state;

15 (4) The spouse of the petitioner if the spouse has not joined
16 in the petition; and

17 (5) A grandparent of the child if the grandparent's child is
18 a deceased parent of the child and, before death, the deceased
19 parent had not executed a consent or relinquishment or the
20 deceased parent's parental relationship to the child had not been
21 otherwise terminated.

22 (b) The court shall require notice of a proceeding for
23 adoption to be served upon any person the court finds, at any
24 time during the proceeding, is:

25 (1) A person described in subsection (a) of this section who
26 has not been given notice;

27 (2) A person who has revoked consent or relinquishment
28 pursuant to the provisions of section 22-305; or

29 (3) A person who, on the basis of a previous relationship
30 with the child, a parent, an alleged parent or the petitioner, can
31 provide relevant information that the court, in its discretion,
32 wants to hear.

§48-22-602. How notice is to be served.

1 (a) Notice shall be served on each person as required under
2 the provisions of section 22-601, in accordance with rule 4 of
3 the West Virginia rules of civil procedure, except as otherwise
4 provided in this article.

5 (b) The notice shall inform the person, in plain language,
6 that his or her parental rights, if any, may be terminated in the
7 proceeding and that such person may appear and defend any
8 such rights within the required time after such service. The
9 notice shall also provide that if the person upon whom notice is
10 properly served fails to respond within the required time after
11 its service, said person may not appear in or receive further
12 notice of the adoption proceedings.

13 (c) In the case of any person who is a nonresident or whose
14 whereabouts are unknown, service shall be achieved: (1) By
15 personal service; (2) by registered or certified mail, return
16 receipt requested, postage prepaid, to the person's last known
17 address, with instructions to forward; or (3) by publication. If
18 personal service is not achieved and the person giving notice
19 has any knowledge of the whereabouts of the person to be
20 served, including a last known address, service by mail shall be
21 first attempted as provided herein. Any service achieved by
22 mail shall be complete upon mailing and shall be sufficient
23 service without the need for notice by publication. In the event
24 that no return receipt is received giving adequate evidence of
25 receipt of the notice by the addressee or of receipt of the notice
26 at the address to which the notice was mailed or forwarded, or
27 if the whereabouts of the person is unknown, then the person
28 required to give notice shall cause service of notice by publica-
29 tion as a Class II publication in compliance with the provisions
30 of article three, chapter fifty-nine of this code, and the publica-
31 tion area shall be the county where the proceedings are had, and
32 in the county where the person to be served was last known to
33 reside, except in cases of foreign adoptions where the child is
34 admitted to this country for purposes of adoptive placement and
35 the United States immigration and naturalization service has
36 issued the foreign-born child a visa or unless good cause is
37 shown for not publishing in the county where the person was
38 last known to reside. The notice shall state the court and its
39 address but not the names of the adopting parents or birth
40 mother, unless the court so orders.

41 (d) In the case of a person under disability, service shall be
42 made on the person and his or her personal representative, or if
43 there be none, on a guardian ad litem.

44 (e) In the case of service by publication or mail or service
45 on a personal representative or a guardian ad litem, the person
46 shall be allowed thirty days from the date of the first publica-
47 tion or mailing or of such service on a personal representative
48 or guardian ad litem in which to appear and defend his or her
49 parental rights.

§48-22-603. Notice to an unknown father.

1 (a) In the case of an unknown father, the court shall inspect
2 the affidavit submitted pursuant to the provisions of section 22-
3 502, consider any additional evidence that the court, in its
4 discretion, determines should be produced, and determine
5 whether said father can be identified. The inspection and
6 consideration of any additional evidence by the court shall be
7 accomplished as soon as practicable after the filing of the
8 petition, but no later than sixty days before the final hearing on
9 the adoption petition.

10 (b) If the court identifies a father pursuant to the provisions
11 of subsection (a) of this section, then notice of the proceeding
12 for adoption shall be served on the father so identified in
13 accordance with the provisions of section 22-602.

14 (c) If after consideration of the affidavit and/or the consid-
15 eration of further evidence, the court finds that proper service
16 cannot be made upon the father because his identity is un-
17 known, the court shall order publication of the notice only if, on
18 the basis of all information available, the court determines that
19 publication is likely to lead to receipt of notice by the father. If
20 the court determines that publication or posting is not likely to
21 lead to receipt of notice, the court may dispense with the
22 publication or posting of a notice.

PART 7. PROCEDURES FOR ADOPTION.

§48-22-701. Proceedings.

1 (a) When the cause has matured for hearing but not sooner
2 than six months after the child has resided continuously in the
3 home of the petitioner or petitioners, the court shall decree the
4 adoption if:

5 (1) It determines that no person retains parental rights in
6 such child except the petitioner and the petitioner's spouse, or
7 the joint petitioners;

8 (2) That all applicable provisions of this article have been
9 complied with;

10 (3) That the petitioner is, or the petitioners are, fit persons
11 to adopt the child; and

12 (4) That it is in the best interests of the child to order such
13 adoption.

14 (b) The court or judge thereof may adjourn the hearing of
15 such petition or the examination of the parties in interest from
16 time to time, as the nature of the case may require. Between the
17 time of the filing of the petition for adoption and the hearing
18 thereon, the court or judge thereof shall, unless the court or
19 judge otherwise directs, cause a discreet inquiry to be made to
20 determine whether such child is a proper subject for adoption
21 and whether the home of the petitioner or petitioners is a
22 suitable home for such child. Any such inquiry, if directed,
23 shall be made by any suitable and discreet person not related to
24 either the persons previously entitled to parental rights or the
25 adoptive parents, or by an agency designated by the court, or
26 judge thereof, and the results thereof shall be submitted to the
27 court or judge thereof prior to or upon the hearing on the
28 petition and shall be filed with the records of the proceeding
29 and become a part thereof. The report shall include, but not be
30 limited to, the following:

31 (1) A description of the family members, including medical
32 and employment histories;

33 (2) A physical description of the home and surroundings;

34 (3) A description of the adjustment of the child and family;

35 (4) Personal references; and

36 (5) Other information deemed necessary by the court,
37 which may include a criminal background investigation.

38 (c) If it shall be necessary, under the provisions of this
39 article, that a discreet and suitable person shall be appointed to
40 act as the next friend of the child sought to be adopted, then and
41 in that case the court or judge thereof shall order a notice of the
42 petition and of the time and place when and where the appoint-
43 ment of next friend will be made, to be published as a Class II
44 legal advertisement in compliance with the provisions of article
45 three, chapter fifty-nine of this code, and the publication area
46 for such publication shall be the county where such court is
47 located. At the time and place so named and upon due proof of
48 the publication of such notice, the court or judge thereof shall
49 make such appointment, and shall thereupon assign a day for
50 the hearing of such petition and the examination of the parties
51 interested.

52 (d) Upon the day so assigned, the court or judge thereof
53 shall proceed to a final hearing of the petition and examination
54 of the parties in interest, under oath, and of such other witnesses
55 as the court or judge thereof may deem necessary to develop
56 fully the standing of the petitioners and their responsibility, and
57 the status of the child sought to be adopted; and if the court or
58 judge thereof shall be of the opinion from the testimony that the
59 facts stated in the petition are true, and if upon examination the
60 court or judge thereof is satisfied that the petitioner is, or the
61 petitioners are, of good moral character, and of respectable
62 standing in the community, and are able properly to maintain
63 and educate the child sought to be adopted, and that the best
64 interests of the child would be promoted by such adoption, then
65 and in such case the court or judge thereof shall make an order
66 reciting the facts proved and the name by which the child shall
67 thereafter be known, and declaring and adjudging that from the
68 date of such order, the rights, duties, privileges and relations,
69 theretofore existing between the child and those persons
70 previously entitled to parental rights, shall be in all respects at
71 an end, and that the rights, duties, privileges and relations
72 between the child and his or her parent or parents by adoption
73 shall thenceforth in all respects be the same, including the rights
74 of inheritance, as if the child had been born to such adopting
75 parent or parents in lawful wedlock, except only as otherwise

76 provided in this article: *Provided*, That no such order shall
77 disclose the names or addresses of those persons previously
78 entitled to parental rights.

**§48-22-702. Recordation of order; fees; disposition of records;
names of adopting parents and persons previously
entitled to parental rights not to be disclosed;
disclosure of identifying and nonidentifying
information; certificate for state registrar of vital
statistics; birth certificate.**

1 (a) The order of adoption shall be recorded in a book kept
2 for that purpose, and the clerk shall receive the same fees as in
3 other cases. All records of proceedings in adoption cases and all
4 papers and records relating to such proceedings shall be kept in
5 the office of the clerk of the circuit court in a sealed file, which
6 file shall be kept in a locked or sealed cabinet, vault or other
7 container and shall not be open to inspection or copy by
8 anyone, except as otherwise provided in this article, or upon
9 court order for good cause shown. No person in charge of
10 adoption records shall disclose the names of the adopting parent
11 or parents, the names of persons previously entitled to parental
12 rights, or the name of the adopted child, except as otherwise
13 provided in this article, or upon court order for good cause
14 shown. The clerk of the court keeping and maintaining the
15 records in adoption cases shall keep and maintain an index of
16 such cases separate and distinct from all other indices kept or
17 maintained by him or her, and the index of adoption cases shall
18 be kept in a locked or sealed cabinet, vault or other container
19 and shall not be open to inspection or copy by anyone, except
20 as otherwise provided in this article, or upon court order for
21 good cause shown. Nonidentifying information, the collection
22 of which is provided for in article 23-101, et seq., of this
23 chapter, shall be provided to the adoptive parents as guardians
24 of the adopted child, or to the adult adoptee, by their submitting
25 a duly acknowledged request to the clerk of the court. The clerk
26 may charge the requesting party for copies of any documents,
27 as provided in section eleven, article one, chapter fifty-nine of
28 this code. Either birth parent may from time to time submit

29 additional social, medical or genetic history for the adoptee,
30 which information shall be placed in the court file by the clerk,
31 who shall bring the existence of this medical information to the
32 attention of the court. The court shall immediately transmit all
33 such nonidentifying medical, social or genetic information to
34 the adoptive parents or the adult adoptee.

35 (b) If an adoptee, or parent of a minor adoptee, is unsuccess-
36 cessful in obtaining identifying information by use of the
37 mutual consent voluntary adoption registry provided for in 23-
38 101, et seq., identifying information may be sought through the
39 following process:

40 (1) Upon verified petition of an adoptee at least eighteen
41 years of age, or, if less than eighteen, his or her adoptive parent
42 or legal guardian, the court may also attempt, either itself, or
43 through its designated agent, to contact the birth parents, if
44 known, to obtain their consent to release identifying informa-
45 tion to the adoptee. The petition shall state the reasons why the
46 adoptee desires to contact his or her birth parents, which
47 reasons shall be disclosed to the birth parents if contacted. The
48 court and its agent shall take any and all care possible to assure
49 that none but the birth parents themselves are informed of the
50 adoptee's existence in relationship to them. The court may
51 appoint the bureau of children and families, or a private agency
52 which provides adoption services in accordance with standards
53 established by law, to contact birth parents as its designated
54 agent, the said agent shall report to the court the results of said
55 contact.

56 (2) Upon the filing of a verified petition as provided in
57 subdivision (1) of this subsection, should the court be unable to
58 obtain consent from either of the birth parents to release
59 identifying information, the court may release such identifying
60 information to the adoptee, or if a minor, the adoptee's parents
61 or guardian, after notice to the birth parents and a hearing
62 thereon, at which hearing the court must specifically find that
63 there exists evidence of compelling medical or other good cause
64 for release of such identifying information.

65 (c) Identifying information may only be obtained with the
66 duly acknowledged consent of the mother or the legal or
67 determined father who consented to the adoption or whose
68 rights were otherwise relinquished or terminated, together with
69 the duly acknowledged consent of the adopted child upon
70 reaching majority, or upon court order for good cause shown.
71 Any person previously entitled to parental rights may from time
72 to time submit additional social or medical information which,
73 notwithstanding other provisions of this article, shall be inserted
74 into the record by the clerk of the court.

75 (d) Immediately upon the entry of such order of adoption,
76 the court shall direct the clerk thereof forthwith to make and
77 deliver to the state registrar of vital statistics a certificate under
78 the seal of said court, showing:

79 (1) The date and place of birth of the child, if known;

80 (2) The name of the mother of the child, if known, and the
81 name of the legal or determined father of the child, if known;

82 (3) The name by which said child has previously been
83 known;

84 (4) The names and addresses of the adopting parents;

85 (5) The name by which the child is to be thereafter known;
86 and

87 (6) Such other information from the record of the adoption
88 proceedings as may be required by the law governing vital
89 statistics and as may enable the state registrar of vital statistics
90 to carry out the duties imposed upon him or her by this section.

91 (e) Upon receipt of the certificate, the registrar of vital
92 statistics shall forthwith issue and deliver by mail to the
93 adopting parents at their last-known address and to the clerk of
94 the county commission of the county wherein such order of
95 adoption was entered a birth certificate in the form prescribed
96 by law, except that the name of the child shown in said certifi-

97 cate shall be the name given him or her by the order of adop-
98 tion. The clerk shall record such birth certificate in the manner
99 set forth in section twelve, article five, chapter sixteen of this
100 code.

**§48-22-703. Effect of order as to relations of parents and child
and as to rights of inheritance; intestacy of
adopted child.**

1 (a) Upon the entry of such order of adoption, any person
2 previously entitled to parental rights, any parent or parents by
3 any previous legal adoption, and the lineal or collateral kindred
4 of any such person, parent or parents, except any such person
5 or parent who is the husband or wife of the petitioner for
6 adoption, shall be divested of all legal rights, including the right
7 of inheritance from or through the adopted child under the
8 statutes of descent and distribution of this state, and shall be
9 divested of all obligations in respect to the said adopted child,
10 and the said adopted child shall be free from all legal obliga-
11 tions, including obedience and maintenance, in respect to any
12 such person, parent or parents. From and after the entry of such
13 order of adoption, the adopted child shall be, to all intents and
14 for all purposes, the legitimate issue of the person or persons so
15 adopting him or her and shall be entitled to all the rights and
16 privileges and subject to all the obligations of a natural child of
17 such adopting parent or parents.

18 (b) For the purpose of descent and distribution, from and
19 after the entry of such order of adoption, a legally adopted child
20 shall inherit from and through the parent or parents of such
21 child by adoption and from or through the lineal or collateral
22 kindred of such adopting parent or parents in the same manner
23 and to the same extent as though said adopted child were a
24 natural child of such adopting parent or parents, but such child
25 shall not inherit from any person entitled to parental rights prior
26 to the adoption nor their lineal or collateral kindred, except that
27 a child legally adopted by a husband or wife of a person entitled
28 to parental rights prior to the adoption shall inherit from such
29 person as well as from the adopting parent. If a legally adopted

30 child shall die intestate, all property, including real and per-
31 sonal, of such adopted child shall pass, according to the statutes
32 of descent and distribution of this state, to those persons who
33 would have taken had the decedent been the natural child of the
34 adopting parent or parents.

§48-22-704. Finality of order; challenges to order of adoption.

1 (a) An order or decree of adoption is a final order for
2 purposes of appeal to the supreme court of appeals on the date
3 when the order is entered. An order or decree of adoption for
4 any other purpose is final upon the expiration of the time for
5 filing an appeal when no appeal is filed or when an appeal is not
6 timely filed, or upon the date of the denial or dismissal of any
7 appeal which has been timely filed.

8 (b) An order or decree of adoption may not be vacated, on
9 any ground, if a petition to vacate the judgment is filed more
10 than six months after the date the order is final.

11 (c) If a challenge is brought within the six-month period by
12 an individual who did not receive proper notice of the proceed-
13 ings pursuant to the provisions of this article, the court shall
14 deny the challenge, unless the individual proves by clear and
15 convincing evidence that the decree or order is not in the best
16 interest of the child.

17 (d) A decree or order entered under this article may not be
18 vacated or set aside upon application of a person who waived
19 notice, or who was properly served with notice pursuant to this
20 article and failed to respond or appear, file an answer or file a
21 claim of paternity within the time allowed.

22 (e) A decree or order entered under this article may not be
23 vacated or set aside upon application of a person alleging there
24 is a failure to comply with an agreement for visitation or
25 communication with the adopted child: *Provided*, That the court
26 may hear a petition to enforce the agreement, in which case the
27 court shall determine whether enforcement of the agreement

28 would serve the best interests of the child. The court may, in its
29 sole discretion, consider the position of a child of the age and
30 maturity to express such position to the court.

31 (f) The supreme court of appeals shall consider and issue
32 rulings on any petition for appeal from an order or decree of
33 adoption and petitions for appeal from any other order entered
34 pursuant to the provisions of this article as expeditiously as
35 possible. The circuit court shall consider and issue rulings on
36 any petition filed to vacate an order or decree of adoption and
37 any other pleadings or petitions filed in connection with any
38 adoption proceeding as expeditiously as possible.

39 (g) When any minor has been adopted, he or she may,
40 within one year after becoming of age, sign, seal and acknowl-
41 edge before proper authority, in the county in which the order
42 of adoption was made, a dissent from such adoption, and file
43 such instrument of dissent in the office of the clerk of the
44 circuit court which granted said adoption. The clerk of the
45 county commission of such county and the circuit clerk shall
46 record and index the same. The adoption shall be vacated upon
47 the filing of such instrument of dissent.

PART 8. MISCELLANEOUS PROVISIONS.

§48-22-801. Adoption of adults.

1 Any adult person who is a resident of West Virginia may
2 petition the circuit court or any other court of record having
3 jurisdiction of adoption proceedings for permission to adopt one
4 who has reached the age of eighteen years or over, and, if
5 desired, to change the name of such person. The consent of the
6 person to be adopted shall be the only consent necessary. The
7 order of adoption shall create the same relationship between the
8 adopting parent or parents and the person adopted and the same
9 rights of inheritance as in the case of an adopted minor child. If
10 a change in name is desired, the adoption order shall so state.

§48-22-802. Contracts limiting or restraining adoptions.

1 Any contract, agreement or stipulation which endeavors to
2 deny to any person or persons the right to petition for adoption
3 of any person, or which endeavors to alter the time or manner
4 of adoption as provided in this article, is contrary to the public
5 policy of the state and such portion of any contract, agreement
6 or stipulation is null and void and of no effect.

§48-22-803. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

1 (a) Any person or agency who knowingly offers, gives or
2 agrees to give to another person money, property, service or
3 other thing of value in consideration for the recipient's locating,
4 providing or procuring a minor child for any purpose which
5 entails a transfer of the legal or physical custody of said child,
6 including, but not limited to, adoption or placement, is guilty of
7 a felony and subject to fine and imprisonment as provided
8 herein.

9 (b) Any person who knowingly receives, accepts or offers
10 to accept money, property, service or other thing of value to
11 locate, provide or procure a minor child for any purpose which
12 entails a transfer of the legal or physical custody of said child,
13 including, but not limited to, adoption or placement, is guilty of
14 a felony and subject to fine and imprisonment as provided
15 herein.

16 (c) Any person who violates the provisions of this section
17 is guilty of a felony and, upon conviction thereof, may be
18 confined in the state correctional facility for not less than one
19 year nor more than five years or, in the discretion of the court,
20 be confined in jail not more than one year and fined not less
21 than one hundred dollars nor more than two thousand dollars.

22 (d) A child whose parent, guardian or custodian has sold or
23 attempted to sell said child in violation of the provisions of this
24 article may be deemed an abused child as defined by section

25 three, article one, chapter forty-nine of this code. The court may
26 place such a child in the custody of the department of health
27 and human resources or with such other responsible person as
28 the best interests of the child dictate.

29 (e) This section does not prohibit the payment or receipt of
30 the following:

31 (1) Fees paid for reasonable and customary services
32 provided by the department of health and human resources or
33 any licensed or duly authorized adoption or child-placing
34 agency.

35 (2) Reasonable and customary legal, medical, hospital or
36 other expenses incurred in connection with the pregnancy, birth
37 and adoption proceedings.

38 (3) Fees and expenses included in any agreement in which
39 a woman agrees to become a surrogate mother.

40 (4) Any fees or charges authorized by law or approved by
41 a court in a proceeding relating to the placement plan, prospec-
42 tive placement or placement of a minor child for adoption.

43 (f) At the final hearing on the adoption, an affidavit of any
44 fees and expenses paid or promised by the adoptive parents
45 shall be submitted to the court.

ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.

PART 1. GENERAL PROVISIONS.

§48-23-101. Policy regarding persons obtaining identifying information after adoption.

1 (a) Adoption is based upon the legal termination of parental
2 rights and responsibilities of birth parents and the creation of
3 the legal relationship of parent and child between an adoptee
4 and his or her adoptive parents. These legal and social premises
5 underlying adoption must be maintained. The Legislature

6 recognizes that some adults who were adopted as children have
7 a strong desire to obtain identifying information about their
8 birth parents while other such adult adoptees have no such
9 desire. The Legislature further recognizes that some birth
10 parents have a strong desire to obtain identifying information
11 about their biological children who were surrendered for
12 adoption, while other birth parents have no such desire.

13 (b) The Legislature fully recognizes the right to privacy and
14 confidentiality of:

15 (1) Birth parents whose children were adopted;

16 (2) The adoptees; and

17 (3) The adoptive parents.

§48-23-102. Legislative purpose.

1 The purpose of this article is to:

2 (1) Set up a mutual consent voluntary adoption registry
3 where birth parents and adult adoptees may register their
4 willingness to the release of identifying information to each
5 other;

6 (2) To provide for the disclosure of such identifying
7 information to birth parents or adoptees, or both, through a
8 social worker employed by a licensed adoption agency,
9 provided each birth parent and the adult adoptee voluntarily
10 registers on his or her own; and

11 (3) To provide for the transmission of nonidentifying health
12 and social and genetic history to the adult adoptees, birth
13 parents and other specified persons; and

14 (4) to provide for disclosure of identifying information for
15 cause shown.

PART 2. DEFINITIONS.

§48-23-201. Applicability of definitions.

1 For the purposes of this article the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

§48-23-202. Adoptee defined.

1 “Adoptee” means a person who has been legally adopted in
2 the state of West Virginia.

§48-23-203. Adoption defined.

1 “Adoption” means the judicial act of creating the relation-
2 ship of parent and child where it did not exist previously.

§48-23-204. Adult defined.

1 “Adult” means a person who is eighteen years of age or
2 more.

§48-23-205. Agency defined.

1 ”Agency” means any public or voluntary organization
2 licensed or approved pursuant to the laws of any jurisdiction
3 within the United States to place children for adoption.

§48-23-206. Genetic and social history defined.

1 “Genetic and social history” means a comprehensive report,
2 when obtainable, on the birth parents, siblings to the birth
3 parents, if any, other children of either birth parent, if any, and
4 parents of the birth parents, which shall contain the following
5 information:

6 (1) Medical history;

- 7 (2) Health status;
- 8 (3) Cause of and age at death;
- 9 (4) Height, weight, eye and hair color;
- 10 (5) Ethnic origins;
- 11 (6) Where appropriate, levels of educational and profes-
12 sional achievement; and
- 13 (7) Religion, if any.

§48-23-207. Health history defined.

1 “Health history” means a comprehensive report of the
2 child’s health status at the time of placement for adoption and
3 medical history, including neonatal, psychological, physiologi-
4 cal and medical care history.

**§48-23-208. Mutual consent voluntary adoption registry or
registry defined.**

1 “Mutual consent voluntary adoption registry” or “registry”
2 means a place provided for herein where eligible persons as
3 described in section 23-501 may indicate their willingness to
4 have their identity and whereabouts disclosed to each other
5 under conditions specified in this article.

§48-23-209. Putative father defined.

1 “Putative father” means any man not deemed or adjudicated
2 under the laws of a jurisdiction of the United States to be the
3 father of genetic origin of a child and who claims or is alleged
4 to be the father of genetic origin of such child.

**PART 3. ESTABLISHMENT AND MAINTENANCE
OF VOLUNTARY ADOPTION REGISTRY.**

§48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.

1 The division of human services, as provided for in §9-2-1,
2 et seq. of this code, shall establish and maintain the mutual
3 consent voluntary adoption registry, except that the division
4 may contract out the function of establishing and maintaining
5 the registry to a licensed voluntary agency with expertise in
6 providing post-legal adoption services, in which case the
7 agency shall establish and maintain the registry that would
8 otherwise be operated by the division.

9 The secretary of the department of health and human
10 resources shall promulgate and adopt such rules as are neces-
11 sary for implementing this article.

PART 4. USE OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-401. Persons to whom use of the mutual consent voluntary adoption registry is available.

1 Use of the mutual consent voluntary adoption registry for
2 obtaining identifying information about birth parents and adult
3 adoptees is available to birth parents and adult adoptees, except
4 as otherwise limited by section 23-402.

§48-23-402. Age limitations on use of the mutual consent voluntary adoption registry.

1 (a) A birth parent is not eligible to use the registry until his
2 or her child who was adopted is eighteen years of age or older.

3 (b) An adult adoptee is not eligible to use the registry if he
4 or she has a sibling in his or her adoptive family who is under
5 the age of eighteen years.

§48-23-403. Registration by a birth father.

1 A birth father may register if:

2 (1) He was named as the father in the original sealed birth
3 certificate;

4 (2) He legitimated or formally acknowledged the child as
5 provided by law; or

6 (3) He signed a voluntary abandonment and release for the
7 child's adoption as provided by law.

§48-23-404. Registration by a birth parent who used an alias in terminating parental rights.

1 If a birth parent used an alias name in terminating his or her
2 parental rights, and the alias is listed in the original sealed birth
3 record, that birth parent may register if the agency, organiza-
4 tion, entity or person that placed the child for adoption, certifies
5 to the court that the individual seeking to register used the alias
6 name set forth in the original sealed birth certificate.

PART 5. OPERATION OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-501. Prerequisites to disclosure of identifying information.

1 The adult adoptee and each birth parent may voluntarily,
2 without having been contacted by any employee or agent of the
3 entity operating the registry, place his or her name in the
4 appropriate registry before any disclosure or identifying
5 information can be made. A qualified person may register by
6 submitting a notarized affidavit to the appropriate registry
7 stating his or her name, address and telephone number and his
8 or her willingness to be identified solely to the other relevant
9 persons who register. No registration may be accepted until the
10 prospective registrant submits satisfactory proof of his or her
11 identity in accord with the provisions specified in section 23-
12 601 of this article. The failure of any of the three above
13 described persons to file a notarized affidavit with the registry
14 for any reason, including death or disability, precludes the
15 disclosure of identifying information to those relevant persons
16 who do register.

§48-23-502. Counseling of registrants.

1 Upon registering, the registrant shall participate in not less
 2 than one hour of counseling with a social worker employed by
 3 the entity that operates the registry, except if a birth parent or
 4 adult adoptee is domiciled outside the state, he or she shall
 5 obtain counseling from a social worker employed by a licensed
 6 agency in that other state selected by the entity that operates the
 7 registry. When an eligible person registers concerning an
 8 adoption that was arranged through an agency which has not
 9 merged or otherwise ceased operations, and that same agency
 10 is not operating the registry, the entity operating the registry
 11 shall notify by certified mail the agency which handled the
 12 adoption within ten business days after the date of registration.

§48-23-503. Cases where disclosure of identifying information cannot occur.

1 In any case where the identity of the birth father was
 2 unknown to the birth mother, or where the administrator learns
 3 that one or both of the birth parents are deceased, this informa-
 4 tion shall be shared with the adult adoptee. In these kinds of
 5 cases, the adoptee will not be able to obtain identifying infor-
 6 mation through the registry, and he or she would be told of his
 7 or her right to pursue whatever right otherwise exists by law to
 8 petition a court to release the identifying information.

§48-23-504. Matching and disclosure procedures.

1 (a) Each mutual consent voluntary adoption registry must
 2 be operated under the direction of an administrator.

3 (b) A person eligible to register may request the administra-
 4 tor to disclose identifying information by filing an affidavit
 5 which sets forth the following:

6 (1) The current name and address of the affiant;

7 (2) Any previous name by which the affiant was known;

8 (3) The original and adopted names, if known, of the
9 adopted child;

10 (4) The place and date of birth of the adopted child; or

11 (5) The name and address of the adoption agency or other
12 entity, organization or person placing the adopted child, if
13 known.

14 (c) The affiant shall notify the registry of any change in
15 name or location which occurs subsequent to his or her filing
16 the affidavit. The registry has no duty to search for an affiant
17 who fails to register his or her most recent address.

18 (d) The administrator of the mutual consent voluntary
19 adoption registry shall process each affidavit in an attempt to
20 match the adult adoptee and the birth parents. Such processing
21 shall include research from agency records, when available, and
22 when agency records are not available, research from court
23 records to determine conclusively whether the affiants match.

24 (e) The administrator shall determine that there is a match
25 when the adult adoptee and the birth mother or the adult
26 adoptee and the birth father have each filed affidavits with the
27 mutual consent voluntary adoption registry and have each
28 received the counseling required in section 23-502.

29 (f) When a match has taken place, the department shall
30 directly notify all parties through a direct and confidential
31 contact. The contact shall be made by an employee or agent of
32 the agency receiving the assignment and shall be made face to
33 face, rather than by mail, telephone or other indirect means. The
34 employee or agent shall be a trained social worker who has
35 expertise in post-legal adoption services.

§48-23-505. Retention of data by the registry.

1 Any affidavits filed and other information collected shall be
2 retained for ten years following the date of registration by any
3 qualified person to which the information pertains. Any

4 qualified person who registers may renew his or her registration
5 for ten additional years within one hundred eighty days prior to
6 the last day of ten years from the date of initial registration.

**§48-23-506. Scope of information obtained by the mutual consent
voluntary adoption registry.**

1 A mutual consent voluntary adoption registry shall obtain
2 only information necessary for identifying a birth parent or
3 adult adoptee and in no event shall obtain information of any
4 kind pertaining to the adoptive parents, any siblings to the adult
5 adoptee who are children of the adoptive parents, the income of
6 anyone and reasons for adoptive placement.

**§48-23-507. Fees for operations of the mutual consent voluntary
adoption registry.**

1 All costs for establishing and maintaining a mutual consent
2 voluntary adoption registry shall be obtained through user's
3 fees charged to all persons who register.

PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.

**§48-23-601. Compilation of nonidentifying information on health
history and social and genetic history.**

1 (a) Prior to placement for adoption, the court shall require
2 that the licensed adoption agency or, where an agency is not
3 involved, the person, entity or organization handling the
4 adoption, shall compile and provide to the prospective adoptive
5 parents a detailed written health history and genetic and social
6 history of the child. These histories must exclude information
7 that would identify birth parents or members of a birth parent's
8 family. The histories must be set forth in a document that is
9 separate from any document containing such identifying
10 information.

11 (b) The court, or an agency designated by the court, or
12 judge thereof, shall provide to an agency, person, or organiza-

13 tion handling the adoption the forms which must be utilized in
14 the acquisition of the above-described detailed nonidentifying
15 written health history and genetic and social history of the
16 child. If the records cannot be obtained, the court shall make
17 specific findings as to why the records are unobtainable.

18 (c) Records containing such nonidentifying information and
19 which are set forth on a document described in subsection (a)
20 above, separate from any document containing identifying data:

21 (1) Shall be retained by the clerk of the court for ninety-
22 nine years; and

23 (2) Shall be available upon request, throughout the time
24 specified in subdivision (1) of this subsection together with any
25 additional nonidentifying information which may have been
26 added on health or on genetic and social history, but which
27 excludes information identifying any birth parent or member of
28 a birth parent's family, or the adoptee or any adoptive parent of
29 the adoptee, to the following persons only:

30 (A) The adoptive parents of the child or, in the event of
31 death of the adoptive parents, the child's guardian;

32 (B) The adoptee upon reaching the age of eighteen;

33 (C) In the event of the death of the adoptee, the adoptee's
34 spouse if he or she is the legal parent of the adoptee's child or
35 the guardian of any child of the adoptee;

36 (D) In the event of the death of the adoptee, any progeny of
37 the adoptee who is age eighteen or older; and

38 (E) The birth parent of the adoptee.

39 (d) The person requesting nonidentifying health history and
40 genetic and social history shall pay the actual and reasonable
41 costs of providing that information. This provision requiring
42 payment of costs is subject to sections of this article that

43 provide for the adoptee to obtain information by petitioning the
44 court.

PART 7. PROHIBITED CONDUCT.

§48-23-701. Prohibited conduct.

1 (a) No person, agency, entity or organization of any kind,
2 including, but not limited to, any officer or employee of this
3 state and any employee, officer or judge of any court of this
4 state, may disclose any confidential information relating to an
5 adoption except as provided in this article or pursuant to a court
6 order. Any employer who knowingly or negligently allows any
7 employee to disclose information in violation of this article is
8 subject to the penalties provided in subsection (b) of this
9 section, together with the employee who made any disclosure
10 prohibited by this law.

11 (b) Any person, agency, entity or organization of any kind
12 who discloses information in violation of this law is liable to
13 the parties so injured in an action to recover damages in respect
14 thereto.

PART 8. NONDISCLOSURE OF REGISTRY INFORMATION.

§48-23-801. Nondisclosure.

1 (a) Notwithstanding any other provision of law, the
2 information acquired by any registry may not be disclosed
3 under any sunshine or freedom of information legislation, rules
4 or practice.

5 (b) Notwithstanding any other provision of law, no person,
6 group of persons, or entity, including an agency, may file a
7 class action to force the registry to disclose identifying informa-
8 tion.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-101. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child and to
2 obtain an order of support for the child may be instituted, by
3 verified complaint, in the circuit court of the county where the
4 child resides: *Provided*, That if such venue creates a hardship
5 for the parties, or either of them, or if judicial economy
6 requires, the court may transfer the action to the county where
7 either of the parties resides.

8 (b) A “paternity proceeding” is a summary proceeding,
9 equitable in nature and within the domestic relations jurisdic-
10 tion of the courts, wherein a circuit court upon the petition of
11 the state or another proper party may intervene to determine and
12 protect the respective personal rights of a child for whom
13 paternity has not been lawfully established, of the mother of the
14 child and of the putative father of the child. The parties to a
15 paternity proceeding are not entitled to a trial by jury.

16 (c) The sufficiency of the statement of the material allega-
17 tions in the complaint set forth as grounds for relief and the
18 grant or denial of the relief prayed for in a particular case shall
19 rest in the sound discretion of the court, to be exercised by the
20 court according to the circumstances and exigencies of the case,
21 having due regard for precedent and the provisions of the
22 statutory law of this state.

23 (d) A decree or order made and entered by a court in a
24 paternity proceeding shall include a determination of the filial
25 relationship, if any, which exists between a child and his or her
26 putative father, and, if such relationship is established, shall
27 resolve dependent claims arising from family rights and
28 obligations attendant to such filial relationship.

29 (e) A paternity proceeding may be brought by any of the
30 following persons:

31 (1) An unmarried woman with physical or legal custody of
32 a child to whom she gave birth;

33 (2) A married woman with physical or legal custody of a
34 child to whom she gave birth, if the complaint alleges that:

35 (A) The married woman lived separate and apart from her
36 husband preceding the birth of the child;

37 (B) The married woman did not cohabit with her husband
38 at any time during such separation and that such separation has
39 continued without interruption; and

40 (C) The respondent, rather than her husband, is the father
41 of the child;

42 (3) The state of West Virginia, including the bureau for
43 child support enforcement;

44 (4) Any person who is not the mother of the child, but who
45 has physical or legal custody of the child;

46 (5) The guardian or committee of the child;

47 (6) The next friend of the child when the child is a minor;

48 (7) By the child in his or her own right at any time after the
49 child's eighteenth birthday but prior to the child's twenty-first
50 birthday; or

51 (8) A man who believes he is the father of a child born out
52 of wedlock, when there has been no prior judicial determination
53 of paternity.

54 (f) Blood or tissue samples taken pursuant to the provisions
55 of this article may be ordered to be taken in such locations as
56 may be convenient for the parties so long as the integrity of the
57 chain of custody of the samples can be preserved.

58 (g) A person who has sexual intercourse in this state
59 submits to the jurisdiction of the courts of this state for a
60 proceeding brought under this article with respect to a child
61 who may have been conceived by that act of intercourse.

62 Service of process may be perfected according to the rules of
63 civil procedure.

64 (h) When the person against whom the proceeding is
65 brought has failed to plead or otherwise defend the action after
66 proper service has been obtained, judgment by default shall be
67 issued by the court as provided by the rules of civil procedure.

**§48-24-102. Statute of limitations; prior statute of limitations not
a bar to action under this article; effect of prior
adjudication between husband and wife.**

1 (a) Except for a proceeding brought by a child in his or her
2 own right under the provisions of subdivision 24-101(e)(7), a
3 proceeding for the establishment of the paternity of a child shall
4 be brought prior to such child's eighteenth birthday.

5 (b) A proceeding to establish paternity under the provisions
6 of this article may be brought by or on behalf of a child
7 notwithstanding the fact that, prior to the first day of July, one
8 thousand nine hundred eighty-six, an action to establish
9 paternity may have been barred by a prior statute of limitations
10 set forth in this code or otherwise provided for by law.

11 (c) A proceeding to establish paternity under the provisions
12 of this article may be brought for any child who was not yet
13 eighteen years of age on the sixteenth day of August, one
14 thousand nine hundred eighty-four, regardless of the current
15 age.

16 (d) A proceeding to establish paternity under the provisions
17 of this article may be brought for any child who was not yet
18 eighteen years of age on the sixteenth day of August, one
19 thousand nine hundred eighty-four, and for whom a paternity
20 action was brought but dismissed because a statute of limita-
21 tions of less than eighteen years was then in effect.

22 (e) Any other provision of law to the contrary notwithstand-
23 ing, when a husband and wife or former husband and wife, in

24 an action for divorce or an action to obtain a support order,
25 have litigated the issue of the paternity of a child conceived
26 during their marriage to the end that the husband has been
27 adjudged not to be the father of such child, such prior adjudica-
28 tion of the issue of paternity between the husband and the wife
29 shall not preclude the mother of such child from bringing a
30 proceeding against another person to establish paternity under
31 the provisions of this article.

**§48-24-103. Medical testing procedures to aid in the determina-
tion of paternity.**

1 (a) Prior to the commencement of an action for the estab-
2 lishment of paternity, the bureau for child support enforcement
3 may order the mother, her child and the man to submit to
4 genetic tests to aid in proving or disproving paternity. The
5 bureau may order the tests upon the request, supported by a
6 sworn statement, of any person entitled to petition the court for
7 a determination of paternity as provided in section one of this
8 article. If the request is made by a party alleging paternity, the
9 statement shall set forth facts establishing a reasonable possibil-
10 ity or requisite sexual contact between the parties. If the request
11 is made by a party denying paternity, the statement may set
12 forth facts establishing a reasonable possibility of the nonexis-
13 tence of sexual contact between the parties or other facts
14 supporting a denial of paternity. If genetic testing is not
15 performed pursuant to an order of the bureau for child support
16 enforcement, the court may, on its own motion, or shall upon
17 the motion of any party, order such tests. A request or motion
18 may be made upon ten days' written notice to the mother and
19 alleged father, without the necessity of filing a complaint.
20 When the tests are ordered, the court or the bureau shall direct
21 that the inherited characteristics, including, but not limited to,
22 blood types be determined by appropriate testing procedures at
23 a hospital, independent medical institution or independent
24 medical laboratory duly licensed under the laws of this state, or
25 any other state, and an expert qualified as an examiner of
26 genetic markers shall analyze, interpret and report on the results

27 to the court or to the bureau for child support enforcement. The
28 results shall be considered as follows:

29 (1) Blood or tissue test results which exclude the man as the
30 father of the child are admissible and shall be clear and con-
31 vincing evidence of nonpaternity and, if a complaint has been
32 filed, the court shall, upon considering such evidence, dismiss
33 the action.

34 (2) Blood or tissue test results which show a statistical
35 probability of paternity of less than ninety-eight percent are
36 admissible and shall be weighed along with other evidence of
37 the respondent's paternity.

38 (3) Undisputed blood or tissue test results which show a
39 statistical probability of paternity of more than ninety-eight
40 percent shall, when filed, legally establish the man as the father
41 of the child for all purposes and child support may be estab-
42 lished pursuant to the provisions of this chapter.

43 (4) When a party desires to challenge the results of the
44 blood or tissue tests or the expert's analysis of inherited
45 characteristics, he or she shall file a written protest with the
46 family law master or circuit court or with the bureau for child
47 support enforcement, if appropriate, within thirty days of the
48 filing of such test results, and serve a copy of such protest upon
49 the other party. The written protest shall be filed at least thirty
50 days prior to any hearing involving the test results. The court or
51 the bureau for child support enforcement, upon reasonable
52 request of a party, shall order that additional tests be made by
53 the same laboratory or another laboratory within thirty days of
54 the entry of the order, at the expense of the party requesting
55 additional testing. Costs shall be paid in advance of the testing.
56 When the results of the blood or tissue tests or the expert's
57 analysis which show a statistical probability of paternity of
58 more than ninety-eight percent are confirmed by the additional
59 testing, then the results are admissible evidence which is clear
60 and convincing evidence of paternity. The admission of the
61 evidence creates a presumption that the man tested is the father.

62 (b) Documentation of the chain of custody of the blood or
63 tissue specimens is competent evidence to establish the chain of
64 custody. A verified expert's report shall be admitted at trial
65 unless a challenge to the testing procedures or a challenge to the
66 results of test analysis has been made before trial. The costs and
67 expenses of making the tests shall be paid by the parties in
68 proportions and at times determined by the court.

69 (c) Except as provided in subsection (d) of this section,
70 when a blood test is ordered pursuant to this section, the
71 moving party shall initially bear all costs associated with the
72 blood test unless that party is determined by the court to be
73 financially unable to pay those costs. This determination shall
74 be made following the filing of an affidavit pursuant to section
75 one, article two, chapter fifty-nine of this code. When the court
76 finds that the moving party is unable to bear that cost, the cost
77 shall be borne by the state of West Virginia. Following the
78 finding that a person is the father based on the results of a blood
79 test ordered pursuant to this section, the court shall order that
80 the father be ordered to reimburse the moving party for the
81 costs of the blood tests unless the court determines, based upon
82 the factors set forth in this section, that the father is financially
83 unable to pay those costs.

84 (d) When a blood test is ordered by the bureau for child
85 support enforcement, the bureau shall initially bear all costs
86 subject to recoupment from the alleged father if paternity is
87 established.

§48-24-104. Establishment of paternity and duty of support.

1 (a) When the respondent, by verified responsive pleading,
2 admits that the man is the father of the child and owes a duty of
3 support, or if after a hearing on the merits, the court shall find,
4 by clear and convincing evidence that the man is the father of
5 the child, the court shall, subject to the provisions of subsection
6 (c) of this section, order support in accordance with the support
7 guidelines set forth in article 13-101, et seq., and the payment

8 of incurred expenses as provided in subsection (e) of this
9 section.

10 (b) Upon motion by a party, the court shall issue a tempo-
11 rary order for child support pending a judicial determination of
12 parentage if there is clear and convincing evidence of paternity
13 on the basis of genetic tests or other scientifically recognized
14 evidence.

15 (c) Reimbursement support ordered pursuant to this section
16 shall be limited to a period not to exceed thirty-six months prior
17 to the service of notice of the commencement of paternity or
18 support establishment, unless the court finds, by clear and
19 convincing evidence:

20 (1) That the respondent had actual knowledge that he was
21 believed to be the father of the child;

22 (2) That the respondent deliberately concealed his where-
23 abouts or deliberately evaded attempts to serve process upon
24 himself or herself; or

25 (3) That the respondent deliberately misrepresented
26 relevant information which would have enabled the petitioner
27 to proceed with the cause of action.

28 If the court finds by clear and convincing evidence that the
29 circumstances in subsection (1), (2) or (3) exist, then the court
30 shall order reimbursement support to the date of birth of the
31 child, subject to the equitable defense of laches.

32 (d) The court shall give full faith and credit to a determina-
33 tion of paternity made by any other state, based on the laws of
34 that state, whether established through voluntary acknowledg-
35 ment or through administrative or judicial process.

36 (e) Bills for pregnancy, childbirth and genetic testing are
37 admissible and constitute prima facie evidence of medical
38 expenses incurred.

39 (f) The thirty-six month limitation on reimbursement
40 support does not apply to the award of medical expenses
41 incurred.

42 (g) For purposes of this section, "reimbursement support"
43 means the amount of money awarded as child support for a
44 period of time prior to the entry of the order which establishes
45 the support obligation.

§48-24-105. Representation of parties.

1 Notwithstanding any provision of this code to the contrary,
2 no parent in any proceeding brought pursuant to this article may
3 have counsel appointed for them according to section one,
4 article twenty-one, chapter twenty-nine of this code or other-
5 wise receive legal services provided solely by the state in such
6 action. The bureau for child support enforcement providing
7 representation to the state of West Virginia shall solely repre-
8 sent the state of West Virginia and does not provide any
9 representation to any party.

§48-24-106. Establishing paternity by acknowledgment of natural father.

1 A written, notarized acknowledgment executed pursuant to
2 the provisions of section twelve, article five, chapter sixteen of
3 this code legally establishes the man as the father of the child
4 for all purposes and child support may be established in
5 accordance with the support guidelines set forth in article 13-
6 101, et seq.

ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court for change of name; contents thereof; notice of application.

1 Any person desiring a change of his or her own name, or
2 that of his or her child or ward, may apply therefor to the circuit
3 court or any other court of record having jurisdiction of the
4 county in which he or she resides, or the judge thereof in
5 vacation, by petition setting forth that he or she has been a bona
6 fide resident of such county for at least one year prior to the

7 filing of the petition, the cause for which the change of name is
8 sought, and the new name desired; and previous to the filing of
9 such petition such person shall cause to be published a notice of
10 the time and place that such application will be made, which
11 notice shall be published as a Class I legal advertisement in
12 compliance with the provisions of article three, chapter fifty-
13 nine of this code, and the publication area for such publication
14 shall be the county.

§48-25-102. Objections to change of name.

1 Any person who is likely to be injured by the change of
2 name of any person so petitioning, or who knows of any reason
3 why the name of any such petitioner should not be changed,
4 may appear at the time and place named in the notice, and shall
5 be heard in opposition to such change.

§48-25-103. When court may order change of name.

1 Upon the filing of such petition, and upon proof of the
2 publication of such notice and of the matters set forth in the
3 petition, and being satisfied that no injury will be done to any
4 person by reason of such change, that reasonable and proper
5 cause exists for changing the name of petitioner, and that such
6 change is not desired because of any fraudulent or evil intent on
7 the part of the petitioner, the court or judge thereof in vacation
8 may order a change of name as applied for except as provided
9 by the provisions of this section. The court may not grant any
10 change of name for any person convicted of any felony during
11 the time that the person is incarcerated. The court may not grant
12 any change of name for any person required to register with the
13 state police pursuant to the provisions of article eight-f, chapter
14 sixty-one of this code during the period that such person is
15 required to register. The court may not grant a change of name
16 for persons convicted of first degree murder in violation of
17 section one, article two, chapter sixty-one of this code for a
18 period of ten years after the person is discharged from impris-
19 onment or is discharged from parole, whichever occurs later.
20 The court may not grant a change of name of any person
21 convicted of violating any provision of section fourteen-a,

22 article two, chapter sixty-one of this code for a period of ten
23 years after the person is discharged from imprisonment or is
24 discharged from parole, whichever occurs later.

§48-25-104. Recordation of order changing name.

1 When such order is made the petitioner shall forthwith
2 cause a certified copy thereof to be filed in the office of the
3 clerk of the county commission of the county where petitioner
4 resides, and such clerk shall record the same in a book to be
5 kept for the purpose and index the same under both the old and
6 the new names. For such recording and indexing the clerk shall
7 be allowed the same fee as for a deed.

§48-25-105. When new name to be used.

1 When such change has been ordered and a certified copy of
2 the order filed in the office of the county clerk, the new name
3 shall thenceforth be used in place of the former name.

§48-25-106. Unlawful change of name.

1 Any person residing in this state who shall change his or
2 her name, or assume another name, unlawfully, shall be guilty
3 of a misdemeanor and, upon conviction thereof, shall be fined
4 not exceeding one hundred dollars, and upon a repetition
5 thereof shall be confined in the county or regional jail not
6 exceeding sixty days.

§48-25-107. Unlawful change of name by certain felons and registrants.

1 (a) It is unlawful for any person convicted of first degree
2 murder in violation of section one, article two, chapter sixty-
3 one of this code, and for any person convicted of violating any
4 provision of section fourteen-a, article two, chapter sixty-one of
5 this code, for which a sentence of life imprisonment is imposed,
6 to apply for a change of name for a period of ten years after the

7 person is discharged from imprisonment or is discharged from
8 parole, whichever occurs later.

9 (b) It is unlawful for any person required to register with
10 the state police pursuant to the provisions of article twelve,
11 chapter fifteen of this code to apply for a change of name
12 during the period that the person is required to register.

13 (c) It is unlawful for any person convicted of a felony to
14 apply for a change of name during the period that such person
15 is incarcerated.

16 (d) A person who violates the provisions of subsection (a),
17 (b) or (c) of this section is guilty of a misdemeanor and, upon
18 conviction thereof, shall be fined not less than two hundred fifty
19 dollars nor more than ten thousand dollars or imprisoned in the
20 county or regional jail for not more than one year, or both fined
21 and incarcerated.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART 1. GENERAL PROVISIONS.

§48-26-101. Title.

1 This article shall be known as the “West Virginia Domestic
2 Violence Act”.

PART 2. DEFINITIONS.

§48-26-201. Applicability of definitions.

1 For purposes of this article, the words or terms defined in
2 this article, and any variation of those words or terms required
3 by the context, have the meanings ascribed to them. These
4 definitions are applicable unless a different meaning clearly
5 appears from the context.

§48-26-202. Board defined.

1 “Board” means the family protection services board
2 created pursuant to section 26-301 of this article.

§48-26-203. Department defined.

1 “Department” means the department of health and human
2 resources.

§48-26-204. Shelter defined.

1 “Shelter” or “family protection shelter” means a licensed
2 domestic violence shelter created for the purpose of receiving,
3 on a temporary basis, persons who are victims of domestic
4 violence, abuse or rape as well as the children of such victims.

§48-26-205. Secretary defined.

1 “Secretary” means the secretary of the department of
2 health and human resources.

§48-26-206. Family protection program defined.

1 “Family protection program” or “program” means a
2 licensed domestic violence program offered by a locally
3 controlled organization primarily for the purpose of providing
4 services to victims of domestic violence or abuse and their
5 children.

PART 3. FAMILY PROTECTION SERVICES BOARD.

§48-26-301. Family protection services board continued; terms.

1 (a) The family protection services board, previously
2 created, is continued. Membership of the board is comprised of
3 five persons. The governor, with the advice and consent of the
4 Senate, shall appoint three members of the board. One ap-
5 pointed member must be a commissioner of a shelter. One
6 appointed member must be a member of a major trade associa-
7 tion that represents shelters across the state. The final guberna-
8 torial appointee must be a member of the public. The other two
9 members are the secretary of the department of health and
10 human resources, or his or her designee, and the chairperson of

11 the governor's committee on crime, delinquency and correction,
12 or his or her designee.

13 (b) The terms of the three members appointed by the
14 governor are staggered terms of three years. The initial term of
15 the commissioner of the shelter is a one-year term, the initial
16 term of the representative of the trade association is a two-year
17 term and the initial term of the appointed member of the public
18 is a three-year term.

19 (c) In the event that a member of the board ceases to be
20 qualified for appointment, then his or her appointment termi-
21 nates.

PART 4. DUTIES OF FAMILY PROTECTION SERVICES BOARD.

§48-26-401. Duties of board generally.

1 It is the duty of the board to:

2 (1) Regulate its procedural practice;

3 (2) Receive and consider applications for the development
4 of shelters;

5 (3) Facilitate the formation and operation of shelters;

6 (4) Promulgate rules to implement the provisions of this
7 article and any applicable federal guidelines;

8 (5) Advise the secretary on matters of concern relative to
9 his or her responsibilities under this article;

10 (6) Study issues pertinent to family protection shelters,
11 programs for domestic violence victims, and report the results
12 to the governor and the Legislature;

13 (7) Conduct hearings as necessary under this article;

14 (8) Delegate to the secretary such powers and duties of the
15 board as the board may deem appropriate to delegate, including,
16 but not limited to, the authority to approve, disapprove, revoke
17 or suspend licenses;

18 (9) Deliver funds to shelters within forty-five days of the
19 approval of a proposal for such shelters;

20 (10) Establish a system of peer review which will ensure
21 the safety, well-being and health of the clients of all shelters
22 operating in the state;

23 (11) Evaluate annually each funded shelter to determine its
24 compliance with the goals and objectives set out in its original
25 application for funding or subsequent revisions;

26 (12) To award to shelters, for each fiscal year, ninety-five
27 percent of the total funds collected and paid over during the
28 fiscal year to the special revenue account established pursuant
29 to section 2-604 of this chapter and to expend, during said
30 period a sum not in excess of five percent of said funds for cost
31 of administering provisions of this article;

32 (13) Establish and enforce system of standards for annual
33 licensure for all shelters and programs in the state;

34 (14) Enforce standards; and

35 (15) Review its rules biannually.

§48-26-402. Duties regarding licenses for shelters and programs.

1 (a) The board shall establish an application for licensing all
2 shelters and programs.

3 (b) Licenses may be renewed on an annual basis with all
4 such licenses having a term of one year commencing on the
5 first day of July and terminating on the thirtieth day of June of
6 the next year.

7 (c) The board shall grant or deny any license within forty-
8 five days of the receipt of the application.

9 (d) The license granted by the board shall be conspicuously
10 displayed by the licensees.

11 (e) The board may grant a provisional license or grant a
12 waiver of licensure if the board deems such waiver or provi-
13 sional license necessary for the shelter or program. All such
14 waivers or provisional licenses shall be reviewed semi-annu-
15 ally.

§48-26-403. Duties regarding rules.

1 The board shall propose rules for legislative approval in
2 accordance with the provisions of article three, chapter twenty-
3 nine-a of this code to effectuate the provisions of this article.

**§48-26-404. Regulation of intervention programs for perpetra-
tors; required provisions; duties of providers.**

1 (a) The family protection services board shall propose rules
2 for legislative approval in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code governing the
4 minimum level of responsibility, service and accountability
5 expected from providers of programs of intervention for
6 perpetrators of domestic violence. These rules shall be devel-
7 oped in consultation with public and private agencies that
8 provide programs for victims of domestic violence and pro-
9 grams of intervention for perpetrators, with advocates for
10 victims, with organizations that represent the interests of
11 shelters, and with persons who have demonstrated expertise and
12 experience in providing services to victims and perpetrators of
13 domestic violence and their children. If a program of interven-
14 tion for perpetrators receives funds from the state or is licensed
15 by the state, the board shall review the program's compliance
16 with the rules promulgated pursuant to this subsection.

17 (b) The rules for programs for intervention for perpetrators
18 of domestic violence shall include:

19 (1) Criteria concerning a perpetrator's appropriateness for
20 the program;

21 (2) Systems for communication and evaluation among the
22 referring court, the public and private agencies that provide
23 programs for victims of domestic violence and the programs of
24 intervention for perpetrators; and

25 (3) Required qualifications concerning education, training
26 and experience for providers of intervention programs.

27 (c) The standards shall be based upon and incorporate the
28 following principles:

29 (1) The focus of a program is to end the acts of violence
30 and ensure the safety of the victim and any children or other
31 family or household members;

32 (2) Domestic violence constitutes behavior for which the
33 perpetrator is accountable; and

34 (3) Although alcohol and substance abuse often exacerbate
35 domestic violence, it is a separate problem which requires
36 specialized intervention or treatment.

37 (d) Providers of perpetrator intervention programs:

38 (1) Shall require participants to sign the following releases:

39 (A) Allowing the provider to inform the victim and the
40 victim's advocates that the perpetrator is participating in a
41 batterers' intervention prevention program with the provider
42 and to provide information to the victim and the victim's
43 advocates, if necessary, for the victim's safety;

44 (B) Allowing prior and current treating agencies to provide
45 information about the perpetrator to the provider; and

46 (C) Allowing the provider, for good cause, to provide
47 information about the perpetrator to relevant legal entities,
48 including courts, parole officers, probation officers and child
49 protective services;

50 (2) Shall report to the court, if the participation was court
51 ordered, and to the victim, if the victim requests and provides
52 a method of notification, any assault, failure to comply with
53 program requirements, failure to attend the program and threat
54 of harm by the perpetrator;

55 (3) Shall report to the victim, without the participant's
56 authorization, all threats of harm;

57 (4) May report to the victim, without the participant's
58 authorization, the participant's failure to attend.

**§48-26-405. Licensing providers of intervention programs for
perpetrators.**

1 (a) The board shall establish an application for licensure for
2 all providers of programs of intervention for perpetrators in
3 accordance with section 26-404 of this article.

4 (b) Licenses may be renewed on an annual basis with all
5 such licenses having a term of one year commencing on the
6 first day of July and terminating on the thirtieth day of June on
7 the next year.

8 (c) The board shall grant or deny any license within forty-
9 five days of the receipt of the application.

10 (d) The license granted by the board shall be conspicuously
11 displayed by the licensees.

12 (e) The board may grant a provisional license or grant a
13 waiver of licensure if the board deems such waiver or provi-
14 sional license necessary for the operation of a program. All
15 such waivers or provisional licenses shall be reviewed semian-
16 nually.

§48-26-406. Closure of shelters; provisional licensee waivers.

1 (a) The board may close any shelter which violates the
2 standards established under this article and which threatens the
3 health, well being and safety of its clients: *Provided*, That the
4 board shall establish a plan to place such clients in other
5 shelters and to develop a method to continue serving the areas
6 served by the shelter to be closed.

7 (b) The board may place a shelter, which violates standards
8 established under this article and which threatens the health,
9 well being and safety of its clients, under receivership and
10 operate said shelter. The board shall have access and may use
11 all assets of the shelter.

12 (c) In order to close or place a shelter in receivership, the
13 board shall hold a public hearing within the confines of
14 municipality or county in which the shelter is located. The
15 board, by the first day of September, one thousand nine hundred
16 eighty-nine, shall establish rules and regulations to govern the
17 conduct of such hearings: *Provided*, That four members of the
18 board must vote in the affirmative before a shelter is closed or
19 placed in receivership.

20 (d) If a shelter disagrees with the findings of the board, the
21 shelter may appeal such ruling to the circuit court of Kanawha
22 County or the circuit court of the county where the shelter is
23 located pursuant to the provisions of section four, article five,
24 chapter twenty-nine-a of this code.

PART 5. DUTIES OF THE BUREAU FOR PUBLIC HEALTH.

§48-26-501. Development of state public health plan for reducing domestic violence.

1 (a) The bureau for public health of the department of health
2 and human resources, in consultation with the family protection
3 services board, shall:

4 (1) Assess the impact of domestic violence on public
5 health; and

6 (2) Develop a state public health plan for reducing the
7 incidence of domestic violence in this state.

8 (b) The state public health plan shall:

9 (1) Include, but not be limited to, public education, includ-
10 ing the use of the various communication media to set forth the
11 public health perspective on domestic violence;

12 (2) Be developed in consultation with public and private
13 agencies that provide programs for victims of domestic vio-
14 lence, advocates for victims, organizations representing the
15 interests of shelters, and persons who have demonstrated
16 expertise and experience in providing health care to victims of
17 domestic violence and their children; and

18 (3) Be completed on or before the first day of January, two
19 thousand.

20 (c) The bureau for public health of the department of health
21 and human resources shall:

22 (1) Transmit a copy of the state public health plan to the
23 governor and the Legislature; and

24 (2) Review and update the state public health plan annually.

**§48-26-502. Notice of victims' rights, remedies and available
services; required information.**

1 (a) The bureau for public health of the department of health
2 and human resources shall make available to health care
3 facilities and practitioners a written form notice of the rights of
4 victims and the remedies and services available to victims of
5 domestic violence.

6 (b) A health care practitioner whose patient has injuries or
7 conditions consistent with domestic violence shall provide to

8 the patient, and every health care facility shall make available
9 to all patients, a written form notice of the rights of victims and
10 the remedies and services available to victims of domestic
11 violence.

§48-26-503. Standards, procedures and curricula.

1 (a) The bureau for public health of the department of health
2 and human resources shall publish model standards, including
3 specialized procedures and curricula, concerning domestic
4 violence for health care facilities, practitioners and personnel.

5 (b) The procedures and curricula shall be developed in
6 consultation with public and private agencies that provide
7 programs for victims of domestic violence, advocates for
8 victims, organizations representing the interests of shelters and
9 personnel who have demonstrated expertise and experience in
10 providing health care to victims of domestic violence and their
11 children.

PART 6. FUNDING.

§48-26-601. Funding application requirements.

1 (a) A shelter or program may apply to the board for a grant
2 of funds as provided by this article. The application shall
3 include, but not be limited to, the following:

4 (1) Evidence that the organization submitting the applica-
5 tion is incorporated in this state as a nonprofit corporation;

6 (2) A list of the incorporators of the corporation and a list
7 of the officers and the board of directors;

8 (3) The proposed budget of the shelter or program for the
9 following fiscal year;

10 (4) A summary of the services proposed to be offered in the
11 following fiscal year by the shelter or program;

12 (5) An evaluation of local needs for a shelter or program;

13 (6) An estimate of the number of people to be served by the
14 shelter or program during the following fiscal year; and

15 (7) Any other information the board may feel is necessary.

16 (b) In order to qualify for a grant of funds under this article,
17 each family protection shelter or program shall:

18 (1) Provide or propose to provide a facility which will serve
19 as temporary shelter to receive, care and provide services for
20 persons who are victims of domestic violence or abuse and their
21 children;

22 (2) Be incorporated in this state as a nonprofit corporation;

23 (3) Have a board of directors which represents a broad
24 spectrum of the community to be served, including at least one
25 person who is or has been a victim of domestic violence or
26 abuse;

27 (4) Receive at least fifty-five percent of its funds from
28 sources other than funds distributed under this article. These
29 sources may be public or private and may include contributions
30 of goods or services; and

31 (5) Require persons employed by or volunteering services
32 to the shelter or program to maintain the confidentiality of any
33 information which may identify individuals served by it.

34 (c) A family protection shelter or program may not be
35 funded initially if it is shown that it discriminates in its services
36 on the basis of race, religion, age, sex, marital status, national
37 origin or ancestry. If such discrimination occurs after initial
38 funding, the shelter or program may not be refunded until the
39 discrimination ceases.

40 (d) A family protection shelter program may not be
41 refunded if its original application projected the provision of

42 residential services and such services were not provided in the
43 first six months following disbursement of the original funds
44 under this article: *Provided*, That upon a subsequent showing
45 that the funds were used in the manner proposed in the original
46 application, the shelter or program is not barred from subse-
47 quent funding. A revision of the original application may be
48 filed with the board.

§48-26-602. Award provisions.

1 Grants made pursuant to this article shall be awarded on the
2 basis of the following criteria:

- 3 (1) Demonstration of local need for proposed services;
- 4 (2) Merit of project as proposed;
- 5 (3) Demonstration of local control of the shelter or pro-
6 gram;
- 7 (4) Administrative design and efficiency of the project; and
- 8 (5) The board shall develop a formula for equal distribution
9 of fifty percent of any money it awards.

§48-26-603. Domestic violence legal services fund.

1 There is hereby established in the state treasury a special
2 revenue account, designated as the “domestic violence legal
3 services fund”, which shall be an appropriated fund for receipt
4 of grants, gifts, fees, or federal or state funds designated for
5 legal services for domestic violence victims. Expenditures from
6 the fund shall be limited to attorneys employed by domestic
7 violence shelters, or employed by nonprofit agencies which
8 establish a collaborative relationship with a domestic violence
9 shelter, that provide civil legal services to victims of domestic
10 violence.

§48-26-604. Annual reports of shelters and programs receiving funds.

1 A shelter or program receiving funds pursuant to this article
2 shall file an annual report with the board by the thirty-first day

3 of each October for the prior fiscal year. The report shall
4 include statistics on the number of persons served, the relation-
5 ship of the victim to the abuser, services provided to the abuser,
6 the number of referrals made for medical, psychological,
7 financial, educational, vocational, child care or legal services
8 and the results of an independent audit. No information
9 contained in the report may identify any person served by the
10 shelter or enable any person to determine the identity of any
11 such person.

PART 7. CONFIDENTIALITY.

§48-26-701. Confidentiality.

1 (a) No program or shelter receiving funds pursuant to this
2 article shall disclose or be compelled to disclose, release or be
3 compelled to release any written records created or maintained
4 in providing services pursuant to this article except:

5 (1) Upon written consent of the person seeking or who has
6 sought services from the program or the shelter;

7 (2) In any proceeding brought under sections four and five,
8 article six, chapter nine of this code or article six, chapter forty-
9 nine of this code;

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

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

16 (5) To protect against a clear and substantial danger of
17 imminent injury by a client to himself or herself or another;

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

21 (b) No consent or authorization for the transmission or
22 disclosure of confidential information shall be effective unless
23 it is in writing and signed by the client. Every person signing an
24 authorization shall be given a copy.

PART 8. EDUCATION CONCERNING DOMESTIC VIOLENCE.

§48-26-801. Continuing education for certain state employees.

1 (a) (1) Subject to the provisions of subdivision (2) of this
2 subsection, the department of health and human resources shall
3 provide or require continuing education concerning domestic
4 violence for child protective services workers, adult protective
5 services workers, social services workers, family support
6 workers and workers in the bureau for child support enforce-
7 ment.

8 (2) Funding for the continuing education provided or
9 required under subdivision (1) of this section may not exceed
10 the amounts allocated for that purpose by the spending unit
11 from existing appropriations. No provision of this section may
12 be construed to require the Legislature to make any appropria-
13 tion.

14 (b) The courses or requirements shall be prepared and
15 presented in consultation with public and private agencies that
16 provide programs for victims of domestic violence or programs
17 of intervention for perpetrators, advocates for victims, organiza-
18 tions representing the interests of shelters and the family
19 protection services board.

**§48-26-802. Continuing education for law-enforcement officers
concerning domestic violence.**

1 (a)(1) Subject to the provisions of subdivision (2) of this
2 subsection, as a part of the initial law-enforcement officer
3 training required before a person may be employed as a law-
4 enforcement officer pursuant to article twenty-nine, chapter

5 thirty of this code, all law-enforcement officers shall receive
6 training concerning domestic violence.

7 (2) Funding for the training required under subdivision (1)
8 of this section may not exceed the amounts allocated by the
9 spending unit for that purpose from existing appropriations. No
10 provision of this section may be construed to require the
11 Legislature to make any appropriation.

12 (b) The course of instruction and the objectives in learning
13 and performance for the education of law-enforcement officers
14 required pursuant to this section shall be developed and
15 presented in consultation with public and private providers of
16 programs for victims of domestic violence and programs of
17 intervention for perpetrators, persons who have demonstrated
18 expertise in training and education concerning domestic
19 violence and organizations representing the interests of shelters.

§48-26-803. Judicial education on domestic violence.

1 (a) (1) Subject to the provisions of subdivision (2) of this
2 subsection, as a part of existing training for court personnel, the
3 supreme court of appeals shall develop and present courses of
4 continuing education concerning domestic violence for magis-
5 trates assistants, and juvenile and adult probation officers.

6 (2) Funding for the continuing education required under
7 subdivision (1) of this section may not exceed the amounts
8 allocated for that purpose by the supreme court of appeals from
9 existing appropriations. No provision of this section may be
10 construed to require the Legislature to make any appropriation.

11 (b) The course of instruction shall be prepared and may be
12 presented in consultation with public and private agencies that
13 provide programs for victims of domestic violence and pro-
14 grams of intervention for perpetrators, advocates for victims,
15 persons who have demonstrated expertise in training and
16 education concerning domestic violence, organizations repre-

17 sending the interests of shelters and the family protection
18 services board.

§48-26-804. Required curricula for public education system.

1 (a)(1) Subject to the provisions of subdivision (2) of this
2 subsection, the state board of education shall select or develop:

3 (A) Curricula that are appropriate for various ages for
4 pupils concerning the dynamics of violence, prevention of
5 violence, including domestic violence; and

6 (B) Curricula for school counselors, health care personnel,
7 administrators and teachers concerning domestic violence.

8 (2) Funding for selecting or developing the curricula
9 required under subdivision (1) of this section may not exceed
10 the amounts allocated for that purpose by the spending unit
11 from existing appropriations. No provision of this section may
12 be construed to require the Legislature to make any appropria-
13 tion.

14 (b) The curricula shall be selected or developed by the state
15 board of education in consultation with public and private
16 agencies that provide programs for conflict resolution, violence
17 prevention, victims of domestic violence and programs of
18 intervention for perpetrators of domestic violence, advocates
19 for victims, organizations representing the interests of shelters,
20 persons who have demonstrated expertise and experience in
21 education and domestic violence and the family protection
22 services board.

**§48-26-805. Continuing education for school personnel who are
required to report child abuse and neglect.**

1 (a) (1) Subject to the provisions of subdivision (2) of this
2 subsection, the state department of education shall provide or
3 require courses of continuing education concerning domestic

4 violence for employees who are required by law to report child
5 abuse or neglect.

6 (2) Funding for the continuing education provided or
7 required under subdivision (1) of this section may not exceed
8 the amounts allocated for that purpose by the spending unit
9 from existing appropriations. No provision of this section may
10 be construed to require the Legislature to make any appropria-
11 tion.

12 (b) The courses or requirements shall be prepared and
13 presented in consultation with public and private agencies that
14 provide programs for victims of domestic violence, persons
15 who have demonstrated expertise in education and domestic
16 violence, advocates for victims, organizations representing the
17 interests of shelters and the family protection services board.

PART 9. LOCAL ADVISORY COUNCILS.

§48-26-901. Establishment of local advisory councils authorized.

1 A local government, a county or a combination thereof
2 may establish an advisory council on domestic violence.

§48-26-902. Purpose of local advisory councils.

1 The purpose of a local advisory council is to increase the
2 awareness and understanding of domestic violence and its
3 consequences and to reduce the incidence of domestic violence
4 within the locality by:

5 (1) Promoting effective strategies for identification of the
6 existence of domestic violence and intervention by public and
7 private agencies serving persons who are victims of domestic
8 violence;

9 (2) Providing for public education;

10 (3) Facilitating communication among public and private
11 agencies that provide programs to assist victims and programs
12 of intervention for perpetrators;

13 (4) Providing assistance to public and private agencies and
14 providers of services to develop statewide procedures and
15 community and staff education, including procedures to review
16 fatalities; and

17 (5) Developing a comprehensive plan of data collection
18 concerning domestic violence in cooperation with courts,
19 prosecutors, law-enforcement officers, health care practitioners
20 and other local agencies, in a manner that protects the identity
21 of victims of domestic violence. Nothing contained in this
22 subdivision shall be construed to modify or diminish any
23 existing law relating to the confidentiality of records.

PART 10. RESERVED.

PART 11. MISCELLANEOUS PROVISIONS.

§48-26-1101. Referral to shelters.

1 Where shelters are available, the law-enforcement officer
2 or other public authority investigating an alleged incident of
3 domestic violence shall advise the victim of the availability of
4 the family protection shelter to which that person may be
5 admitted.

§48-26-1102. Continuation of board.

1 After having conducted a performance audit through its
2 joint committee on government operations, pursuant to article
3 ten, chapter four of this code, the Legislature hereby finds and
4 declares that the family protection services board should be
5 continued and reestablished. Accordingly, notwithstanding the
6 provisions of said article, the family protection services board
7 shall continue to exist until the first day of July, two thousand
8 six, unless sooner terminated, continued or reestablished by act
9 of the Legislature.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 1. GENERAL PROVISIONS.

§48-27-101. Findings and purposes.

1 (a) The Legislature of this state finds that:

2 (1) Every person has a right to be safe and secure in his or
3 her home and family and to be free from domestic violence.

4 (2) Children are often physically assaulted or witness
5 violence against one of their parents or other family or house-
6 hold members, violence which too often ultimately results in
7 death. These children may suffer deep and lasting emotional
8 harm from victimization and from exposure to domestic
9 violence;

10 (3) Domestic violence is a major health and
11 law-enforcement problem in this state with enormous costs to
12 the state in both dollars and human lives. It affects people of all
13 racial and ethnic backgrounds and all socioeconomic classes;
14 and

15 (4) Domestic violence can be deterred, prevented or
16 reduced by legal intervention that treats this problem with the
17 seriousness that it deserves.

18 (b) This article shall be liberally construed and applied to
19 promote the following purposes:

20 (1) To assure victims of domestic violence the maximum
21 protection from abuse that the law can provide;

22 (2) To create a speedy remedy to discourage violence
23 against family or household members with whom the perpe-
24 trator of domestic violence has continuing contact;

25 (3) To expand the ability of law-enforcement officers to
26 assist victims, to enforce the domestic violence law more
27 effectively, and to prevent further abuse;

28 (4) To facilitate equal enforcement of criminal law by
29 deterring and punishing violence against family and household
30 members as diligently as violence committed against strangers;

31 (5) To recognize that domestic violence constitutes serious
32 criminal behavior with potentially tragic results and that it will
33 no longer be excused or tolerated; and

34 (6) To recognize that the existence of a former or on-going
35 familial or other relationship should not serve to excuse,
36 explain or mitigate acts of domestic violence which are
37 otherwise punishable as crimes under the laws of this state.

PART 2. DEFINITIONS.

§48-27-201. Applicability of definitions.

1 For the purposes of this article and article 26-101, et seq.,
2 of this chapter, the words or terms defined in this article, and
3 any variation of those words or terms required by the context,
4 have the meanings ascribed to them in this section. These
5 definitions are applicable unless a different meaning clearly
6 appears from the context.

§48-27-202. Domestic violence defined.

1 “Domestic violence”, or “abuse” means the occurrence of
2 one or more of the following acts between family or household
3 members, as that term is defined in section 27-203:

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

7 (2) Placing another in reasonable apprehension of physical
8 harm;

9 (3) Creating fear of physical harm by harassment, psycho-
10 logical abuse or threatening acts;

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

14 (5) Holding, confining, detaining or abducting another
15 person against that person's will.

§48-27-203. Family or household members defined.

1 "Family or household members" means persons who:

2 (1) Are or were married to each other;

3 (2) Are or were living together as spouses;

4 (3) Are or were sexual or intimate partners;

5 (4) Are or were dating: *Provided*, That a casual acquaint-
6 tance or ordinary fraternization between persons in a business
7 or social context does not establish a dating relationship;

8 (5) Are or were residing together in the same household;

9 (6) Are or were related by marriage or related by consan-
10 guinity within the second degree;

11 (7) Have a child in common, regardless of whether they
12 have ever married or lived together; or

13 (8) Are the father, stepfather, mother, stepmother, brother
14 or sister of a family or household member described in subdivi-
15 sions one through seven of this subsection.

§48-27-204. Law-enforcement agency defined.

1 (a) "Law-enforcement agency" means and is limited to:

2 (1) The state police and its members;

3 (2) A county sheriff and his or her law-enforcement
4 deputies; and

5 (3) A police department in any municipality as defined in
6 section two, article one, chapter eight of this code.

7 (b) The term “law-enforcement agency” includes the
8 department of health and human resources in those instances of
9 child abuse reported to the department that are not otherwise
10 reported to any other law-enforcement agency.

§48-27-205. Program for victims of domestic violence defined.

1 “Program for victims of domestic violence” means a
2 licensed program for victims of domestic violence and their
3 children, which program provides advocacy, shelter, crisis
4 intervention, social services, treatment, counseling, education
5 or training.

§48-27-206. Program of intervention for perpetrators defined.

1 “Program of intervention for perpetrators” means a
2 licensed program, where available, or if no licensed program is
3 available, a program that:

4 (1) Accepts perpetrators of domestic violence into educa-
5 tional intervention groups or counseling pursuant to a court
6 order; or

7 (2) Offers educational intervention groups to perpetrators
8 of domestic violence.

PART 3. PROCEDURE.

§48-27-301. Jurisdiction.

1 Circuit courts and magistrate courts, as constituted under
2 chapter fifty of this code, have concurrent jurisdiction over
3 proceedings under this article: *Provided*, That on and after the
4 first day of September, two thousand one, magistrate court

5 jurisdiction shall be limited, and thereafter, final hearings
6 wherein a protective order is sought shall be heard before a
7 circuit judge or a family law master.

§48-27-302. Venue.

1 The action may be heard in the county in which the
2 domestic violence occurred, in the county in which the respon-
3 dent is living or in the county in which the petitioner is living,
4 either temporarily or permanently. If the parties are married to
5 each other, the action may also be brought in the county in
6 which an action for divorce between the parties may be brought
7 as provided by 5-106.

§48-27-303. Effect of petitioner leaving residence.

1 The petitioner's right to relief under this article shall not be
2 affected by his or her leaving a residence or household to avoid
3 further abuse.

§48-27-304. Commencement of proceeding.

1 (a) An action under this article is commenced by the filing
2 of a verified petition.

3 (b) No person shall be refused the right to file a petition
4 under the provisions of this article. No person shall be denied
5 relief under the provisions of this article if she or he presents
6 facts sufficient under the provisions of this article for the relief
7 sought.

8 (c) Husband and wife are competent witnesses in domestic
9 violence proceedings and cannot refuse to testify on the
10 grounds of the privileged nature of their communications.

§48-27-305. Persons who may file petition.

1 A petition for a protective order may be filed by:

2 (1) A person seeking relief under this article for herself or
3 himself;

4 (2) An adult family or household member for the protection
5 of the victim or for any family or household member who is a
6 minor child or physically or mentally incapacitated to the extent
7 that he or she cannot file on his or her own behalf, or

8 (3) A person who reported or was a witness to domestic
9 violence and who, as a result, has been abused, threatened,
10 harassed or who has been the subject of other actions intended
11 to intimidate the person.

§48-27-306. Counterclaim or affirmative defenses.

1 (a) A respondent named in a petition alleging domestic
2 violence may file a verified counterclaim stating any claim that
3 the respondent has against the petitioner that would be a basis
4 for filing a petition under this article.

5 (b) In response to a petition or counterclaim, the person
6 alleged to have committed the domestic violence may assert
7 any affirmative defense that he or she may have available.

§48-27-307. Persons accompanying petitioner.

1 No person accompanying a person who is seeking to file a
2 petition under the provisions of this article is precluded from
3 being present if his or her presence is desired by the person
4 seeking a petition unless the person's behavior is disruptive to
5 the proceeding.

§48-27-308. Charges for fees and costs postponed.

1 No fees shall be charged for the filing of petitions or other
2 papers, service of petitions or orders, copies of orders, or other
3 costs for services provided by, or associated with, any proceed-
4 ings under this article until the matter is brought before the
5 court for final resolution.

§48-27-309. Priority of petitions.

1 Any petition filed under the provisions of this article shall
2 be given priority over any other civil action before the court,

3 except actions in which trial is in progress, and shall be
4 docketed immediately upon filing. Any appeal to the circuit
5 court of a magistrate's judgment on a petition for relief under
6 this article shall be heard within ten working days of the filing
7 of the appeal.

§48-27-310. Full faith and credit.

1 Any protective order issued pursuant to this article shall be
2 effective throughout the state in every county. Any protective
3 order issued by any other state, territory or possession of the
4 United States, Puerto Rico, the District of Columbia or Indian
5 tribe shall be accorded full faith and credit and enforced as if it
6 were an order of this state whether or not such relief is available
7 in this state. A protective order from another jurisdiction is
8 presumed to be valid if the order appears authentic on its face
9 and shall be enforced in this state. If the validity of the order is
10 contested, the court or law enforcement to which the order is
11 presented shall, prior to the final hearing, determine the
12 existence, validity and terms of such order in the issuing
13 jurisdiction. A protective order from another jurisdiction may
14 be enforced even if the order is not entered into the state
15 law-enforcement information system described by 27-802.

§48-27-311. Service of process.

1 A protective order may be served on the respondent by
2 means of a Class I legal advertisement published notice, with
3 the publication area being the county in which the respondent
4 resides, published in accordance with the provisions of section
5 two, article three, chapter fifty-nine of this code if: (1) The
6 petitioner files an affidavit with the court stating that an attempt
7 at personal service pursuant to rule four of the West Virginia
8 rules of civil procedure has been unsuccessful or evidence is
9 adduced at the hearing for the protective order that the respon-
10 dent has left the state of West Virginia; and (2) a copy of the
11 order is mailed by certified or registered mail to the respondent
12 at the respondent's last known residence and returned undeliv-
13 ered.

**PART 4. COORDINATION WITH PENDING
CIRCUIT COURT ACTIONS.**

§48-27-401. Proceedings when divorce action is pending.

1 (a) During the pendency of a divorce action, a person may
2 file for and be granted relief provided by this article, until an
3 order is entered in the divorce action pursuant to part 5-501, et
4 seq.

5 (b) If a person who has been granted relief under this article
6 should subsequently become a party to an action for divorce,
7 separate maintenance or annulment, such person shall remain
8 entitled to the relief provided under this article including the
9 right to file for and obtain any further relief, so long as no
10 temporary order has been entered in the action for divorce,
11 annulment and separate maintenance, pursuant to part 5-501, et
12 seq.

13 (c) Except as provided in section 27-402 of this article for
14 a petition and a temporary emergency protective order, no
15 person who is a party to a pending action for divorce, separate
16 maintenance or annulment in which an order has been entered
17 pursuant to part 5-501, et seq., of this chapter, shall be entitled
18 to file for or obtain relief against another party to that action
19 under this article until after the entry of a final order which
20 grants or dismisses the action for divorce, annulment or
21 separate maintenance.

22 (d) Notwithstanding the provisions set forth in section 27-
23 505, any order issued pursuant to this section where a subse-
24 quent action is filed seeking a divorce, annulment or separate
25 maintenance, shall remain in full force and effect by operation
26 of this statute until a temporary or final order is issued pursuant
27 to section part 5-501, et seq., or a final order granting or
28 dismissing the action for divorce, annulment or separate
29 maintenance.

§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.

1 (a) The provisions of this section apply where a temporary
2 order has been entered by a family law master or judge in an
3 action for divorce, annulment or separate maintenance, notwith-
4 standing the provisions of subsection 27-401(c).

5 (b) A person who is a party to an action for divorce,
6 annulment or separate maintenance in which a temporary order
7 has been entered pursuant to section 5-501 of this chapter may
8 petition the magistrate court for a temporary emergency
9 protective order pursuant to this section for any violation of the
10 provisions of this article occurring after the date of entry of the
11 temporary order pursuant to section 5-501 of this chapter.

12 (c) The only relief that a magistrate may award pursuant to
13 this section is a temporary emergency protective order:

14 (1) Directing the respondent to refrain from abusing the
15 petitioner or minor children or both;

16 (2) Ordering the respondent to refrain from entering the
17 school, business or place of employment of the petitioner or
18 household members or family members for the purpose of
19 violating the protective order; and

20 (3) Ordering the respondent to refrain from contacting,
21 telephoning, communicating with, harassing or verbally abusing
22 the petitioner.

23 (d) A temporary emergency protective order may modify an
24 award of custody or visitation only upon a showing, by clear
25 and convincing evidence, of the respondent's abuse of a child,
26 as abuse is defined in section 27-202. An order of modification
27 shall clearly state which party has custody and describe why
28 custody or visitation arrangements were modified.

29 (e) The magistrate shall forthwith transmit a copy of any
30 temporary emergency protective order, together with a copy of
31 the petition, by mail or by facsimile machine to the family law
32 master before whom the action is pending and to
33 law-enforcement agencies. Upon receipt of the petition and
34 order, the master shall examine its provisions. Within ten days
35 of the magistrate's issuance of the temporary emergency
36 protective order, the master shall issue an order either to extend
37 such emergency protection for a time certain or to vacate the
38 magistrate's order. The master shall forthwith give notice to all
39 parties and to the issuing magistrate court. The magistrate court
40 clerk shall forward a copy of the master's order to
41 law-enforcement agencies.

42 If no temporary order has been entered in the pending
43 action for divorce, annulment or separate maintenance, the
44 master shall forthwith return the order with such explanation to
45 the issuing magistrate. The magistrate who issued the order
46 shall vacate the order, noting thereon the reason for termination.
47 The magistrate court clerk shall transmit a copy of the vacated
48 order to the parties and law-enforcement agencies.

§48-27-403. Temporary orders of court; hearings; persons present.

1 (a) Upon filing of a verified petition under this article, the
2 court may enter such temporary orders as it may deem neces-
3 sary to protect the petitioner or minor children from domestic
4 violence and, upon good cause shown, may do so ex parte
5 without the necessity of bond being given by the petitioner.
6 Clear and convincing evidence of immediate and present danger
7 of abuse to the petitioner or minor children shall constitute
8 good cause for the issuance of an ex parte order pursuant to this
9 section. If the respondent is not present at the proceeding, the
10 petitioner or the petitioner's legal representative shall certify to
11 the court, in writing, the efforts which have been made to give
12 notice to the respondent or just cause why notice should not be
13 required. Copies of medical reports or records may be admitted
14 into evidence to the same extent as though the original thereof.

15 The custodian of such records shall not be required to be
16 present to authenticate such records for any proceeding held
17 pursuant to this subsection. Following such proceeding, the
18 court shall order a copy of the petition to be served immediately
19 upon the respondent, together with a copy of any temporary
20 order issued pursuant to the proceedings, notice setting forth the
21 time and place of the final hearing and a statement of the right
22 of the respondent to be present and to be represented by
23 counsel. Copies of any order made under the provisions of this
24 section shall also be issued to the petitioner and any
25 law-enforcement agency having jurisdiction to enforce the
26 order, including municipal police, the county sheriff's office
27 and local office of the state police, within twenty-four hours of
28 the entry of the order. A temporary protective order is effective
29 until such time as a hearing is held and is in full force and effect
30 in every county in this state.

31 (b) Within five days following the issuance of the court's
32 temporary order, a final hearing shall be held at which the
33 petitioner must prove the allegation of domestic violence, or
34 that he or she reported or witnessed domestic violence against
35 another and has, as a result, been abused, threatened, harassed
36 or has been the subject of other actions to attempt to intimidate
37 him or her, by a preponderance of the evidence, or such petition
38 shall be dismissed. If the respondent has not been served with
39 notice of the temporary order, the hearing may be continued in
40 order to permit service to be effected. The failure to obtain
41 service upon the respondent does not constitute a basis for
42 dismissing the petition. Copies of medical reports may be
43 admitted into evidence to the same extent as though the original
44 thereof, upon proper authentication, by the custodian of such
45 records.

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

51 by the court to be disruptive may be precluded from being
52 present.

53 (d) If a hearing is continued, the court may make or extend
54 such temporary orders as it deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

§48-27-501. Issuance of protective order; modification of order.

1 (a) The court shall enter a protective order if it finds, after
2 hearing the evidence adduced by the parties, that the petitioner
3 has proved the allegations of domestic violence by a preponder-
4 ance of the evidence. If the respondent is present at the hearing
5 and elects not to contest the allegations of domestic violence or
6 does not contest the relief sought, the petitioner is not required
7 to adduce evidence and prove the allegations of domestic
8 violence and the court may directly address the issues of the
9 relief requested.

10 (b) The court may modify the terms of a protective order at
11 any time upon subsequent petition filed by any party.

§48-27-502. Mandatory provisions in protective order.

1 (a) A protective order must order the respondent to refrain
2 from abusing, harassing, stalking, threatening or otherwise
3 intimidating the petitioner or the minor children, or engaging in
4 other conduct that would place the petitioner or the minor
5 children in reasonable fear of bodily injury.

6 (b) The protective order must inform the respondent that he
7 or she is prohibited from possessing any firearm or ammuni-
8 tion, notwithstanding the fact that the respondent may have a
9 valid license to possess a firearm, and that possession of a
10 firearm or ammunition while subject to the court's protective
11 order is a criminal offense under federal law.

12 (c) The protective order must inform the respondent that the
13 order is in full force and effect in every county of this state.

14 (d) The protective order must contain on its face the
15 following statement, printed in bold-faced type or in capital
16 letters:

17 "VIOLATION OF THIS ORDER MAY BE PUNISHED
18 BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL
19 FOR AS LONG AS ONE YEAR AND BY A FINE OF AS
20 MUCH AS TWO THOUSAND DOLLARS".

§48-27-503. Permissive provisions in protective order.

1 The terms of a protective order may include:

2 (1) Granting possession to the petitioner of the residence or
3 household jointly resided in at the time the abuse occurred;

4 (2) Awarding temporary custody of or establishing tempo-
5 rary visitation rights with regard to minor children named in the
6 order;

7 (3) Establishing terms of temporary visitation with regard
8 to the minor children named in the order including, but not
9 limited to, requiring third party supervision of visitations if
10 necessary to protect the petitioner and/or the minor children;

11 (4) Ordering the noncustodial parent to pay to the caretaker
12 parent a sum for temporary support and maintenance of the
13 petitioner and children, if any;

14 (5) Ordering the respondent to pay to the petitioner a sum
15 for temporary support and maintenance of the petitioner, where
16 appropriate;

17 (6) Ordering the respondent to refrain from entering the
18 school, business or place of employment of the petitioner or
19 household or family members for the purpose of violating the
20 protective order;

21 (7) Ordering the respondent to participate in an intervention
22 program for perpetrators;

23 (8) Ordering the respondent to refrain from contacting,
24 telephoning, communicating, harassing or verbally abusing the
25 petitioner.

26 (9) Providing for either party to obtain personal property or
27 other items from a location, including granting temporary
28 possession of motor vehicles owned by either or both of the
29 parties, and providing for the safety of the parties while this
30 occurs, including ordering a law-enforcement officer to
31 accompany one or both of the parties.

32 (10) Ordering the respondent to reimburse the petitioner or
33 other person for any expenses incurred as a result of the
34 domestic violence, including, but not limited to, medical
35 expenses, transportation and shelter; and

36 (11) Ordering the petitioner and respondent to refrain from
37 transferring, conveying, alienating, encumbering, or otherwise
38 dealing with property which could otherwise be subject to the
39 jurisdiction of the court or another court in an action for divorce
40 or support, partition or in any other action affecting their
41 interests in property.

**§48-27-504. Provisions in protective order for person witnessing
or reporting domestic violence.**

1 When the person to be protected is a person who reported
2 or was a witness to the domestic violence, the terms of a
3 protective order may order the respondent:

4 (1) Order the respondent to refrain from abusing, contact-
5 ing, telephoning, communicating, harassing, verbally abusing
6 or otherwise intimidating the person to be protected; and

7 (2) Order the respondent to refrain from entering the
8 school, business or place of employment of the person to be
9 protected for the purpose of violating the protective order.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

1 (a) Except as otherwise provided by subsection 27-401(d)
2 of this article, a protective order issued by a magistrate, family
3 law master or circuit judge pursuant to this article is effective
4 for either ninety days or one hundred eighty days, in the
5 discretion of the court. If the court enters an order for a period
6 of ninety days, upon receipt of a written request from the
7 petitioner prior to the expiration of the ninety day period, the
8 court shall extend its order for an additional ninety-day period.

9 (b) To be effective, a written request to extend an order
10 from ninety days to one hundred eighty days must be submitted
11 to the court prior to the expiration of the original ninety-day
12 period. A notice of the extension shall be sent by the clerk of
13 the court to the respondent by first class mail, addressed to the
14 last known address of the respondent as indicated by the court's
15 case filings. The extension of time is effective upon mailing of
16 the notice.

17 (c) Certified copies of any order or extension notice made
18 under the provisions of this section shall be issued to the
19 petitioner, the respondent and any law-enforcement agency
20 having jurisdiction to enforce the order, including the city
21 police, the county sheriff's office or local office of the West
22 Virginia state police within twenty-four hours of the entry of
23 the order.

24 (d) The court may amend the terms of a protective order at
25 any time upon subsequent petition filed by either party. The
26 protective order shall be in full force effect in every county of
27 this state and shall so state.

§48-27-506. Effect of protective order on real and personal property.

1 No order entered pursuant to this article may in any manner
2 affect title to any real property, except as provided in section
3 14-301 for past due child support. The personal property of any

4 person ordered to pay child support pursuant to the provisions
5 of this article is subject to a lien for past due child support as
6 provided in part 14-201, et seq.

§48-27-507. Mutual protective orders prohibited.

1 Mutual protective orders are prohibited unless both parties
2 have filed a petition under part 3 of this article and have proven
3 the allegations of domestic violence by a preponderance of the
4 evidence. This shall not prevent other persons, including the
5 respondent, from filing a separate petition. The court may
6 consolidate two or more petitions if he or she determines that
7 consolidation will further the interest of justice and judicial
8 economy. The court shall enter a separate order for each
9 petition filed.

§48-27-508. Costs to be paid to family court fund.

1 Any person against whom a protective order is issued shall
2 be assessed costs of twenty-five dollars. Such costs shall be
3 paid to the family court fund established pursuant to section 29-
4 403 of this chapter.

§48-27-509. Conditions of visitation in cases involving domestic violence.

1 (a) A court may award visitation of a child by a parent who
2 has committed domestic violence only if the court finds that
3 adequate provision for the safety of the child and the petitioner
4 can be made.

5 (b) In a visitation order, a court may:

6 (1) Order an exchange of a child to occur in a protected
7 setting;

8 (2) Order that supervision be provided by another person or
9 agency;

10 (3) Order the perpetrator of domestic violence to attend and
11 complete, to the satisfaction of the court, a program of interven-
12 tion for perpetrators as a condition of the visitation;

13 (4) Order the perpetrator of domestic violence to abstain
14 from possession or consumption of alcohol or controlled
15 substances during the visitation and for the twelve hours that
16 precede the visitation;

17 (5) Order the perpetrator of domestic violence to pay the
18 costs of supervised visitation, if any;

19 (6) Prohibit overnight visitation;

20 (7) Impose any other condition that the court considers
21 necessary to provide for the safety of the child, the petitioner or
22 any other family or household member.

23 (c) Regardless of whether visitation is allowed, the court
24 may order that the address of the child and the petitioner be
25 kept confidential.

26 (d) If a court allows a family or household member to
27 supervise visitation, the court shall establish conditions to be
28 followed during visitation.

§48-27-510. Appeals.

1 Any party to a temporary or final protective order may as
2 a matter of right present a petition for appeal, within five days
3 of entry of the order in magistrate court, to the circuit court.
4 The order shall remain in effect pending an appeal unless stayed
5 by the circuit court. No bond shall be required for any appeal
6 under this section. In any case where a petition for appeal is
7 filed under this section, the petition shall be heard de novo by
8 the circuit court within ten days from the filing of the petition
9 for appeal.

§48-27-511. Purging of domestic violence files.

1 Two years after the entry of a final protective order, the
2 circuit court, may, upon motion, order that the protective order

3 and references to the order be purged from the file maintained
4 by any law-enforcement agency and may further order that the
5 file maintained by the court be sealed and not opened except
6 upon order of the court when such is in the interest of justice.

PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

§48-27-601. Filing of orders with law-enforcement agency; affidavit as to award of possession of real property; service of order on respondent.

1 (a) Upon entry of an order pursuant to section 27-403 or
2 part 27-501, et seq., or an order entered pursuant to part 5-501,
3 et seq., granting relief provided for by this article, a copy of the
4 order shall, no later than the close of the next business day, be
5 transmitted by the court or the clerk of the court to a local office
6 of the municipal police, the county sheriff and the West
7 Virginia state police, where it shall be placed in a confidential
8 file, with access provided only to the law-enforcement agency
9 and the respondent named on the order.

10 (b) A sworn affidavit may be executed by a party who has
11 been awarded exclusive possession of the residence or house-
12 hold, pursuant to an order entered pursuant to section 27-503,
13 and shall be delivered to such law-enforcement agencies
14 simultaneously with any order, giving his or her consent for a
15 law-enforcement officer to enter the residence or household,
16 without a warrant, to enforce the protective order or temporary
17 order.

18 (c) Orders shall be promptly served upon the respondent.
19 Failure to serve a protective order on the respondent does not
20 stay the effect of a valid order if the respondent has actual
21 notice of the existence and contents of the order.

**PART 7. LAW ENFORCEMENT RESPONSE
TO DOMESTIC VIOLENCE.**

§48-27-701. Service of pleadings and orders by law-enforcement officers.

1 Notwithstanding any other provision of this code to the
2 contrary, all law-enforcement officers are hereby authorized to
3 serve all pleadings and orders filed or entered pursuant to this
4 article on Sundays and legal holidays. No law-enforcement
5 officer shall refuse to serve any pleadings or orders entered
6 pursuant to this article.

§48-27-702. Law-enforcement officers to provide information and transportation.

1 (a) Any law-enforcement officer responding to an alleged
2 incident of domestic violence shall inform the parties of the
3 availability of the possible remedies provided by this article and
4 the possible applicability of the criminal laws of this state. Any
5 law-enforcement officer investigating an alleged incident of
6 domestic violence shall advise the victim of such violence of
7 the availability of the family protection shelter to which such
8 person may be admitted.

9 (b) If there is reasonable cause to believe that a person is a
10 victim of domestic violence or is likely to be a victim of
11 domestic violence, a law-enforcement officer responding to an
12 alleged incident of domestic violence shall, in addition to
13 providing the information required in subsection (a) of this
14 section, provide transportation for or facilitate transportation of
15 the victim, upon the request of such victim, to a shelter or an
16 appropriate court.

PART 8. RECORD-KEEPING BY LAW-ENFORCEMENT OFFICERS.

§48-27-801. Reports of domestic violence to state police.

1 (a) Each law-enforcement agency shall maintain records on
2 all incidents of domestic violence reported to it and shall
3 monthly make and deliver to the West Virginia state police a
4 report on a form prescribed by the state police, listing all such
5 incidents of domestic violence. Such reports shall include:

6 (1) The age and sex of the victim and the perpetrator of
7 domestic violence;

8 (2) The relationship between the parties;

9 (3) The type and extent of abuse;

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

11 (5) Whether the law-enforcement agency responded to the
12 complaint and if so, the time involved, the action taken and the
13 time lapse between the agency's action and the victim's request
14 for assistance;

15 (6) Whether any prior reports have been made, received or
16 filed regarding domestic violence on any prior occasion and if
17 so, the number of such prior reports; and

18 (7) The effective dates and terms of any protective order
19 issued prior to or following the incident to protect the victim:
20 *Provided*, That no information which will permit the identifica-
21 tion of the parties involved in any incident of domestic violence
22 shall be included in such report.

23 (b) The West Virginia state police shall tabulate and
24 analyze any statistical data derived from the reports made by
25 law-enforcement agencies pursuant to this section and publish
26 a statistical compilation in its annual uniform crime report, as
27 provided for in section twenty-four, article two, chapter fifteen
28 of this code. The statistical compilation shall include, but is not
29 limited to, the following:

30 (1) The number of domestic violence complaints received;

31 (2) The number of complaints investigated;

32 (3) The number of complaints received from alleged
33 victims of each sex;

34 (4) The average time lapse in responding to such com-
35 plaints;

36 (5) The number of complaints received from alleged
37 victims who have filed such complaints on prior occasions;

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

40 (7) The type of police action taken in disposition of the
41 cases; and

42 (8) The number of alleged violations of protective orders.

§48-27-802. Maintenance of registry by state police.

1 (a) The West Virginia state police shall maintain a registry
2 in which it shall enter certified copies of orders entered by
3 courts from every county in this state pursuant to the provisions
4 of this article, or from other jurisdictions pursuant to their laws:
5 *Provided*, That the provisions of this subsection are not
6 effective until a central automated record system is developed.

7 (b) A petitioner who obtains a protective order pursuant to
8 this article, or from another jurisdiction pursuant to its law, may
9 register that order in any county within this state where the
10 petitioner believes enforcement may be necessary.

11 (c) A protective order may be registered by the petitioner in
12 a county other than the issuing county by obtaining a copy of
13 the order of the issuing court, certified by the clerk of that
14 court, and presenting that certified order to the local office of
15 the West Virginia state police where the order is to be regis-
16 tered.

17 (d) Upon receipt of a certified order for registration, the
18 local office of the state police shall provide certified copies to
19 any law-enforcement agency within its jurisdiction, including
20 the city police and the county sheriff's office.

21 (e) Nothing in this section precludes the enforcement of an
22 order in a county other than the county or jurisdiction in which
23 the order was issued, if the petitioner has not registered the
24 order in the county in which an alleged violation of the order
25 occurs.

§48-27-803. Limitation on use of information.

1 Nothing in this article shall be construed to authorize the
2 inclusion of information contained in a report of an incident of
3 abuse in any local, state, interstate, national or international
4 systems of criminal identification pursuant to section
5 twenty-four, article two, chapter fifteen of this code: *Provided,*
6 That nothing in this section shall prohibit the West Virginia
7 state police from processing information through its criminal
8 identification bureau with respect to any actual charge or
9 conviction of a crime.

PART 9. SANCTIONS.

§48-27-901. Civil contempt; violation of protective orders; order to show cause.

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

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

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

§48-27-902. Violations of protective orders; criminal complaints.

1 (a) When a respondent abuses the petitioner or minor
2 children, or both, or is physically present at any location in
3 knowing and willful violation of the terms of a temporary or
4 final protective order issued by a magistrate, a circuit court
5 judge or a family law master under the provisions of this article

6 or section 5-508 granting the relief pursuant to the provisions
7 of this article, any person authorized to file a petition pursuant
8 to the provisions of section 27-305 or the legal guardian or
9 guardian ad litem may file a petition for civil contempt as set
10 forth in section 27-901.

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

**§48-27-903. Misdemeanor offenses for violation of protective
order, repeat offenses, penalties.**

1 (a) A respondent who abuses the petitioner and/or minor
2 children or who is physically present at any location in knowing
3 and willful violation of the terms of a temporary or final
4 protective order issued by a magistrate, a circuit court judge or
5 a family law master under the provisions of this article or
6 section 5-508 granting the relief pursuant to the provisions of
7 this article, is guilty of a misdemeanor and, upon conviction
8 thereof, shall be confined in the county or regional jail for a
9 period of not less than one day nor more than one year, which
10 jail term shall include actual confinement of not less than
11 twenty-four hours, and shall be fined not less than two hundred
12 fifty dollars nor more than two thousand dollars.

13 (b) When a respondent previously convicted of the offense
14 described in subsection (a) of this section abuses the petitioner
15 and/or minor children or is physically present at any location in
16 knowing and willful violation of the terms of a temporary or
17 final protective order issued under the provisions of this article,
18 the respondent is guilty of a misdemeanor and, upon conviction
19 thereof, shall be confined in the county or regional jail for not
20 less than three months nor more than one year, which jail term
21 shall include actual confinement of not less than twenty-four
22 hours, and fined not less than five hundred dollars nor more
23 than three thousand dollars, or both.

PART 10. ARRESTS.

§48-27-1001. Arrest for violations of protective orders.

1 (a) When a law-enforcement officer observes any respon-
2 dent abuse the petitioner and/or minor children or the respon-
3 dent's physical presence at any location in knowing and willful
4 violation of the terms of a temporary or final protective order
5 issued by a magistrate, a circuit court judge or a family law
6 master under the provisions of this article or section 5-508
7 granting the relief pursuant to the provisions of this article, he
8 or she shall immediately arrest the respondent.

9 (b) When a family or household member is alleged to have
10 committed a violation of the provisions of section 27-903, a
11 law-enforcement officer may arrest the perpetrator for said
12 offense where:

13 (1) The law-enforcement officer has observed credible
14 corroborative evidence, as defined in subsection 27-1002(b),
15 that the offense has occurred; and

16 (2) The law-enforcement officer has received, from the
17 victim or a witness, a verbal or written allegation of the facts
18 constituting a violation of section 27-903; or

19 (3) The law-enforcement officer has observed credible
20 evidence that the accused committed the offense.

21 (c) Any person who observes a violation of a protective
22 order as described in this section, or the victim of such abuse or
23 unlawful presence, may call a local law-enforcement agency,
24 which shall verify the existence of a current order, and shall
25 direct a law-enforcement officer to promptly investigate the
26 alleged violation.

27 (d) Where there is an arrest, the officer shall take the
28 arrested person before a court or a magistrate and, upon a
29 finding of probable cause to believe a violation of an order as
30 set forth in this section has occurred, the court or magistrate
31 shall set a time and place for a hearing in accordance with the
32 West Virginia rules of criminal procedure.

§48-27-1002. Arrest in domestic violence matters; conditions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, if a person is alleged to have committed a violation of
3 the provisions of subsection (a) or (b), section twenty-eight,
4 article two, chapter sixty-one of this code against a family or
5 household member, in addition to any other authority to arrest
6 granted by this code, a law-enforcement officer has authority to
7 arrest that person without first obtaining a warrant if:

8 (1) The law-enforcement officer has observed credible
9 corroborative evidence that an offense has occurred; and either:

10 (2) The law-enforcement officer has received, from the
11 victim or a witness, an oral or written allegation of facts
12 constituting a violation of section twenty-eight, article two,
13 chapter sixty-one of this code; or

14 (3) The law-enforcement officer has observed credible
15 evidence that the accused committed the offense.

16 (b) For purposes of this section, credible corroborative
17 evidence means evidence that is worthy of belief and corre-
18 sponds to the allegations of one or more elements of the offense
19 and may include, but is not limited to, the following:

20 (1) Condition of the alleged victim.—One or more contu-
21 sions, scratches, cuts, abrasions, or swellings; missing hair; torn
22 clothing or clothing in disarray consistent with a struggle;
23 observable difficulty in breathing or breathlessness consistent
24 with the effects of choking or a body blow; observable diffi-
25 culty in movement consistent with the effects of a body blow or
26 other unlawful physical contact.

27 (2) Condition of the accused.—Physical injury or other
28 conditions similar to those set out for the condition of the
29 victim which are consistent with the alleged offense or alleged
30 acts of self-defense by the victim.

31 (3) Condition of the scene.—Damaged premises or furnish-
 32 ings; disarray or misplaced objects consistent with the effects
 33 of a struggle.

34 (4) Other conditions.—Statements by the accused admitting
 35 one or more elements of the offense; threats made by the
 36 accused in the presence of an officer; audible evidence of a
 37 disturbance heard by the dispatcher or other agent receiving the
 38 request for police assistance; written statements by witnesses.

39 (c) Whenever any person is arrested pursuant to subsection
 40 (a) of this section, the arrested person shall be taken before a
 41 magistrate within the county in which the offense charged is
 42 alleged to have been committed in a manner consistent with the
 43 provisions of Rule 1 of the Administrative Rules for the
 44 Magistrate Courts of West Virginia.

45 (d) If an arrest for a violation of subsection (c), section
 46 twenty-eight, article two, chapter sixty-one of this code is
 47 authorized pursuant to this section, that fact constitutes prima
 48 facie evidence that the accused constitutes a threat or danger to
 49 the victim or other family or household members for the
 50 purpose of setting conditions of bail pursuant to section
 51 seventeen-c, article one-c, chapter sixty-two of this code.

52 (e) Whenever any person is arrested pursuant to the
 53 provisions of this article or for a violation of an order issued
 54 pursuant to section 5-508, the arresting officer:

55 (1) Shall seize all weapons that are alleged to have been
 56 involved or threatened to be used in the commission of domes-
 57 tic violence; and

58 (2) May seize a weapon that is in plain view of the officer
 59 or was discovered pursuant to a consensual search, as necessary
 60 for the protection of the officer or other persons.

PART 11. MISCELLANEOUS PROVISIONS.

§48-27-1101. The forms to be provided.

1 The West Virginia supreme court of appeals shall prescribe
2 forms which are necessary and convenient for proceedings
3 pursuant to this article, and the court shall distribute such forms
4 to the clerk of the circuit court and magistrate court of each
5 county within the state.

§48-27-1102. Authorization for the promulgation of legislative rules.

1 The governor's committee on crime, delinquency and
2 correction shall develop and promulgate rules for state, county
3 and municipal law-enforcement officers and law-enforcement
4 agencies with regard to domestic violence. The notice of the
5 public hearing on the rules shall be published before the first
6 day of July, one thousand nine hundred ninety-one. Prior to the
7 publication of the proposed rules, the governor's committee on
8 crime, delinquency and correction shall convene a meeting or
9 meetings of an advisory committee to assist in the development
10 of the rules. The advisory committee shall be composed of
11 persons invited by the committee to represent state, county and
12 local law-enforcement agencies and officers, to represent
13 magistrates and court officials, to represent victims of domestic
14 violence, to represent shelters receiving funding pursuant to
15 article 26-101, et seq., of this chapter and to represent other
16 persons or organizations who, in the discretion of the commit-
17 tee, have an interest in the rules. The rules and the revisions
18 thereof as provided in this section shall be promulgated as
19 legislative rules in accordance with chapter twenty-nine-a of
20 this code. Following the promulgation of said rules, the
21 committee shall meet at least annually to review the rules and
22 to propose revisions as a result of changes in law or policy.

§48-27-1103. Training of law-enforcement officers in domestic violence.

1 All law-enforcement officers shall receive training relating
2 to response to calls involving domestic violence.

§48-27-1104. Judicial education on domestic violence.

1 All judges may and magistrates and family law masters
2 shall receive a minimum of three hours of training by the first
3 day of October, one thousand nine hundred ninety-three, and
4 three hours per year each year thereafter on domestic violence
5 which shall include training on the psychology of domestic
6 violence, the battered wife and child syndromes, sexual abuse,
7 courtroom treatment of victims, offenders and witnesses,
8 available sanctions and treatment standards for offenders, and
9 available shelter and support services for victims. The supreme
10 court of appeals may provide such training in conjunction with
11 other judicial education programs offered by the supreme court.

§48-27-1105. Rule for time-keeping requirements.

1 The supreme court of appeals shall promulgate a procedural
2 rule to establish time-keeping requirements for magistrates,
3 magistrate court clerks and magistrate assistants so as to assure
4 the maximum funding of incentive payments, grants and other
5 funding sources available to the state for the processing of cases
6 filed for the establishment of temporary orders of child support
7 pursuant to the provisions of this article.

ARTICLE 28. [Reserved]

**ARTICLE 29. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED
WOMEN; HUSBAND AND WIFE.**

**PART 1. EMANCIPATION FROM ALL
DISABILITIES AND INCAPACITIES.**

**§48-29-101. Emancipation from all disabilities under common
law.**

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, are fully emancipated from all the disabilities
4 and relieved from all the incapacities to which they were
5 formerly subject under common law.

§48-29-102. Emancipation from all disabilities to contract.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, may make contracts of any kind and assume
4 or stipulate for obligations of any kind, in any form or manner
5 permitted under this code. In no case may any act, contract or
6 obligation of a married woman require, for its validity or
7 effectiveness, the authority of her husband or of a judge.

§48-29-103. Emancipation from all disabilities as to personal or real property.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, may own in their own right, real and personal
4 property, acquired by descent, gift or purchase and may
5 manage, sell, convey or dispose of any real or personal property
6 to the same extent and in the same manner a married man can
7 property belonging to him.

§48-29-104. Liability for married woman's torts.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, are liable for torts that they have committed.

§48-29-105. Emancipation from liability for torts or contracts of spouse.

1 No married person, including married persons who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, is liable for the contracts or torts of his or her
4 spouse.

PART 2. CONVEYANCES BETWEEN MARRIED PERSONS.

§48-29-201. Burden of proof.

1 The burden of proof in any proceeding questioning the
2 validity or lawfulness of any conveyance or transfer of property
3 or any interest in property from one spouse to the other spouse
4 by the spouse making the conveyance or transfer, or his or her
5 heir, devisee or creditor is on the spouse in whose favor the
6 conveyance or transfer was made.

§48-29-202. Presumption of gift in certain transactions between husband and wife.

1 Where one spouse purchases real or personal property and
2 pays for the real or personal property, but takes title in the name
3 of the other spouse, the transaction, in the absence of evidence
4 of a contrary intention, is presumed to be a gift by the spouse so
5 purchasing to the spouse in whose name the title is taken:
6 *Provided*, That in the case of an action under the provisions of
7 article seven of this chapter wherein the court is required to
8 determine what property of the parties constitutes marital
9 property and equitably divide the same, the presumption created
10 by this section does not apply, and a gift between spouses must
11 be affirmatively proved.

PART 3. HUSBAND AND WIFE.

§48-29-301. Requirement of a writing for contract between husband and wife.

1 A contract between a husband and wife shall not be
2 enforceable by way of action or defense, unless there is some
3 writing sufficient to indicate that a contract has been made
4 between them and signed by the spouse against whom enforce-
5 ment is sought or by his or her authorized agent or broker.

§48-29-302. Loss of consortium.

1 A married woman may sue and recover for loss of consor-
2 tium to the same extent and in all cases as a married man.

§48-29-303. Liability of husband and wife for purchases and services.

1 (a) A husband and wife are both liable for the reasonable
2 and necessary services of a physician rendered to the husband
3 or wife while residing together as husband and wife, or for
4 reasonable and necessary services of a physician rendered to
5 their minor child while residing in the family of its parents, and
6 for the rental of any tenement or premises actually occupied by
7 the husband and wife as a residence and reasonably necessary
8 to them for such purpose.

9 (b) A husband and wife are liable when any article pur-
10 chased by either goes to:

11 (1) The support of the family;

12 (2) The joint benefit of both;

13 (3) The reasonable apparel of either and their minor child
14 residing in the family;

15 (4) The reasonable support of a spouse and child while
16 abandoned by the other spouse;

17 (c) A husband and wife are liable for the reasonable
18 services of any domestic, laborer or other person from which
19 the family or both husband and wife benefit.

ARTICLE 30. PROCEEDING BEFORE A FAMILY LAW MASTER.

PART 1. HEARINGS.

§48-30-101. Hearings before a master.

1 (a) Persons entitled to notice of a master's hearing shall be
2 timely informed of:

3 (1) The time, place and nature of the hearing;

4 (2) The legal authority and jurisdiction under which the
5 hearing is to be held; and

6 (3) The matters of fact and law asserted.

7 (b) The master shall give all interested parties opportunity
8 for the submission and consideration of facts, arguments, offers
9 of settlement or proposals of adjustment when time, the nature
10 of the proceedings and the public interest permit. To the extent
11 that the parties are unable to settle or compromise a controversy
12 by consent, the master shall provide the parties a hearing and
13 make a recommended order in accordance with the provisions
14 of sections 30-102 and 30-202.

15 (c) The master who presides at the reception of evidence
16 pursuant to section 30-102 shall prepare the default order or
17 make and enter the temporary order provided for in section 30-
18 201, or make the recommended order required by section
19 thirteen of this article, as the case may be. Except to the extent
20 required for disposition of ex parte matters as authorized by this
21 chapter, a master may not consult a person or party on a fact in
22 issue, unless on notice and opportunity for all parties to
23 participate; nor shall the master attempt to supervise or direct
24 an employee or agent engaged in the performance of investiga-
25 tive or prosecuting functions for a prosecuting attorney, the
26 division of human services or any other agency or political
27 subdivision of this state.

§48-30-102. Hearing procedures.

1 (a) This section applies, according to the provisions thereof,
2 to hearings required by section ten, article two-a, chapter
3 fifty-one of this code to be conducted by a family law master.

4 (b) A family law master to whom a matter is referred
5 pursuant to the provisions of section ten, article two-a, chapter
6 fifty-one of this code shall preside at the taking of evidence.

7 (c) A family law master presiding at a hearing under the
8 provisions of this chapter may:

9 (1) Administer oaths and affirmations, compel the atten-
10 dance of witnesses and the production of documents, examine
11 witnesses and parties and otherwise take testimony, receive
12 relevant evidence and establish a record;

13 (2) Rule on motions for discovery and offers of proof;

14 (3) Take depositions or have depositions taken when the
15 ends of justice may be served;

16 (4) Regulate the course of the hearing;

17 (5) Hold pretrial conferences for the settlement or simplifi-
18 cation of issues and enter time-frame orders which shall
19 include, but not be limited to, discovery cut-offs, exchange of
20 witness lists and agreements on stipulations, contested issues
21 and hearing schedules;

22 (6) Make and enter temporary orders on procedural matters,
23 including, but not limited to, substitution of counsel, amend-
24 ment of pleadings, requests for hearings and other similar
25 matters;

26 (7) Accept voluntary acknowledgments of support liability
27 or paternity;

28 (8) Accept stipulated agreements;

29 (9) Prepare default orders for entry if the person against
30 whom an action is brought does not respond to notice or process
31 within the time required;

32 (10) Recommend orders in accordance with the provisions
33 of section 30-202;

34 (11) Require the issuance of subpoenas and subpoenas
35 duces tecum, issue writs of attachment, hold hearings in aid of
36 execution and propound interrogatories in aid of execution and
37 fix bond or other security in connection with an action for
38 enforcement in a child or spousal support matter; and

39 (12) Take other action authorized by general order of the
40 circuit court or the chief judge thereof consistent with the
41 provisions of this chapter.

42 (d) Except as otherwise provided by law, a moving party
43 has the burden of proof on a particular question presented. Any
44 oral or documentary evidence may be received, but the family
45 law master shall exclude irrelevant, immaterial or unduly
46 repetitious evidence. A party is entitled to present his or her
47 case or defense by oral or documentary evidence, to submit
48 rebuttal evidence and to conduct such cross-examination as may
49 be required for a full and true disclosure of the facts. In
50 determining claims for money due or the amount of payments
51 to be made, when a party will not be prejudiced thereby, the
52 family law master may adopt procedures for the submission of
53 all or part of the evidence in written form.

54 (e) Hearings before a family law master shall be recorded
55 electronically. A magnetic tape or other electronic recording
56 medium on which a hearing is recorded shall be indexed and
57 securely preserved by the secretary-clerk of the family law
58 master and shall not be placed in the case file in the office of
59 the circuit clerk: *Provided*, That upon the request of the family
60 law master, such magnetic tapes or other electronic recording
61 media shall be stored by the clerk of the circuit court. When
62 requested by either of the parties, a family law master shall
63 provide a duplicate copy of the tape or other electronic record-
64 ing medium of each hearing held. For evidentiary purposes, a
65 duplicate of such electronic recording prepared by the secre-
66 tary-clerk shall be a "writing" or "recording" as those terms are
67 defined in rule 1001 of the West Virginia rules of evidence, and
68 unless the duplicate is shown not to reflect the contents accu-
69 rately, it shall be treated as an original in the same manner that
70 data stored in a computer or similar data is regarded as an
71 "original" under such rule. The party requesting the copy shall
72 pay to the family law master an amount equal to the actual cost
73 of the tape or other medium or the sum of five dollars, which-
74 ever is greater. Unless otherwise ordered by the court, the

75 preparation of a transcript and the payment of the cost thereof
76 shall be the responsibility of the party requesting the transcript.

77 (f) The recording of the hearing or the transcript of testi-
78 mony, as the case may be, and the exhibits, together with all
79 papers and requests filed in the proceeding, constitute the
80 exclusive record for recommending an order in accordance with
81 section 30-202, and on payment of lawfully prescribed costs,
82 shall be made available to the parties. When a family law
83 master's final recommended order rests on official notice of a
84 material fact not appearing in the evidence in the record, a party
85 is entitled, on timely request, to an opportunity to show the
86 contrary.

87 (g) After a temporary parenting plan has been agreed to by
88 the parties or ordered by the family law master, or after a
89 temporary support order has been entered by the court, a
90 scheduled final evidentiary hearing cannot be continued without
91 the agreement of the parties or without a review of the tempo-
92 rary parenting plan and the temporary support order.

93 (h) In any case in which a party has filed an affidavit that he
94 or she is financially unable to pay the fees or costs, the family
95 law master shall determine whether either party is financially
96 able to pay such fees and costs based on the information set
97 forth in the affidavit or on any evidence submitted at the
98 hearing. If the family law master determines that either party is
99 financially able to pay the fees and costs, the family law master
100 shall assess the payment of such fees and costs accordingly as
101 part of a recommended order. The provisions of this subsection
102 do not alter or diminish the provisions of section one, article
103 two, chapter fifty-nine of this code.

**§48-30-103. Acts or failures to act in the physical presence of
family law masters.**

1 (a) If in the master's presence a party, witness or other
2 person conducts himself or herself in a manner which would
3 constitute direct contempt if committed in the presence of a

4 circuit judge, the master shall halt any proceeding which may
5 be in progress and inform the person that their conduct consti-
6 tutes direct contempt and give notice of the procedures and
7 possible dispositions which may result.

8 (b) (1) If a circuit judge is sitting in the same county in
9 which the conduct occurred, or is otherwise available, the
10 alleged contemnor shall be immediately taken before the circuit
11 judge. Disposition of these matters shall be given priority over
12 any other matters, with the exception of a criminal trial in
13 progress.

14 (2) If a circuit judge is unavailable, then the master shall
15 schedule a hearing before the circuit court and the alleged
16 contemnor shall be advised, on the record, of the time and place
17 of the hearing. The master may elect, in his or her discretion, to
18 obtain a warrant for the arrest of the alleged contemnor from
19 the magistrate court on the charge of contempt with the matter
20 to be heard by the circuit court.

21 (c) At the hearing, the circuit court shall be advised of the
22 charges, receive the evidence and rule in the same manner as
23 would be appropriate if the conduct complained of occurred in
24 the physical presence of a circuit judge. In addition to other
25 sanctions the court may award attorney's fees and costs.

26 (d) Prior to or during any hearing before a master, if the
27 master determines that a situation exists which warrants the
28 presence of security during such hearing, the master shall
29 inform the sheriff of the need for such security and the time and
30 place of the hearing, and the sheriff shall assign a deputy to act
31 as bailiff during such hearing.

§48-30-104. Family law master's docket.

1 (a) Every family law master shall establish a regular docket
2 or other means for hearing urgent motions regarding child
3 support, child custody or visitation, protection from family

4 violence or abuse, possession of the home or other urgent
5 matter. The family law master shall make all decisions and
6 rulings before him or her within thirty days, or sooner after the
7 close of the evidence in the proceeding before the master. If the
8 master's recommended decision is not so timely made, the
9 master shall, in writing, notify the administrator of the West
10 Virginia supreme court as to why he or she has not so ruled; and
11 the administrator of the West Virginia supreme court may take
12 appropriate action against said master including pay suspen-
13 sions, or reprimand or dismissal without pay for up to six
14 months.

15 (b) Upon the request of the family law master, the clerk of
16 the circuit court shall, under the general direction of the master,
17 maintain the master's docket, schedule trials and hearings and
18 deliver case files to the master.

**PART 2. TEMPORARY ORDERS; DEFAULT ORDERS;
RECOMMENDED ORDERS.**

§48-30-201. Default orders; temporary orders.

1 (a) In any proceeding in which the amount of support is to
2 be established, if the obligor has been served with notice of a
3 hearing before a master and does not enter an appearance, the
4 family law master shall prepare a default order for entry by the
5 circuit judge, which order fixes support in an amount at least
6 equal to the amount paid as public assistance under section
7 four, article three, chapter nine of this code, if the obligee or
8 custodian receives public assistance, or in an amount at least
9 equal to the amount that would be paid as public assistance if
10 the obligee or custodian were eligible to receive public assis-
11 tance, unless the family law master has sufficient information
12 in the record so as to determine the amount to be fixed in
13 accordance with the child support guidelines.

14 (b) A master who presides at a hearing under the provisions
15 of section 30-102 is authorized to make and enter temporary
16 support and custody orders which, when entered, shall be

17 enforceable and have the same force and effect under law as
18 temporary support orders made and entered by a judge of the
19 circuit court, unless and until such support orders are modified,
20 vacated or superseded by an order of the circuit court.

21 (c) All orders prepared by a master shall provide for
22 automatic withholding from income of the obligor if arrearages
23 in support occur, if no such provision already exists in prior
24 orders or if the existing order as it relates to withholding is not
25 in compliance with applicable law.

§48-30-202. Recommended orders.

1 (a) This section applies, according to the provisions thereof,
2 when a hearing has been conducted in accordance with section
3 30-102.

4 (b) A master who has presided at the hearing pursuant to
5 section 30-102 shall recommend an order and findings of fact
6 and conclusions of law to the circuit court within ten days
7 following the close of the evidence. Before the recommended
8 order is made, the master may, in his or her discretion, require
9 the parties to submit proposed findings and conclusions and the
10 supporting reasons therefor.

11 (c) The master shall sign and send the recommended order,
12 any separate document containing the findings of fact and
13 conclusions of law and the notice of recommended order as set
14 forth in section 30-203 to the attorney for each party, or if a
15 party is unrepresented, directly to the party, in the same manner
16 as pleadings subsequent to an original complaint are served in
17 accordance with rule five of the rules of civil procedure. The
18 master shall file the recommended order and the record in the
19 office of the circuit clerk prior to the expiration of the ten-day
20 period during which exceptions can be filed.

21 (d) A copy of any supporting documents or a summary of
22 supporting documents, prepared or used by the bureau for child
23 support enforcement attorney or an employee of the bureau for
24 child support enforcement, and all documents introduced into

25 evidence before the master, shall be made available to the
26 attorney for each party and to each of the parties before the
27 circuit court takes any action on the recommendation.

28 (e) All recommended orders of the master shall include the
29 statement of findings of fact and conclusions of law, and the
30 reasons or basis therefor, on all the material issues of fact, law,
31 or discretion presented on the record; and the appropriate
32 sanction, relief or denial thereof. In every action where visita-
33 tion is recommended, the master shall specify a schedule for
34 visitation by the noncustodial parent: *Provided*, That with
35 respect to any existing order which provided for visitation but
36 which does not provide a specific schedule for visitation by the
37 noncustodial parent, upon motion of any party, notice of
38 hearing and hearing, the master shall recommend an order
39 which provides a specific schedule of visitation by the
40 noncustodial parent.

§48-30-203. Form of notice of recommended order.

1 IN THE CIRCUIT COURT OF COUNTY, WEST VIR-
2GINIA,

3 Petitioner,

4 vs. CIVIL ACTION NO.

5 Respondent.

6 NOTICE OF RECOMMENDED ORDER

7 The undersigned family law master hereby recommends the
8 enclosed order to the circuit court of _____ county. If you
9 wish to file objections to this decision, you must file a written
10 petition in accordance with the provisions of section 48- 30-302
11 of the West Virginia Code within a period of ten days ending on
12 _____, _____, with the circuit clerk of county
13 and send a copy to counsel for the opposing party or if the party
14 is unrepresented to the party, and to the office of the family law
15 master located at _____.

16 If no written petition for review is filed by
17 ----, then the recommended order will be sent to the circuit
18 judge assigned to this case. A recommended order which is not
19 signed by a party, or counsel for a party who is represented, by
20 the end of the ten-day period will still be sent to the circuit
21 judge for entry.

22 YOUR FAILURE TO SIGN THE ORDER AS HAVING
23 BEEN INSPECTED OR APPROVED WILL NOT DELAY
24 THE ENTRY THEREOF.

25 Family Law Master

§48-30-204. Orders to be entered by circuit court exclusively.

1 With the exception of temporary support and custody orders
2 entered by a master in accordance with the provisions of section
3 30-201 and section 1-304, and procedural orders entered
4 pursuant to the provisions of section 30-102, an order imposing
5 sanctions or granting or denying relief may not be made and
6 entered except as authorized by law. Upon entry of a final order
7 in any action for divorce, separate maintenance or annulment,
8 the clerk of the circuit court shall deliver an attested copy of
9 such order to the parties who have appeared in such action or
10 their counsel of record by personal delivery or by first class
11 mail.

PART 3. CIRCUIT COURT REVIEW.

§48-30-301. Circuit court review of master's action or recommended order.

1 (a) A person who alleges that he or she will be adversely
2 affected or aggrieved by a recommended order of a master is
3 entitled to review of the proceedings. The recommended order
4 of the master is the subject of review by the circuit court and a
5 procedural action or ruling not otherwise directly reviewable is
6 subject to review only upon the review of the recommended
7 order by the circuit court.

8 (b) When a master's action or recommended order is
9 presented to the circuit court for review upon the petition of any
10 party and such action or recommended order is subject to
11 review, the family law master or circuit court shall enter a
12 temporary support and custody order or otherwise provide for
13 relief during the pendency of the review proceedings upon any
14 party's request therefor or on the master's or court's own
15 motion if the family law master or court deems such order or
16 other relief to be fair and equitable.

§48-30-302. Procedure for review by circuit court.

1 (a) Within ten days after the master's recommended order,
2 any separate document with findings of fact and conclusions of
3 law and the notice of recommended order is served on the
4 parties as set forth in section 30-202, any party may file
5 exceptions thereto in a petition requesting that the action by the
6 master be reviewed by the circuit court. Failure to timely file
7 the petition shall constitute a waiver of exceptions, unless the
8 petitioner, prior to the expiration of the ten-day period, moves
9 for and is granted an extension of time from the circuit court. At
10 the time of filing the petition, a copy of the petition for review
11 shall be served on all parties to the proceeding, in the same
12 manner as pleadings subsequent to an original complaint are
13 served under rule five of the rules of civil procedure.

14 (b) Not more than ten days after the filing of the petition for
15 review, a responding party wishing to file a cross-petition that
16 would otherwise be untimely may file, with proof of service on
17 all parties, a cross-petition for review.

§48-30-303. Form of petition for review.

1 (a) The petition for review shall contain a list of exceptions
2 in the form of questions presented for review, expressed in the
3 terms and circumstances of the case, designating and pointing
4 out the errors complained of with reasonable certainty, so as to

5 direct the attention of the circuit court specifically to them, but
6 without unnecessary detail. The statement of questions should
7 be short and concise and should not be argumentative or
8 repetitious. The statement of a question presented will be
9 deemed to comprise every subsidiary question fairly included
10 therein. Only the questions set forth in the petition or fairly
11 included therein will be considered by the court. Parts of the
12 master's report not excepted to are admitted to be correct, not
13 only as regards the principles, but as to the evidence, upon
14 which they are founded.

15 (b) The circuit court may require, or a party may choose to
16 submit with the petition for review, a brief in support thereof,
17 which should include a direct and concise argument amplifying
18 the reasons relied upon for modification of the master's
19 recommended order and citing the constitutional provisions,
20 statutes and regulations which are applicable.

§48-30-304. Answer in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing of a
2 petition within which to file an answer disclosing any matter or
3 ground why the recommended order of the master should not be
4 modified by the court in the manner sought by the petition. The
5 judge may require, or a party may choose to submit with the
6 answer, a brief in opposition to the petition, which should
7 include a direct and concise argument in support of the master's
8 recommended order and citing the constitutional provisions,
9 statutes and regulations which are applicable.

10 (b) No motion by a respondent to dismiss a petition for
11 review will be received.

12 (c) Any party may file a supplemental brief at any time
13 while a petition for review is pending, calling attention to new
14 cases or legislation or other intervening matter not available at
15 the time of the party's last filing.

§48-30-305. Circuit court review of family law master's recommended order.

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the family law master when:

3 (1) No petition has been filed within the time allowed, or
4 the parties have expressly waived the right to file a petition;

5 (2) A petition and an answer in opposition have been filed,
6 or the time for filing an answer in opposition has expired, or the
7 parties have expressly waived the right to file an answer in
8 opposition, as the case may be.

9 (b) To the extent necessary for decision and when pre-
10 sented, the circuit court shall decide all relevant questions of
11 law, interpret constitutional and statutory provisions and
12 determine the appropriateness of the terms of the recommended
13 order of the family law master.

14 (c) The circuit court shall examine the recommended order
15 of the family law master, along with the findings and conclu-
16 sions of the family law master, and may enter the recommended
17 order, may recommit the case, with instructions, for further
18 hearing before the master or may, in its discretion, enter an
19 order upon different terms, as the ends of justice may require.
20 Conclusions of law of the family law master shall be subject to
21 de novo review by the circuit court. The circuit court shall be
22 held to the clearly erroneous standard in reviewing findings of
23 fact. The circuit court shall not follow the recommendation,
24 findings and conclusions of a master found to be:

25 (1) Arbitrary, capricious, an abuse of discretion or other-
26 wise not in conformance with the law;

27 (2) Contrary to constitutional right, power, privilege or
28 immunity;

29 (3) In excess of statutory jurisdiction, authority or limita-
30 tions or short of statutory right;

31 (4) Without observance of procedure required by law;

32 (5) Unsupported by substantial evidence; or

33 (6) Unwarranted by the facts.

34 (d) In making its determinations under this section, the
35 circuit court shall review the whole record or those parts of it
36 cited by a party. If the circuit court finds that a family law
37 master's recommended order is deficient as to matters which
38 might be affected by evidence not considered or inadequately
39 developed in the family law master's recommended order, the
40 court may recommit the recommended order to the family law
41 master, with instructions indicating the court's opinion, or the
42 circuit court may proceed to take such evidence without
43 recommitting the matter.

44 (e) The order of the circuit court entered pursuant to the
45 provisions of subsection (d) of this section shall be entered not
46 later than ten days after the time for filing pleadings or briefs
47 has expired or after the filing of a notice or notices waiving the
48 right to file such pleading or brief.

49 (f) If a case is recommitted by the circuit court, the family
50 law master shall retry the matter within twenty days.

51 (g) At the time a case is recommitted, the circuit court shall
52 enter appropriate temporary orders awarding custody, visitation,
53 child support, spousal support or such other temporary relief as
54 the circumstances of the parties may require.

PART 4. MISCELLANEOUS PROVISIONS.

**§48-30-401. County commissions required to furnish offices for
the family law master.**

1 Each county commission of this state has a duty to provide
2 premises for the family law master which are adequate for the
3 conduct of the duties required of such master under the provi-
4 sions of this chapter and which conform to standards estab-
5 lished by rules promulgated by the supreme court of appeals.
6 The administrative office of the supreme court of appeals shall
7 pay to the county commission a reasonable amount as rent for
8 the premises furnished by the county commission to the family
9 law master and his or her staff pursuant to the provisions of this
10 section.

§48-30-402. Budget of the family law master system.

1 The budget for the payment of the salaries and benefits of
2 the family law masters and clerical and secretarial assistants
3 shall be included in the appropriation for the supreme court of
4 appeals. The family law master administration fund is hereby
5 created and shall be a special account in the state treasury. The
6 fund shall operate as a special fund administered by the state
7 auditor which shall be appropriated by line item by the Legisla-
8 ture for payment of administrative expenses of the family law
9 master system. All agencies or entities receiving federal
10 matching funds for the services of family law masters and their
11 staff, including, but not limited to, the commissioner of the
12 bureau for child support enforcement and the secretary of the
13 department of health and human resources, shall enter into an
14 agreement with the administrative office of the supreme court
15 of appeals whereby all federal matching funds paid to and
16 received by said agencies or entities for the activities by family
17 law masters and staff of the program shall be paid into the
18 family law master administration fund. Said agreement shall
19 provide for advance payments into the fund by such agencies,
20 from available federal funds pursuant to Title IV-D of the
21 Social Security Act and in accordance with federal regulations.

§48-30-403. Family court fund.

1 The office and the clerks of the circuit courts shall, on or
2 before the tenth day of each month, transmit all fees and costs

3 received for the services of the office under this chapter to the
 4 state treasurer for deposit in the state treasury to the credit of a
 5 special revenue fund to be known as the “family court fund”,
 6 which is hereby created. All moneys collected and received
 7 under this chapter and paid into the state treasury and credited
 8 to the “family court fund” shall be used by the administrative
 9 office of the supreme court of appeals solely for paying the
 10 costs associated with the duties imposed upon the family law
 11 masters under the provisions of this chapter which require
 12 activities by the family law masters which are not subject to
 13 being matched with federal funds or subject to reimbursement
 14 by the federal government. Such moneys shall not be treated by
 15 the auditor and treasurer as part of the general revenue of the
 16 state.

§48-30-404. Continuation of family law masters system.

1 After having conducted a performance and fiscal audit
 2 through its joint committee on government operations, pursuant
 3 to article ten, chapter four of this code, the Legislature hereby
 4 finds and declares the family law masters system should be
 5 continued and reestablished as recreated in article two-a,
 6 chapter fifty-one of this code.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

**§49-3-1. Consent by agency or department to adoption of child;
 statement of relinquishment by parent; petition to
 terminate parental rights.**

1 (a)(1) Whenever a child welfare agency licensed to place
 2 children for adoption or the department of health and human
 3 resources has been given the permanent legal and physical
 4 custody of any child and the rights of the mother and the rights
 5 of the legal, determined, putative, outside or unknown father of
 6 the child have been terminated by order of a court of competent
 7 jurisdiction or by a legally executed relinquishment of parental

8 rights, the child welfare agency or the department may consent
9 to the adoption of the child pursuant to the provisions of article
10 twenty-two, chapter forty-eight of this code.

11 (2) Relinquishment for an adoption to an agency or to the
12 department is required of the same persons whose consent or
13 relinquishment is required under the provisions of section three
14 hundred one, article twenty-two, chapter forty-eight of this
15 code. The form of any relinquishment so required shall conform
16 as nearly as practicable to the requirements established in
17 section three hundred three, article twenty-two, chapter forty-
18 eight, and all other provisions of that article providing for
19 relinquishment for adoption shall govern the proceedings
20 herein.

21 (3) For purposes of any placement of a child for adoption
22 by the department, the department shall first consider the
23 suitability and willingness of any known grandparent or
24 grandparents to adopt the child. Once any such grandparents
25 who are interested in adopting the child have been identified,
26 the department shall conduct a home study evaluation, includ-
27 ing home visits and individual interviews by a licensed social
28 worker. If the department determines, based on the home study
29 evaluation, that the grandparents would be suitable adoptive
30 parents, it shall assure that the grandparents are offered the
31 placement of the child prior to the consideration of any other
32 prospective adoptive parents.

33 (4) The department shall make available, upon request, for
34 purposes of any private or agency adoption proceeding,
35 preplacement and post-placement counseling services by
36 persons experienced in adoption counseling, at no cost, to any
37 person whose consent or relinquishment is required pursuant to
38 the provision of article twenty-two, chapter forty-eight of this
39 code.

40 (b)(1) Whenever the mother has executed a relinquishment
41 pursuant to this section, and the legal, determined, putative,

42 outsider or unknown father, as those terms are defined pursuant
43 to the provisions of, part one, article twenty-two, chapter
44 forty-eight of this code, has not executed a relinquishment, the
45 child welfare agency or the department may, by verified
46 petition, seek to have the father's rights terminated based upon
47 the grounds of abandonment or neglect of said child. Abandon-
48 ment may be established in accordance with the provisions of
49 section three hundred six, article twenty-two, chapter
50 forty-eight of this code.

51 (2) Unless waived by a writing acknowledged as in the case
52 of deeds or by other proper means, notice of the petition shall
53 be served on any person entitled to parental rights of a child
54 prior to its adoption who has not signed a relinquishment of
55 custody of the child.

56 (3) In addition, notice shall be given to any putative,
57 outsider or unknown father who has asserted or exercised
58 parental rights and duties to and with the child and who has not
59 relinquished any parental rights and such rights have not
60 otherwise been terminated, or who has not had reasonable
61 opportunity before or after the birth of the child to assert or
62 exercise such rights: *Provided*, That if such child is more than
63 six months old at the time such notice would be required and
64 such father has not asserted or exercised his parental rights and
65 he knew the whereabouts of the child, then such father shall be
66 presumed to have had reasonable opportunity to assert or
67 exercise such rights.

68 (c)(1) Upon the filing of the verified petition seeking to
69 have the parental rights terminated, the court shall set a hearing
70 on the petition. A copy of the petition and notice of the date,
71 time and place of the hearing on said petition shall be person-
72 ally served on any respondent at least twenty days prior to the
73 date set for the hearing.

74 (2) Such notice shall inform the person that his parental
75 rights, if any, may be terminated in the proceeding and that

76 such person may appear and defend any such rights within
77 twenty days of such service. In the case of any such person who
78 is a nonresident or whose whereabouts are unknown, service
79 shall be achieved: (1) By personal service; (2) by registered or
80 certified mail, return receipt requested, postage prepaid, to the
81 person's last known address, with instructions to forward; or (3)
82 by publication. If personal service is not acquired, then if the
83 person giving notice shall have any knowledge of the where-
84 abouts of the person to be served, including a last known
85 address, service by mail shall be first attempted as herein
86 provided. Any such service achieved by mail shall be complete
87 upon mailing and shall be sufficient service without the need
88 for notice by publication. In the event that no return receipt is
89 received giving adequate evidence of receipt of the notice by
90 the addressee or of receipt of the notice at the address to which
91 the notice was mailed or forwarded, or if the whereabouts of the
92 person are unknown, then the person required to give notice
93 shall file with the court an affidavit setting forth the circum-
94 stances of any attempt to serve the notice by mail, and the
95 diligent efforts to ascertain the whereabouts of the person to be
96 served. If the court determines that the whereabouts of the
97 person to be served cannot be ascertained and that due diligence
98 has been exercised to ascertain such person's whereabouts, then
99 the court shall order service of such notice by publication as a
100 Class II publication in compliance with the provisions of article
101 three, chapter fifty-nine of this code, and the publication area
102 shall be the county where such proceedings are had, and in the
103 county where the person to be served was last known to reside.
104 In the case of a person under disability, service shall be made
105 on the person and his personal representative, or if there be
106 none, on a guardian ad litem.

107 (3) In the case of service by publication or mail or service
108 on a personal representative or a guardian ad litem, the person
109 shall be allowed thirty days from the date of the first publica-
110 tion or mailing of such service on a personal representative or
111 guardian ad litem in which to appear and defend such parental
112 rights.

113 (d) A petition under this section may be instituted in the
114 county where the child resides or where the child is living.

115 (e) If the court finds that the person certified to parental
116 rights is guilty of the allegations set forth in the petition, the
117 court shall enter an order terminating his parental rights and
118 shall award the legal and physical custody and control of said
119 child to the petitioner.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

§51-2A-10. Matters to be heard by a family law master.

1 (a) A chief judge of a circuit court shall refer to the family
2 law master the following matters for hearing:

3 (1) Actions to obtain orders of support brought under the
4 provisions of section one hundred one, article fourteen, chapter
5 forty-eight of this code;

6 (2) All actions to establish paternity brought under the
7 provisions of article twenty-four, chapter forty-eight of this
8 code, and any dependent claims related to such action regarding
9 child support, custody and visitation;

10 (3) All petitions for writs of habeas corpus wherein the
11 issue contested is child custody;

12 (4) All motions for temporary relief affecting child custody,
13 visitation, child support, spousal support or domestic violence,
14 wherein either party has requested such referral or the court on
15 its own motion in individual cases or by general order has
16 referred such motions to the family law master: *Provided*, That
17 if the family law master determines, in his or her discretion, that
18 the pleadings raise substantial issues concerning the identifica-
19 tion of separate property or the division of marital property
20 which may have a bearing on an award of support, the family

21 law master shall notify the appropriate circuit court of this fact
22 and the circuit court may refer the case to a special commis-
23 sioner chosen by the circuit court to serve in such capacity;

24 (5) All petitions for modification of an order involving
25 child custody, child visitation, child support or spousal support;

26 (6) All actions for divorce, annulment or separate mainte-
27 nance brought pursuant to articles three, four and five, chapter
28 forty-eight of this code: *Provided*, That an action for divorce,
29 annulment or separate maintenance which does not involve
30 child custody or child support shall be heard by a circuit judge
31 if, at the time of the filing of the action, the parties file a written
32 property settlement agreement which has been signed by both
33 parties;

34 (7) All actions wherein an obligor is contesting the enforce-
35 ment of an order of support through the withholding from
36 income of amounts payable as support or is contesting an
37 affidavit of accrued support, filed with a circuit clerk, which
38 seeks to collect arrearage;

39 (8) All actions commenced under article sixteen, chapter
40 forty-eight of this code or the interstate family support act of
41 another state;

42 (9) Proceedings for the enforcement of support, custody or
43 visitation orders;

44 (10) All actions to allocate custodial responsibility for a
45 minor child, including actions brought pursuant to the uniform
46 child custody jurisdiction act and actions brought to establish
47 grandparent visitation: *Provided*, That any action instituted
48 under article six, chapter forty-nine of this code shall be heard
49 by a circuit judge;

50 (11) Civil contempt and direct contempts: *Provided*, That
51 criminal contempts must be heard by a circuit judge; and

52 (12) On and after the first day of September, two thousand
53 one, final hearings in domestic violence proceedings wherein a
54 protective order is sought.

55 (b) On its own motion or upon motion of a party, the circuit
56 court may revoke the referral of a particular matter to a family
57 law master if the family law master is recused, if the matter is
58 uncontested, or for other good cause, or if the matter will be
59 more expeditiously and inexpensively heard by a circuit judge
60 without substantially affecting the rights of parties.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.

§56-10-8. Priority of cases involving placement of children.

1 Any action or motion which involves a contested issue
2 regarding the permanent or temporary placement of a minor
3 child shall be given priority over any civil action before the
4 court except actions in which trial is in progress and actions
5 brought under article twenty-seven, chapter forty-eight of this
6 code and shall be docketed immediately upon filing.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 3. COMPETENCY OF WITNESSES.

§57-3-9. Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony.

1 No priest, nun, rabbi, duly accredited Christian Science
2 practitioner or member of the clergy authorized to celebrate the
3 rites of marriage in this state pursuant to the provisions of
4 article two, chapter forty-eight of this code shall be compelled
5 to testify in any criminal or grand jury proceedings or in any
6 domestic relations action in any court of this state:

7 (1) With respect to any confession or communication, made
8 to such person, in his or her professional capacity in the course
9 of discipline enjoined by the church or other religious body to
10 which he or she belongs, without the consent of the person
11 making such confession or communication; or

12 (2) With respect to any communication made to such
13 person, in his or her professional capacity, by either spouse, in
14 connection with any effort to reconcile estranged spouses,
15 without the consent of the spouse making the communication.
16 This subsection is in addition to the protection and privilege
17 afforded pursuant to section three hundred one, article one,
18 chapter forty-eight of this code.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

**§59-1-28a. Disposition of filing fees in divorce and other civil
actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of divorce
3 actions as prescribed in subsection (b) of this section, and
4 except for those payments to be made from amounts equaling
5 filing fees received for the institution of actions for divorce,
6 separate maintenance and annulment as prescribed in subsec-
7 tion (c) of this section, for each civil action instituted under the
8 rules of civil procedure, any statutory summary proceeding, any
9 extraordinary remedy, the docketing of civil appeals, or any
10 other action, cause, suit or proceeding in the circuit court, the
11 clerk of the court shall, at the end of each month, pay into the
12 funds or accounts described in this subsection an amount equal
13 to the amount set forth in this subsection of every filing fee
14 received for instituting such action as follows:

15 (1) Into the regional jail and correctional facility develop-
16 ment fund in the state treasury established pursuant to the

17 provisions of section ten, article twenty, chapter thirty-one of
18 this code, the amount of sixty dollars; and

19 (2) Into the court security fund in the state treasury estab-
20 lished pursuant to the provisions of section fourteen, article
21 three, chapter fifty-one of this code, the amount of five dollars.

22 (b) For each divorce action instituted in the circuit court,
23 the clerk of the court shall, at the end of each month, pay into
24 the funds or accounts in this subsection an amount equal to the
25 amount set forth in this subsection of every filing fee received
26 for instituting such divorce action as follows:

27 (1) Into the regional jail and correctional facility develop-
28 ment fund in the state treasury established pursuant to the
29 provisions of section ten, article twenty, chapter thirty-one of
30 this code, the amount of ten dollars;

31 (2) Into the special revenue account of the state treasury,
32 established pursuant to section six hundred four, article two,
33 chapter forty-eight of this code, an amount of thirty dollars;

34 (3) Into the family court fund established under section four
35 hundred three, article thirty, chapter forty-eight of this code, an
36 amount of fifty dollars; and

37 (4) Into the court security fund in the state treasury,
38 established pursuant to the provisions of section fourteen,
39 article three, chapter fifty-one of this code, the amount of five
40 dollars.

41 (c) For each action for divorce, separate maintenance or
42 annulment instituted in the circuit court, the clerk of the court
43 shall, at the end of each month, pay into the funds or accounts
44 in this subsection an amount equal to the amount set forth in
45 this subsection of every filing fee received for instituting such
46 divorce action as follows:

47 (1) Into the regional jail and correctional facility develop-
48 ment fund in the state treasury established pursuant to the
49 provisions of section ten, article twenty, chapter thirty-one of
50 this code, the amount of ten dollars;

51 (2) Into the special revenue account of the state treasury,
52 established pursuant to section twenty-four, article one, chapter
53 forty-eight of this code, an amount of thirty dollars;

54 (3) Into the family court fund established under section four
55 hundred three, article thirty, chapter forty-eight of this code, an
56 amount of seventy dollars; and

57 (4) Into the court security fund in the state treasury,
58 established pursuant to the provisions of section fourteen,
59 article three, chapter fifty-one of this code, the amount of five
60 dollars.

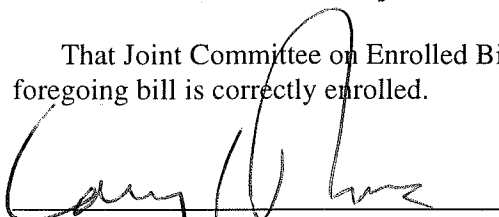
61 (d) Notwithstanding any provision of subsection (a) or (b)
62 of this section to the contrary, the clerk of the court shall, at the
63 end of each month, pay into the family court fund established
64 under section four hundred three, article thirty, chapter forty-
65 eight of this code an amount equal to the amount of every fee
66 received for petitioning for the modification of an order
67 involving child custody, child visitation, child support or
68 spousal support as determined by subdivision (3), subsection
69 (a), section eleven of this article.

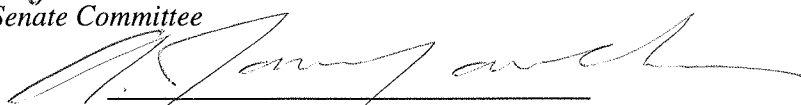
70 (e) The clerk of the court from which a protective order is
71 issued shall, at the end of each month, pay into the family court
72 fund established under section four hundred three, article thirty,
73 chapter forty-eight of this code an amount equal to every fee
74 received pursuant to the provisions of section five hundred
75 eight, article twenty-seven, chapter forty-eight of this code.

76 (f) The clerk of each circuit court shall, at the end of each
77 month, pay into the regional jail and prison development fund
78 in the state treasury an amount equal to forty dollars of every

79 fee for service received in any criminal case against any
80 respondent convicted in such court and shall pay an amount
81 equal to five dollars of every such fee into the court security
82 fund in the state treasury established pursuant to the provisions
83 of section fourteen, article three, chapter fifty-one of this code.

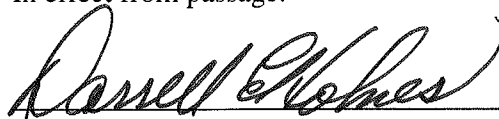
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

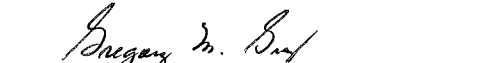

Chairman Senate Committee

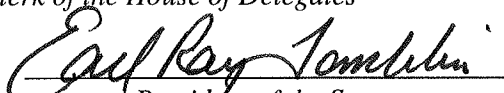

Chairman House Committee

Originating in the House.

In effect from passage.

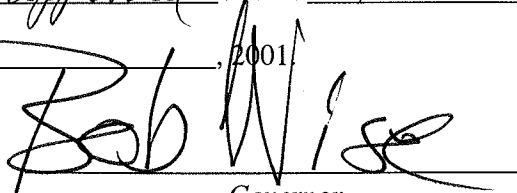

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 21st
day of April, 2001


Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/01

Time 12:32 pm