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ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 484

(SENATORS PALUMBO, LAIRD, TUCKER, EDGELL,
WILLS, WELLS, KESSLER (MR. PRESIDENT),
KLEMPA, JENKINS, BEACH AND YOST, ORIGINAL SPONSORS)

[PASSED MARCH 10, 2012; IN EFFECT NINETY DAYS FROM PASSAGE.]

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SB 484

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[Passed March 9, 2012; in effect ninety days from passage.]

AN ACT to repeal §49-5-21 of the Code of West Virginia, 1931, as amended; to repeal §49-6-5a of said code; to amend and reenact §49-1-3 of said code; to amend and reenact §49-2-17 of said code; to amend and reenact §49-5-13 of said code; to amend and reenact §49-5D-2, §49-5D-3 and §49-5D-3a of said code; to amend said code by adding thereto two new sections, designated §49-5D-3b and §49-5D-3c; to amend and reenact §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code; to amend and reenact §49-6A-5 of said code; to amend and reenact §49-6D-3 of said code; to amend and reenact §49-7-1 of said code; and to amend said code by adding thereto a new section, designated §49-7-36, all relating generally to child welfare; defining "court appointed special advocate program"; establishing a system of assistance from funds appropriated to the Department of Health and Human Resources for facilitating the adoption or legal guardianship of children who are dependents of the department or of a child welfare agency licenced to place children for adoption;

providing when a juvenile is ordered into out-of-state placement, the reasons why the juvenile was not placed in state be included in the court order; adding additional members to the multidisciplinary team; providing a process for multidisciplinary treatment planning in cases involving child abuse and neglect; providing a process for multidisciplinary treatment planning in cases involving status offense or delinquency; increasing the continuing education hours required for attorneys appointed in child abuse and neglect cases; providing that reasonable efforts to preserve the family are not required when a person is required by state or federal law to register with a sex offender registry; providing that the court may modify a dispositional order when it finds a material change of circumstances has occurred and such modification is in the child's best interests; clarifying that the circuit court of origin has exclusive jurisdiction over placement of a child in a child abuse and neglect case; providing a process for permanency hearings and permanent placement reviews; providing that any combination of improvement periods cannot cause a child to be in foster care more than fifteen months of the most recent twenty-two months unless the court finds that it is in the child's best interests; providing for modifications and requests for expunging of records; requiring the secretary to promulgate legislative rules; providing guidelines for unified child and family case plans; confidentiality of records; and requiring a quarterly status review hearing and yearly permanency hearings for transitioning adults.

Be it enacted by the Legislature of West Virginia:

That §49-5-21 of the Code of West Virginia, 1931, as amended, be repealed; that §49-6-5a of said code be repealed; that §49-1-3 of said code be amended and reenacted; that §49-2-17 of said code be amended and reenacted; that §49-5-13 of said code be amended and reenacted; that §49-5D-2, §49-5D-3 and §49-5D-3a of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §49-5D-3b and §49-5D-3c; that §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code be amended and reenacted; that §49-6A-5 of said code be amended and reenacted; that §49-6D-3 of said code be

amended and reenacted; that §49-7-1 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-7-36, all to read as follows:

ARTICLE 1. PURPOSES AND DEFINITIONS.

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

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

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

8 (B) Sexual abuse or sexual exploitation;

9 (C) The sale or attempted sale of a child by a parent,
10 guardian or custodian in violation of section sixteen, article
11 four, chapter forty-eight of this code; or

12 (D) Domestic violence as defined in section two hundred
13 two, article twenty-seven, chapter forty-eight of this code.

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

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

22 (3) "Battered parent" means a parent, guardian or other
23 custodian who has been judicially determined not to have
24 condoned the abuse or neglect and has not been able to stop
25 the abuse or neglect of the child or children due to being the
26 victim of domestic violence as defined by section two
27 hundred two, article twenty-seven, chapter forty-eight of
28 this code, which domestic violence was perpetrated by the

29 person or persons determined to have abused or neglected
30 the child or children.

31 (4) "Child abuse and neglect" or "child abuse or neglect"
32 means physical injury, mental or emotional injury, sexual
33 abuse, sexual exploitation, sale or attempted sale or negli-
34 gent treatment or maltreatment of a child by a parent,
35 guardian or custodian who is responsible for the child's
36 welfare, under circumstances which harm or threaten the
37 health and welfare of the child.

38 (5) "Child abuse and neglect services" means social
39 services which are directed toward:

40 (A) Protecting and promoting the welfare of children who
41 are abused or neglected;

42 (B) Identifying, preventing and remedying conditions
43 which cause child abuse and neglect;

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

48 (D) In cases where children have been removed from
49 their families, providing services to the children and the
50 families so as to reunify such children with their families or
51 some portion thereof;

52 (E) Placing children in suitable adoptive homes when
53 reunifying the children with their families, or some portion
54 thereof, is not possible or appropriate; and

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

57 (6) "Child advocacy center (CAC)" means a community-
58 based organization that is a member in good standing with
59 the West Virginia Child Abuse Network, Inc., and is working
60 to implement the following program components:

61 (A) Child-appropriate/child-friendly facility: A child
62 advocacy center provides a comfortable, private, child-
63 friendly setting that is both physically and psychologically
64 safe for clients.

65 (B) Multidisciplinary team (MDT): A multidisciplinary
66 team for response to child abuse allegations includes repre-
67 sentation from the following: Law enforcement; child
68 protective services; prosecution; mental health; medical;
69 victim advocacy; child advocacy center.

70 (C) Organizational capacity: A designated legal entity
71 responsible for program and fiscal operations has been
72 established and implements basic sound administrative
73 practices.

74 (D) Cultural competency and diversity: The CAC pro-
75 motes policies, practices and procedures that are culturally
76 competent. Cultural competency is defined as the capacity to
77 function in more than one culture, requiring the ability to
78 appreciate, understand and interact with members of diverse
79 populations within the local community.

80 (E) Forensic interviews: Forensic interviews are con-
81 ducted in a manner which is of a neutral, fact-finding nature
82 and coordinated to avoid duplicative interviewing.

83 (F) Medical evaluation: Specialized medical evaluation
84 and treatment are to be made available to CAC clients as
85 part of the team response, either at the CAC or through
86 coordination and referral with other specialized medical
87 providers.

88 (G) Therapeutic intervention: Specialized mental health
89 services are to be made available as part of the team re-
90 sponse, either at the CAC or through coordination and
91 referral with other appropriate treatment providers.

92 (H) Victim support/advocacy: Victim support and
93 advocacy are to be made available as part of the team
94 response, either at the CAC or through coordination with
95 other providers, throughout the investigation and subsequent
96 legal proceedings.

97 (I) Casereview: Team discussion and information sharing
98 regarding the investigation, case status and services needed
99 by the child and family are to occur on a routine basis.

100 (J) Case tracking: CACs must develop and implement a
101 system for monitoring case progress and tracking case
102 outcomes for team components: *Provided*, That a child
103 advocacy center may establish a safe exchange location for
104 children and families who have a parenting agreement or an
105 order providing for visitation or custody of the children that
106 require a safe exchange location.

107 (7) "Court appointed special advocate (CASA) program"
108 means a community organization that screens, trains and
109 supervises CASA volunteers to advocate for the best interests
110 of children who are involved in abuse and neglect proceed-
111 ings. Court appointed special advocate programs will be
112 operated under the following guidelines:

113 (A) Standards: CASA programs shall be members in good
114 standing with the West Virginia Court Appointed Special
115 Advocate Association, Inc., and the National Court Ap-
116 pointed Special Advocates Association and adhere to all
117 standards set forth by these entities.

118 (B) Organizational capacity: A designated legal entity
119 responsible for program and fiscal operations has been
120 established and implements basic sound administrative
121 practice.

122 (C) Cultural competency and diversity: CASA programs
123 promote policies, practices and procedures that are cultur-
124 ally competent. "Cultural competency" is defined as the
125 capacity to function in more than one culture, requiring the
126 ability to appreciate, understand and interact with members
127 of diverse populations within the local community.

128 (D) Case management: CASA programs must utilize a
129 uniform case management system to monitor case progress
130 and track outcomes.

131 (E) Case review: CASA volunteers meet with CASA staff
132 on a routine basis to discuss case status and outcomes.

133 (F) Training: Court appointed special advocates shall
134 serve as volunteers without compensation and shall receive
135 training consistent with state and nationally developed
136 standards.

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

145 (A) Nonaccidental trauma inflicted by a parent, guard-
146 ian, custodian, sibling or a babysitter or other caretaker;

147 (B) A combination of physical and other signs indicating
148 a pattern of abuse which may be medically diagnosed as
149 battered child syndrome;

150 (C) Nutritional deprivation;

151 (D) Abandonment by the parent, guardian or custodian;

152 (E) Inadequate treatment of serious illness or disease;

153 (F) Substantial emotional injury inflicted by a parent,
154 guardian or custodian;

155 (G) Sale or attempted sale of the child by the parent,
156 guardian or custodian; or

157 (H) The parent, guardian or custodian abuse of alcohol or
158 drugs or other controlled substance as defined in section one
159 hundred one, article one, chapter sixty-a of this code, has
160 impaired his or her parenting skills to a degree as to pose an
161 imminent risk to a child's health or safety.

162 (9) "Legal guardianship" means the permanent relation-
163 ship between a child and caretaker, established by order of
164 the circuit court having jurisdiction over the child, pursuant
165 to the provisions of this chapter and chapter forty-eight of
166 this code.

167 (10) "Multidisciplinary team" means a group of profes-
168 sionals and paraprofessionals representing a variety of
169 disciplines who interact and coordinate their efforts to
170 identify, diagnose and treat specific cases of child abuse and
171 neglect. Multidisciplinary teams may include, but are not
172 limited to, medical, educational, child care and law-enforce-
173 ment personnel, social workers, psychologists and psychia-
174 trists. Their goal is to pool their respective skills in order to
175 formulate accurate diagnoses and to provide comprehensive
176 coordinated treatment with continuity and followup for both
177 parents and children. "Community team" means a
178 multidisciplinary group which addresses the general problem
179 of child abuse and neglect in a given community and may
180 consist of several multidisciplinary teams with different
181 functions.

182 (11) (A) "Neglected child" means a child:

183 (i) Whose physical or mental health is harmed or threat-
184 ened by a present refusal, failure or inability of the child's
185 parent, guardian or custodian to supply the child with
186 necessary food, clothing, shelter, supervision, medical care
187 or education, when such refusal, failure or inability is not
188 due primarily to a lack of financial means on the part of the
189 parent, guardian or custodian; or

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

193 (B) "Neglected child" does not mean a child whose
194 education is conducted within the provisions of section one,
195 article eight, chapter eighteen of this code.

196 (12) "Parent" means an individual defined has a parent
197 by law or on the basis of a biological relationship, marriage

198 to a person with a biological relationship, legal adoption or
199 other recognized grounds.

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

204 (14) "Parenting skills" means a parent's competencies in
205 providing physical care, protection, supervision and psycho-
206 logical support appropriate to a child's age and state of
207 development.

208 (15) "Sexual abuse" means:

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

217 (i) Sexual intercourse;

218 (ii) Sexual intrusion; or

219 (iii) Sexual contact;

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

228 (i) Sexual intercourse;

229 (ii) Sexual intrusion; or

230 (iii) Sexual contact;

231 (C) Any conduct whereby a parent, guardian or custodian
232 displays his or her sex organs to a child, or procures another
233 person to display his or her sex organs to a child, for the
234 purpose of gratifying the sexual desire of the parent, guard-
235 ian or custodian, of the person making such display, or of the
236 child, or for the purpose of affronting or alarming the child.

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

240 (17) "Sexual exploitation" means an act whereby:

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

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

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

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

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

261 (21) "Serious physical abuse" means bodily injury which
262 creates a substantial risk of death, which causes serious or

263 prolonged disfigurement, prolonged impairment of health or
264 prolonged loss or impairment of the function of any bodily
265 organ.

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

269 (23) "Time-limited reunification services" means individ-
270 ual, group and family counseling, inpatient, residential or
271 outpatient substance abuse treatment services, mental health
272 services, assistance to address domestic violence, services
273 designed to provide temporary child care and therapeutic
274 services for families, including crisis nurseries and transpor-
275 tation to or from any such services, provided during fifteen
276 of the most recent twenty-two months a child has been in
277 foster care, as determined by the earlier date of the first
278 judicial finding that the child is subjected to abuse or
279 neglect, or the date which is sixty days after the child is
280 removed from home.

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

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

1 (a) From funds appropriated to the Department of Health
2 and Human Resources, the secretary shall establish a system
3 of assistance for facilitating the adoption or legal guardian-
4 ship of children. An adoption subsidy shall be available for
5 children who are legally free for adoption and who are
6 dependents of the department or a child welfare agency
7 licensed to place children for adoption. A legal guardianship
8 subsidy shall not require the surrender or termination of
9 parental rights. For either subsidy, the children must be in
10 special circumstances because one or more of the following
11 conditions inhibit their adoption or legal guardianship
12 placement:

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

14 (2) They are emotionally disturbed;

15 (3) They are older children;

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

17 (5) They are a member of a racial or ethnic minority.

18 (b) The department shall provide assistance in the form
19 of subsidies or other services to parents who are found and
20 approved for adoption or legal guardianship of a child
21 certified as eligible for subsidy by the department, but before
22 the final decree of adoption or order of legal guardianship is
23 entered, there must be a written agreement between the
24 family entering into the subsidized adoption or legal guard-
25 ianship and the department. Adoption or legal guardianship
26 subsidies in individual cases may commence with the
27 adoption or legal guardianship placement, and will vary with
28 the needs of the child as well as the availability of other
29 resources to meet the child's needs. The subsidy may be for
30 special services only, or for money payments, and either for
31 a limited period, or for a long term, or for any combination
32 of the foregoing. The specific financial terms of the subsidy
33 shall be included in the agreement between the department
34 and the adoptive parents or legal guardians. The agreement
35 may recognize and provide for direct payment by the
36 department of attorney's fees to an attorney representing the
37 adoptive parent. The amount of the time-limited or long-
38 term subsidy may in no case exceed that which would be
39 allowable from time to time for such child under foster
40 family care or, in the case of a special service, the reasonable
41 fee for the service rendered. In addition, the department
42 shall provide either Medicaid or other health insurance
43 coverage for any special needs child for whom there is an
44 adoption or legal guardianship assistance agreement be-
45 tween the department and the adoptive parent or legal
46 guardian and who the department determines cannot be
47 placed with an adoptive parent or legal guardian without
48 medical assistance because the child has special needs for
49 medical, mental health or rehabilitative care.

50 (c) After reasonable efforts have been made without the
51 use of subsidy and no appropriate adoptive family or legal

52 guardian has been found for the child, the department shall
53 certify the child as eligible for a subsidy in the event of
54 adoption or a legal guardianship: *Provided*, that reasonable
55 efforts to place a child without a subsidy shall not be
56 required if it is in the best interest of the child because of
57 such factors as the existence of significant emotional ties
58 developed between the child and the prospective parent or
59 guardian while in care as a foster child.

60 (d) If the child is the dependent of a voluntary licensed
61 child-placing agency, that agency shall present to the
62 department evidence of the inability to place the child for
63 adoption or legal guardianship without the use of subsidy or
64 evidence that such efforts would not be in the best interests
65 of the child. In no event shall the value of the services and
66 assistance provided by the department under an agreement
67 pursuant to this section exceed the value of assistance
68 available to foster families in similar circumstances. All
69 records regarding subsidized adoptions or legal guardian-
70 ships shall be held in confidence; however, records regarding
71 the payment of public funds for subsidized adoptions or legal
72 guardianships shall be available for public inspection
73 provided they do not directly or indirectly identify any child
74 or persons receiving funds for such child.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the court shall, upon
3 request of the court, make an investigation of the environ-
4 ment of the juvenile and the alternative dispositions possible.
5 The court, upon its own motion, or upon request of counsel,
6 may order a psychological examination of the juvenile. The
7 report of such examination and other investigative and social
8 reports shall not be made available to the court until after
9 the adjudicatory hearing. Unless waived, copies of the report
10 shall be provided to counsel for the petitioner and counsel
11 for the juvenile no later than seventy-two hours prior to the
12 dispositional hearing.

13 (b) Following the adjudication, the court shall conduct
14 the dispositional proceeding, giving all parties an opportu-
15 nity to be heard. In disposition the court shall not be limited
16 to the relief sought in the petition and shall, in electing from
17 the following alternatives, consider the best interests of the
18 juvenile and the welfare of the public:

19 (1) Dismiss the petition;

20 (2) Refer the juvenile and the juvenile's parent or
21 custodian to a community agency for needed assistance and
22 dismiss the petition;

23 (3) Upon a finding that the juvenile is in need of extra-
24 parental supervision: (A) Place the juvenile under the
25 supervision of a probation officer of the court or of the court
26 of the county where the juvenile has his or her usual place of
27 abode or other person while leaving the juvenile in custody
28 of his or her parent or custodian; and (B) prescribe a program
29 of treatment or therapy or limit the juvenile's activities
30 under terms which are reasonable and within the child's
31 ability to perform, including participation in the litter
32 control program established pursuant to section three, article
33 fifteen-a, chapter twenty-two of this code or other appropri-
34 ate programs of community service;

35 (4) Upon a finding that a parent or custodian is not
36 willing or able to take custody of the juvenile, that a juvenile
37 is not willing to reside in the custody of his or her parent or
38 custodian or that a parent or custodian cannot provide the
39 necessary supervision and care of the juvenile, the court may
40 place the juvenile in temporary foster care or temporarily
41 commit the juvenile to the department or a child welfare
42 agency. The court order shall state that continuation in the
43 home is contrary to the best interest of the juvenile and why;
44 and whether or not the department made a reasonable effort
45 to prevent the placement or that the emergency situation
46 made such efforts unreasonable or impossible. Whenever the
47 court transfers custody of a youth to the department, an
48 appropriate order of financial support by the parents or
49 guardians shall be entered in accordance with section five,

50 article seven of this chapter and guidelines promulgated by
51 the Supreme Court of Appeals;

52 (5) Upon a finding that the best interests of the juvenile
53 or the welfare of the public require it, and upon an adjudica-
54 tion of delinquency pursuant to subdivision (1), section four,
55 article one of this chapter, the court may commit the juvenile
56 to the custody of the Director of the Division of Juvenile
57 Services for placement in a juvenile services facility for the
58 treatment, instruction and rehabilitation of juveniles:
59 *Provided*, That the court maintains discretion to consider
60 alternative sentencing arrangements. Notwithstanding any
61 provision of this code to the contrary, in the event that the
62 court determines that it is in the juvenile's best interests or
63 required by the public welfare to place the juvenile in the
64 custody of the Division of Juvenile Services, the court shall
65 provide the Division of Juvenile Services with access to all
66 relevant court orders and records involving the underlying
67 offense or offenses for which the juvenile was adjudicated
68 delinquent, including sentencing and presentencing reports
69 and evaluations, and provide the division with access to
70 school records, psychological reports and evaluations,
71 medical reports and evaluations or any other such records as
72 may be in the court's possession as would enable the Division
73 of Juvenile Services to better assess and determine the
74 appropriate counseling, education and placement needs for
75 the juvenile offender. Commitments shall not exceed the
76 maximum term for which an adult could have been sen-
77 tenced for the same offense and any such maximum allow-
78 able sentence to be served in a juvenile correctional facility
79 may take into account any time served by the juvenile in a
80 detention center pending adjudication, disposition or
81 transfer. The order shall state that continuation in the home
82 is contrary to the best interests of the juvenile and why; and
83 whether or not the state department made a reasonable effort
84 to prevent the placement or that the emergency situation
85 made such efforts unreasonable or impossible; or

86 (6) After a hearing conducted under the procedures set
87 out in subsections (c) and (d), section four, article five,

88 chapter twenty-seven of this code, commit the juvenile to a
89 mental health facility in accordance with the juvenile's
90 treatment plan; the director of the mental health facility may
91 release a juvenile and return him or her to the court for
92 further disposition. The order shall state that continuation in
93 the home is contrary to the best interests of the juvenile and
94 why; and whether or not the state department made a
95 reasonable effort to prevent the placement or that the
96 emergency situation made such efforts unreasonable or
97 impossible.

98 (c) In any case in which the court decides to order the
99 juvenile placed in an out-of-state facility or program, it shall
100 set forth in the order directing the placement the reasons the
101 juvenile was not placed in an in-state facility or program.

102 (d) The disposition of the juvenile shall not be affected by
103 the fact that the juvenile demanded a trial by jury or made
104 a plea of denial. Any dispositional order is subject to appeal
105 to the Supreme Court of Appeals.

106 (e) Following disposition, the court shall inquire whether
107 the juvenile wishes to appeal and the response shall be
108 transcribed; a negative response shall not be construed as a
109 waiver. The evidence shall be transcribed as soon as practi-
110 cable and made available to the juvenile or his or her
111 counsel, if the same is requested for purposes of further
112 proceedings. A judge may grant a stay of execution pending
113 further proceedings.

114 (f) Notwithstanding any other provision of this code to
115 the contrary, if a juvenile charged with delinquency under
116 this chapter is transferred to adult jurisdiction and there
117 tried and convicted, the court may make its disposition in
118 accordance with this section in lieu of sentencing such
119 person as an adult.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

**§49-5D-2. Multidisciplinary investigative teams; establishment;
procedures; coordination between agencies.**

1 (a) The prosecuting attorney shall establish a
2 multidisciplinary investigative team in each county. The
3 multidisciplinary team shall be headed and directed by the
4 prosecuting attorney or his or her designee and shall include
5 as permanent members the prosecuting attorney or his or her
6 designee, a local child protective services caseworker from
7 the Department of Health and Human Resources; a local
8 law-enforcement officer employed by a law-enforcement
9 agency in the county; a child advocacy center representative,
10 where available; a health care provider with pediatric and
11 child abuse expertise, where available; a mental health
12 professional with pediatric and child abuse expertise, where
13 available; an educator and a representative from a licensed
14 domestic violence program serving the county. The Depart-
15 ment of Health and Human Resources and any local law-
16 enforcement agency or agencies selected by the prosecuting
17 attorney shall appoint their representatives to the team by
18 submitting a written designation of the team to the prosecut-
19 ing attorney of each county within thirty days of the prose-
20 cutor's request that the appointment be made. Within fifteen
21 days of the appointment, the prosecuting attorney shall
22 notify the chief judge of each circuit within which the county
23 is situated of the names of the representatives so appointed.
24 Any other person or any other appointee of an agency who
25 may contribute to the team's efforts to assist a minor child as
26 may be determined by the permanent members of the team
27 may also be appointed as a member of the team by the
28 prosecutor with notification to the chief judge.

29 (b) Any permanent member of the multidisciplinary
30 investigative team shall refer all cases of accidental death of
31 any child reported to their agency and all cases when a child
32 dies while in the custody of the state for investigation and
33 review by the team. The multidisciplinary investigative team
34 shall meet at regular intervals at least once every calendar
35 month.

36 (c) The investigative team shall be responsible for
37 coordinating or cooperating in the initial and ongoing
38 investigation of all civil and criminal allegations pertinent to

39 cases involving child sexual assault, child sexual abuse, child
40 abuse and neglect and shall make a recommendation to the
41 county prosecuting attorney as to the initiation or com-
42 mencement of a civil petition and/or criminal prosecution.

43 (d) State, county and local agencies shall provide the
44 multidisciplinary investigative team with any information
45 requested in writing by the team as allowable by law or upon
46 receipt of a certified copy of the circuit court's order direct-
47 ing said agencies to release information in its possession
48 relating to the child. The team shall assure that all informa-
49 tion received and developed in connection with the provi-
50 sions of this article remains confidential. For purposes of this
51 section, the term "confidential" shall be construed in
52 accordance with the provisions of section one, article seven
53 of this chapter.

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

1 (a) (1) A multidisciplinary treatment planning process for
2 cases initiated pursuant to articles five and six of this
3 chapter shall be established within each county of the state,
4 either separately or in conjunction with a contiguous county,
5 by the secretary of the department with advice and assis-
6 tance from the prosecutor's advisory council as set forth in
7 section four, article four, chapter seven of this code. The
8 Division of Juvenile Services shall establish a similar
9 treatment planning process for delinquency cases in which
10 the juvenile has been committed to its custody, including
11 those cases in which the juvenile has been committed for
12 examination and diagnosis.

13 (2) The provisions of this section do not require a
14 multidisciplinary team meeting to be held prior to tempo-
15 rarily placing a child or juvenile out-of-home under exigent
16 circumstances or upon a court order placing a juvenile in a
17 facility operated by the Division of Juvenile Services.

18 (b) The case manager in the Department of Health and
19 Human Resources for the child, family or juvenile or the case
20 manager in the Division of Juvenile Services for a juvenile

21 shall convene a treatment team in each case when it is
22 required pursuant to this article.

23 Prior to disposition, in each case in which a treatment
24 planning team has been convened, the team shall advise the
25 court as to the types of services the team has determined are
26 needed and the type of placement, if any, which will best
27 serve the needs of the child. If the team determines that an
28 out-of-home placement will best serve the needs of the child,
29 the team shall first consider placement with appropriate
30 relatives then with foster care homes, facilities or programs
31 located within the state. The team may only recommend
32 placement in an out-of-state facility if it concludes, after
33 considering the best interests and overall needs of the child,
34 that there are no available and suitable in-state facilities
35 which can satisfactorily meet the specific needs of the child.

36 Any person authorized by the provisions of this chapter
37 to convene a multidisciplinary team meeting may seek and
38 receive an order of the circuit court setting such meeting and
39 directing attendance. Members of the multidisciplinary team
40 may participate in team meetings by telephone or video
41 conferencing: *Provided*, That the provisions of this subsec-
42 tion do not prevent the respective agencies from designating
43 a person other than the case manager as a facilitator for
44 treatment team meetings.

45 (c) The treatment team shall coordinate its activities and
46 membership with local family resource networks and
47 coordinate with other local and regional child and family
48 service planning committees to assure the efficient planning
49 and delivery of child and family services on a local and
50 regional level.

51 (d) The multidisciplinary treatment team shall be
52 afforded access to information in the possession of the
53 Department of Health and Human Services, Division of
54 Juvenile Services, law-enforcement agencies and other state,
55 county and local agencies; and the agencies shall cooperate
56 in the sharing of information, as may be provided in sections
57 three(d) and six, article five-D and section one, article seven,

58 all of chapter forty-nine, and any other relevant provision of
59 law. Any multidisciplinary team member who acquires
60 confidential information shall not disclose such information
61 except as permitted by the provisions of this code or court
62 rules.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

1 (a) In any case in which a multidisciplinary treatment
2 team develops an individualized service plan for a child or
3 family pursuant to the provisions of this article, the court
4 shall review the proposed service plan to determine if
5 implementation of the plan is in the child's best interests. If
6 the multidisciplinary team cannot agree on a plan or if the
7 court determines not to adopt the team's recommendations,
8 it shall, upon motion or sua sponte, schedule and hold within
9 ten days of such determination, and prior to the entry of an
10 order placing the child in the custody of the department or
11 in an out-of-home setting, a hearing to consider evidence
12 from the team as to its rationale for the proposed service
13 plan. If, after a hearing held pursuant to the provisions of
14 this section, the court does not adopt the teams's recom-
15 mended service plan, it shall make specific written findings
16 as to why the team's recommended service plan was not
17 adopted.

18 (b) In any case in which the court decides to order the
19 child placed in an out-of-state facility or program it shall set
20 forth in the order directing the placement the reasons why
21 the child was not placed in an in-state facility or program.

22 (c) Any member of the multidisciplinary treatment team
23 who disagrees with recommendations of the team may
24 inform the court of his or her own recommendations and
25 objections to the team's recommendations. The recommenda-
26 tions and objections of the dissenting team member may be
27 made in a hearing on the record, made in writing and served
28 upon each team member and filed with the court and
29 indicated in the case plan, or both made in writing and
30 indicated in the case plan. Upon receiving objections, the

31 court will conduct a hearing pursuant to paragraph (a) of
32 this section.

§49-5D-3b. Multidisciplinary treatment planning process involving child abuse and neglect.

1 (a) Within thirty days of the initiation of a judicial
2 proceeding pursuant to article six of this chapter, the
3 Department of Health and Human Services shall convene a
4 multidisciplinary treatment team to assess, plan and imple-
5 ment a comprehensive, individualized service plan for
6 children who are victims of abuse or neglect and their
7 families. The multidisciplinary team shall obtain and utilize
8 any assessments for the children or the adult respondents
9 that it deems necessary to assist in the development of such
10 a plan.

11 (b) In a case initiated pursuant to article six of this
12 chapter, the treatment team shall consist of the child or
13 family's case manager in the Department of Health and
14 Human Resources, the adult respondent or respondents, the
15 child's parent or parents, guardians, any copetitioners,
16 custodial relatives of the child, foster or preadoptive parents,
17 any attorney representing an adult respondent or other
18 member of the treatment team, the child's counsel or the
19 guardian ad litem, the prosecuting attorney or his or her
20 designee, a member of a child advocacy center when the
21 child has been processed through the child advocacy center
22 program or programs or it is otherwise appropriate that a
23 member of the child advocacy center participate, any court-
24 appointed special advocate assigned to a case, any other
25 person entitled to notice and the right to be heard, an
26 appropriate school official and any other person or agency
27 representative who may assist in providing recommendations
28 for the particular needs of the child and family, including
29 domestic violence service providers. The child may partici-
30 pate in multidisciplinary treatment team meetings if the
31 child's participation is deemed appropriate by the
32 multidisciplinary treatment team. Unless otherwise ordered
33 by the court, a party whose parental rights have been
34 terminated and his or her attorney shall not be given notice

35 of a multidisciplinary treatment team meeting and does not
36 have the right to participate in any treatment team meeting.

37 (c) Prior to disposition in each case which a treatment
38 planning team has been convened, the team shall advise the
39 court as to the types of services the team has determined are
40 needed and the type of placement, if any, which will best
41 serve the needs of the child. If the team determines that an
42 out-of-home placement will best serve the needs of the child,
43 the team shall first consider placement with appropriate
44 relatives then with foster care homes, facilities or programs
45 located within the state. The team may only recommend
46 placement in an out-of-state facility if it concludes, after
47 considering the best interests and overall needs of the child,
48 that there are no available and suitable in-state facilities
49 which can satisfactorily meet the specific needs of the child.

50 (d) The multidisciplinary treatment team shall submit
51 written reports to the court as required by the rules govern-
52 ing this type of proceeding or by the court, and shall meet as
53 often as deemed necessary but at least every three months
54 until the case is dismissed from the docket of the court. The
55 multidisciplinary treatment team shall be available for status
56 conferences and hearings as required by the court.

57 (e) If a respondent or copetitioner admits the underlying
58 allegations of child abuse or neglect, or both abuse and
59 neglect, in the multidisciplinary treatment planning process,
60 his or her statements not be used in any subsequent criminal
61 proceeding against him or her, except for perjury or false
62 swearing.

**§49-5D-3c. Multidisciplinary treatment process for status offend-
ers or delinquents.**

1 (a) (1) When a juvenile is adjudicated as a status offender
2 pursuant to section eleven-d, article five of this chapter, the
3 Department of Health and Human Resources shall promptly
4 convene a multidisciplinary treatment team and conduct an
5 assessment, utilizing a standard uniform comprehensive
6 assessment instrument or protocol, to determine the juve-

7 nile's mental and physical condition, maturity and education
8 level, home and family environment, rehabilitative needs and
9 recommended service plan. Upon completion of the assess-
10 ment, the treatment team shall prepare and implement a
11 comprehensive, individualized service plan for the juvenile.

12 (2) When a juvenile is adjudicated as a delinquent or has
13 been granted an improvement period pursuant to section
14 nine, article five of this chapter, the court, either upon its
15 own motion or motion of a party, may require the Depart-
16 ment of Health and Human Resources to convene a
17 multidisciplinary treatment team and conduct an assessment,
18 utilizing a standard uniform comprehensive assessment
19 instrument or protocol, to determine the juvenile's mental
20 and physical condition, maturity and education level, home
21 and family environment, rehabilitative needs and recom-
22 mended service plan. A referral to the Department of Health
23 and Human Resources to convene a multidisciplinary
24 treatment team and to conduct such an assessment shall be
25 made when the court is considering placing the juvenile in
26 the department's custody or placing the juvenile out-of-home
27 at the department's expense pursuant to section thirteen,
28 article five of this chapter. In any delinquency proceeding in
29 which the court requires the Department of Health and
30 Human Resources to convene a multidisciplinary treatment
31 team, the probation officer shall notify the department at
32 least fifteen working days before the court proceeding in
33 order to allow the department sufficient time to convene and
34 develop an individualized service plan for the juvenile.

35 (3) When a juvenile has been adjudicated and committed
36 to the custody of the Director of the Division of Juvenile
37 Services, including those cases in which the juvenile has
38 been committed for examination and diagnosis, the Division
39 of Juvenile Services shall promptly convene a
40 multidisciplinary treatment team and conduct an assessment,
41 utilizing a standard uniform comprehensive assessment
42 instrument or protocol, to determine the juvenile's mental
43 and physical condition, maturity and education level, home
44 and family environment, rehabilitative needs and recom-

45 mended service plan. Upon completion of the assessment, the
46 treatment team shall prepare and implement a comprehen-
47 sive, individualized service plan for the juvenile.

48 (4) (A) The rules of juvenile procedure shall govern the
49 procedure for obtaining an assessment of a juvenile, prepar-
50 ing an individualized service plan and submitting the plan
51 and assessment to the court.

52 (B) In juvenile proceedings conducted pursuant to article
53 five of this chapter, the treatment team shall consist of the
54 juvenile, the juvenile's case manager in the Department of
55 Health and Human Resources or the Division of Juvenile
56 Services, the juvenile's parent or parents, guardian or
57 guardians or custodial relatives, the juvenile's attorney, any
58 attorney representing a member of the treatment team, the
59 prosecuting attorney or his or her designee, an appropriate
60 school official and any other person or agency representative
61 who may assist in providing recommendations for the
62 particular needs of the juvenile and family, including
63 domestic violence service providers. In delinquency proceed-
64 ings, the probation officer shall be a member of a treatment
65 team. When appropriate, the juvenile case manager in the
66 Department of Health and Human Resources and the
67 Division of Juvenile Services shall cooperate in conducting
68 multidisciplinary treatment team meetings when it is in the
69 juvenile's best interest.

70 (C) Prior to disposition, in each case in which a treatment
71 planning team has been convened, the team shall advise the
72 court as to the types of services the team has determined are
73 needed and type of placement, if any, which will best serve
74 the needs of the child. If the team determines that an out-of-
75 home placement will best serve the needs of the child, the
76 team shall first consider placement at facilities or programs
77 located within the state. The team may only recommend
78 placement in an out-of-state facility if it concludes, after
79 considering the best interests and overall needs of the child,
80 that there are no available and suitable in-state facilities
81 which can satisfactorily meet the specific needs of the child.

82 (D) The multidisciplinary treatment team shall submit
83 written reports to the court as required by applicable law or
84 by the court, shall meet with the court at least every three
85 months, as long as the juvenile remains in the legal or
86 physical custody of the state, and shall be available for status
87 conferences and hearings as required by the court.

88 (E) In any case in which a juvenile has been placed out of
89 his or her home except for a temporary placement in a
90 shelter or detention center, the multidisciplinary treatment
91 team shall cooperate with the state agency in whose custody
92 the juvenile is placed to develop an after-care plan. The rules
93 of juvenile procedure and section twenty, article five,
94 chapter forty-nine of the code shall govern the development
95 of an after-care plan for a juvenile, the submission of the
96 plan to the court and any objection to the after-care plan.

97 (F) If a juvenile respondent admits the underlying
98 allegations of the case initiated pursuant to article five,
99 chapter forty-nine of this code in the multidisciplinary
100 treatment planning process, his or her statements shall not
101 be used in any juvenile or criminal proceedings against the
102 juvenile, except for perjury or false swearing.

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

§49-6-2. Petition to court when child believed neglected or abused

**— Right to counsel; improvement period; hearing;
priority of proceeding; transcript.**

1-- (a) In any proceeding under the provisions of this article,
2 the child, his or her or parents and his or her legally estab-
3 lished custodian or other persons standing in loco parentis to
4 him or her shall have the right to be represented by counsel
5 at every stage of the proceedings and shall be informed by
6 the court of their right to be so represented and that if they
7 cannot pay for the services of counsel, that counsel will be
8 appointed. Counsel of the child shall be appointed in the
9 initial order. If the order gives physical custody of the child
10 to the state, the initial order shall appoint counsel for the
11 parents or, if the parents are separated or divorced, the

12 parents or parent or other person or persons standing in loco
13 parentis who had physical custody of the child for the
14 majority of the time in the period immediately preceding the
15 petition: *Provided*, That such representation shall only
16 continue after the first appearance if the parent or other
17 persons standing in loco parentis cannot pay for the services
18 of counsel. Counsel for other parties shall only be appointed
19 upon request for appointment of counsel. If the requesting
20 parties have not retained counsel and cannot pay for the
21 services of counsel, the court shall, by order entered of
22 record, appoint an attorney or attorneys to represent the
23 other party or parties and so inform the parties. Under no
24 circumstances may the same attorney represent both the
25 child and the other party or parties, nor shall the same
26 attorney represent both parents or custodians. However, one
27 attorney may represent both parents or custodians where
28 both parents or guardians consent to this representation
29 after the attorney fully discloses to the client the possible
30 conflict and where the attorney assures the court that she or
31 he is able to represent each client without impairing her or
32 his professional judgment; however, if more than one child
33 from a family is involved in the proceeding, one attorney may
34 represent all the children. A parent who has been judicially
35 determined to be battered shall be entitled to his or her own
36 attorney. The court may allow to each attorney so appointed
37 a fee in the same amount which appointed counsel can
38 receive in felony cases. Effective July 1, 2012, any attorney
39 appointed pursuant to this section shall receive a minimum
40 of eight hours of continuing legal education training per
41 reporting period on child abuse and neglect procedure and
42 practice. In addition to this requirement, after July 1, 2013,
43 any attorney appointed to represent a child must first
44 complete training on representation of children that is
45 approved by the administrative office of the Supreme Court
46 of Appeals. The Supreme Court of Appeals shall develop
47 procedures for approval and certification of training re-
48 quired under this section by July 1, 2012: *Provided, however*,
49 That where no attorney who has completed this training is
50 available for such appointment, the court shall appoint a
51 competent attorney with demonstrated knowledge of child

52 welfare law to represent the parent or child. Any attorney
53 appointed pursuant to this section shall perform all duties
54 required as an attorney licensed to practice law in the State
55 of West Virginia.

56 (b) In any proceeding brought pursuant to the provisions
57 of this article, the court may grant any respondent an
58 improvement period in accord with the provisions of this
59 article. During such period, the court may require temporary
60 custody with a responsible person which has been found to
61 be a fit and proper person for the temporary custody of the
62 child or children or the state department or other agency
63 during the improvement period. An order granting such
64 improvement period shall require the department to prepare
65 and submit to the court a family case plan in accordance
66 with the provisions of section three, article six-d of this
67 chapter.

68 (c) In any proceeding pursuant to the provisions of this
69 article, the party or parties having custodial or other paren-
70 tal rights or responsibilities to the child shall be afforded a
71 meaningful opportunity to be heard, including the opportu-
72 nity to testify and to present and cross-examine witnesses.
73 The petition shall not be taken as confessed. A transcript or
74 recording shall be made of all proceedings unless waived by
75 all parties to the proceeding. The rules of evidence shall
76 apply. Where relevant, the court shall consider the efforts of
77 the state department to remedy the alleged circumstances. At
78 the conclusion of the hearing, the court shall make a deter-
79 mination based upon the evidence and shall make findings of
80 fact and conclusions of law as to whether such child is
81 abused or neglected and, if applicable, whether the parent,
82 guardian, or custodian is a battered parent, all of which shall
83 be incorporated into the order of the court. The findings
84 must be based upon conditions existing at the time of the
85 filing of the petition and proven by clear and convincing
86 proof.

87 (d) Any petition filed and any proceeding held under the
88 provisions of this article shall, to the extent practicable, be
89 given priority over any other civil action before the court,

90 except proceedings under article two-a, chapter forty-eight
91 of this code and actions in which trial is in progress. Any
92 petition filed under the provisions of this article shall be
93 docketed immediately upon filing. Any hearing to be held at
94 the end of an improvement period and any other hearing to
95 be held during any proceedings under the provisions of this
96 article shall be held as nearly as practicable on successive
97 days and, with respect to said hearing to be held at the end
98 of an improvement period, shall be held as close in time as
99 possible after the end of said improvement period and shall
100 be held within sixty days of the termination of such improve-
101 ment period.

102 (e) Following the court's determination, it shall be
103 inquired of the parents or custodians whether or not appeal
104 is desired and the response transcribed. A negative response
105 shall not be construed as a waiver. The evidence shall be
106 transcribed and made available to the parties or their
107 counsel as soon as practicable, if the same is required for
108 purposes of further proceedings. If an indigent person
109 intends to pursue further proceedings, the court reporter
110 shall furnish a transcript of the hearing without cost to the
111 indigent person if an affidavit is filed stating that he or she
112 cannot pay therefor.

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

1 (a) Upon the filing of a petition, the court may order that
2 the child alleged to be an abused or neglected child be
3 delivered for not more than ten days into the custody of the
4 state department or a responsible person found by the court
5 to be a fit and proper person for the temporary care of the
6 child pending a preliminary hearing, if it finds that:

7 (1) There exists imminent danger to the physical well
8 being of the child; and

9 (2) There are no reasonably available alternatives to
10 removal of the child, including, but not limited to, the
11 provision of medical, psychiatric, psychological or home-

12 making services in the child's present custody: *Provided*,
13 That where the alleged abusing person, if known, is a
14 member of a household, the court shall not allow placement
15 pursuant to this section of the child or children in said home
16 unless the alleged abusing person is or has been precluded
17 from visiting or residing in said home by judicial order. In a
18 case where there is more than one child in the home, or in
19 the temporary care, custody or control of the alleged offend-
20 ing parent, the petition shall so state, and notwithstanding
21 the fact that the allegations of abuse or neglect may pertain
22 to less than all of such children, each child in the home for
23 whom relief is sought shall be made a party to the proceed-
24 ing. Even though the acts of abuse or neglect alleged in the
25 petition were not directed against a specific child who is
26 named in the petition, the court shall order the removal of
27 such child, pending final disposition, if it finds that there
28 exists imminent danger to the physical well being of the
29 child and a lack of reasonable available alternatives to
30 removal. The initial order directing such custody shall
31 contain an order appointing counsel and scheduling the
32 preliminary hearing, and upon its service shall require the
33 immediate transfer of custody of such child or children to the
34 department or a responsible relative which may include any
35 parent, guardian, or other custodian. The court order shall
36 state:

37 (A) That continuation in the home is contrary to the best
38 interests of the child and why; and

39 (B) Whether or not the department made reasonable
40 efforts to preserve the family and prevent the placement or
41 that the emergency situation made such efforts unreasonable
42 or impossible. The order may also direct any party or the
43 department to initiate or become involved in services to
44 facilitate reunification of the family.

45 (b) Whether or not the court orders immediate transfer of
46 custody as provided in subsection (a) of this section, if the
47 facts alleged in the petition demonstrate to the court that
48 there exists imminent danger to the child, the court may
49 schedule a preliminary hearing giving the respondents at

50 least five days' actual notice. If the court finds at the prelimi-
51 nary hearing that there are no alternatives less drastic than
52 removal of the child and that a hearing on the petition
53 cannot be scheduled in the interim period, the court may
54 order that the child be delivered into the temporary custody
55 of the department or a responsible person or agency found by
56 the court to be a fit and proper person for the temporary care
57 of the child for a period not exceeding sixty days: *Provided,*
58 That the court order shall state:

59 (1) That continuation in the home is contrary to the best
60 interests of the child and set forth the reasons therefor;

61 (2) whether or not the department made reasonable
62 efforts to preserve the family and to prevent the child's
63 removal from his or her home;

64 (3) Whether or not the department made reasonable
65 efforts to preserve the family and to prevent the placement
66 or that the emergency situation made such efforts unreason-
67 able or impossible; and

68 (4) What efforts should be made by the department, if
69 any, to facilitate the child's return home: *Provided, however,*
70 That if the court grants an improvement period as provided
71 in section twelve of this article, the sixty-day limit upon
72 temporary custody is waived.

73 (c) If a child or children shall, in the presence of a child
74 protective service worker, be in an emergency situation
75 which constitutes an imminent danger to the physical well
76 being of the child or children, as that phrase is defined in
77 section three, article one of this chapter, and if such worker
78 has probable cause to believe that the child or children will
79 suffer additional child abuse or neglect or will be removed
80 from the county before a petition can be filed and temporary
81 custody can be ordered, the worker may, prior to the filing of
82 a petition, take the child or children into his or her custody
83 without a court order: *Provided,* That after taking custody of
84 such child or children prior to the filing of a petition, the
85 worker shall forthwith appear before a circuit judge or a

86 juvenile referee of the county wherein custody was taken, or
87 if no such judge or referee be available, before a circuit judge
88 or a juvenile referee of an adjoining county, and shall
89 immediately apply for an order ratifying the emergency
90 custody of the child pending the filing of a petition. The
91 circuit court of every county in the state shall appoint at
92 least one of the magistrates of the county to act as a juvenile
93 referee, who shall serve at the will and pleasure of the
94 appointing court, and who shall perform the functions
95 prescribed for such position by the provisions of this subsection.
96 The parents, guardians or custodians of the child or
97 children may be present at the time and place of application
98 for an order ratifying custody, and if at the time the child or
99 children are taken into custody by the worker, the worker
100 knows which judge or referee is to receive the application,
101 the worker shall so inform the parents, guardians or custodi-
102 ans. The application for emergency custody may be on forms
103 prescribed by the Supreme Court of Appeals or prepared by
104 the prosecuting attorney or the applicant, and shall set forth
105 facts from which it may be determined that the probable
106 cause described above in this subsection exists. Upon such
107 sworn testimony or other evidence as the judge or referee
108 deems sufficient, the judge or referee may order the emer-
109 gency taking by the worker to be ratified. If appropriate
110 under the circumstances, the order may include authoriza-
111 tion for an examination as provided for in subsection (b),
112 section four of this article. If a referee issues such an order,
113 the referee shall by telephonic communication have such
114 order orally confirmed by a circuit judge of the circuit or an
115 adjoining circuit who shall on the next judicial day enter an
116 order of confirmation. If the emergency taking is ratified by
117 the judge or referee, emergency custody of the child or
118 children shall be vested in the department until the expira-
119 tion of the next two judicial days, at which time any such
120 child taken into emergency custody shall be returned to the
121 custody of his or her parent or guardian or custodian unless
122 a petition has been filed and custody of the child has been
123 transferred under the provisions of section three of this
124 article.

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

130 (1) The parent has subjected the child, another child of
131 the parent or any other child residing in the same household
132 or under the temporary or permanent custody of the parent
133 to aggravated circumstances which include, but are not
134 limited to, abandonment, torture, chronic abuse and sexual
135 abuse;

136 (2) The parent has:

137 (A) Committed murder of the child's other parent,
138 guardian or custodian, another child of the parent or any
139 other child residing in the same household or under the
140 temporary or permanent custody of the parent;

141 (B) Committed voluntary manslaughter of the child's
142 other parent, guardian or custodian, another child of the
143 parent or any other child residing in the same household or
144 under the temporary or permanent custody of the parent;

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

148 (D) Committed unlawful or malicious wounding that
149 results in serious bodily injury to the child, the child's other
150 parent, guardian or custodian, to another child of the parent
151 or any other child residing in the same household or under
152 the temporary or permanent custody of the parent;

153 (E) Committed sexual assault or sexual abuse of the
154 child, the child's other parent, guardian or custodian,
155 another child of the parent or any other child residing in the
156 same household or under the temporary or permanent
157 custody of the parent; or

158 (F) Has been required by state or federal law to register
159 with a sex offender registry; or

160 (3) The parental rights of the parent to another child
161 have been terminated involuntarily.

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

1 (a) Following a determination pursuant to section two of
2 this article wherein the court finds a child to be abused or
3 neglected, the department shall file with the court a copy of
4 the child's case plan, including the permanency plan for the
5 child. The term case plan means a written document that
6 includes, where applicable, the requirements of the family
7 case plan as provided for in section three, article six-d of this
8 chapter and that also includes at least the following: A
9 description of the type of home or institution in which the
10 child is to be placed, including a discussion of the appropri-
11 ateness of the placement and how the agency which is
12 responsible for the child plans to assure that the child
13 receives proper care and that services are provided to the
14 parents, child and foster parents in order to improve the
15 conditions in the parent(s) home; facilitate return of the child
16 to his or her own home or the permanent placement of the
17 child; and address the needs of the child while in foster care,
18 including a discussion of the appropriateness of the services
19 that have been provided to the child. The term "permanency
20 plan" refers to that part of the case plan which is designed to
21 achieve a permanent home for the child in the least restric-
22 tive setting available. The plan must document efforts to
23 ensure that the child is returned home within approximate
24 time lines for reunification as set out in the plan. Reasonable
25 efforts to place a child for adoption or with a legal guardian
26 may be made at the same time reasonable efforts are made to
27 prevent removal or to make it possible for a child to safely
28 return home. If reunification is not the permanency plan for
29 the child, the plan must state why reunification is not
30 appropriate and detail the alternative placement for the
31 child to include approximate time lines for when such
32 placement is expected to become a permanent placement.
33 This case plan shall serve as the family case plan for parents

34 of abused or neglected children. Copies of the child's case
35 plan shall be sent to the child's attorney and parent, guard-
36 ian or custodian or their counsel at least five days prior to
37 the dispositional hearing. The court shall forthwith proceed
38 to disposition giving both the petitioner and respondents an
39 opportunity to be heard. The court shall give precedence to
40 dispositions in the following sequence:

41 (1) Dismiss the petition;

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

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

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

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

58 (A) That continuation in the home is contrary to the best
59 interests of the child and why;

60 (B) Whether or not the department has made reasonable
61 efforts, with the child's health and safety being the para-
62 mount concern, to preserve the family, or some portion
63 thereof, and to prevent or eliminate the need for removing
64 the child from the child's home and to make it possible for
65 the child to safely return home;

66 (C) What efforts were made or that the emergency
67 situation made such efforts unreasonable or impossible; and

68 (D) The specific circumstances of the situation which
69 made such efforts unreasonable if services were not offered
70 by the department. The court order shall also determine
71 under what circumstances the child's commitment to the
72 department shall continue. Considerations pertinent to the
73 determination include whether the child should:

74 (i) Be continued in foster care for a specified period;

75 (ii) Be considered for adoption;

76 (iii) Be considered for legal guardianship;

77 (iv) Be considered for permanent placement with a fit
78 and willing relative; or

79 (v) Be placed in another planned permanent living
80 arrangement, but only in cases where the department has
81 documented to the circuit court a compelling reason for
82 determining that it would not be in the best interests of the
83 child to follow one of the options set forth in subparagraphs
84 (i), (ii), (iii) or (iv) of this paragraph. The court may order
85 services to meet the special needs of the child. Whenever the
86 court transfers custody of a youth to the department, an
87 appropriate order of financial support by the parents or
88 guardians shall be entered in accordance with section five,
89 article seven of this chapter; or

90 (6) Upon a finding that there is no reasonable likelihood
91 that the conditions of neglect or abuse can be substantially
92 corrected in the near future and, when necessary for the
93 welfare of the child, terminate the parental, custodial and
94 guardianship rights and responsibilities of the abusing
95 parent and commit the child to the permanent sole custody
96 of the nonabusing parent, if there be one, or, if not, to either
97 the permanent guardianship of the department or a licensed
98 child welfare agency. The court may award sole custody of
99 the child to a nonabusing battered parent. If the court shall
100 so find, then in fixing its dispositional order the court shall
101 consider the following factors:

102 (A) The child's need for continuity of care and caretak-
103 ers;

104 (B) The amount of time required for the child to be
105 integrated into a stable and permanent home environment;
106 and

107 (C) Other factors as the court considers necessary and
108 proper. Notwithstanding any other provision of this article,
109 the court shall give consideration to the wishes of a child
110 fourteen years of age or older or otherwise of an age of
111 discretion as determined by the court regarding the perma-
112 nent termination of parental rights. No adoption of a child
113 shall take place until all proceedings for termination of
114 parental rights under this article and appeals thereof are
115 final. In determining whether or not parental rights should
116 be terminated, the court shall consider the efforts made by
117 the department to provide remedial and reunification
118 services to the parent. The court order shall state:

119 (i) That continuation in the home is not in the best
120 interest of the child and why;

121 (ii) Why reunification is not in the best interests of the
122 child;

123 (iii) Whether or not the department made reasonable
124 efforts, with the child's health and safety being the para-
125 mount concern, to preserve the family, or some portion
126 thereof, and to prevent the placement or to eliminate the
127 need for removing the child from the child's home and to
128 make it possible for the child to safely return home, or that
129 the emergency situation made such efforts unreasonable or
130 impossible; and

131 (iv) Whether or not the department made reasonable
132 efforts to preserve and reunify the family, or some portion
133 thereof, including a description of what efforts were made or
134 that such efforts were unreasonable due to specific circum-
135 stances.

136 (7) For purposes of the court's consideration of the
137 disposition custody of a child pursuant to the provisions of
138 this subsection, the department is not required to make
139 reasonable efforts to preserve the family if the court deter-
140 mines:

141 (A) The parent has subjected the child, another child of
142 the parent or any other child residing in the same household
143 or under the temporary or permanent custody of the parent
144 to aggravated circumstances which include, but are not
145 limited to, abandonment, torture, chronic abuse and sexual
146 abuse;

147 (B) The parent has:

148 (i) Committed murder of the child's other parent, guard-
149 ian or custodian, another child of the parent or any other
150 child residing in the same household or under the temporary
151 or permanent custody of the parent;

152 (ii) Committed voluntary manslaughter of the child's
153 other parent, guardian or custodian, another child of the
154 parent or any other child residing in the same household or
155 under the temporary or permanent custody of the parent;

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

159 (iv) Committed a felonious assault that results in serious
160 bodily injury to the child, the child's other parent, guardian
161 or custodian, to another child of the parent or any other
162 child residing in the same household or under the temporary
163 or permanent custody of the parent; or

164 (v) Committed sexual assault or sexual abuse of the child,
165 the child's other parent, guardian or custodian, another child
166 of the parent or any other child residing in the same house-
167 hold or under the temporary or permanent custody of the
168 parent; or

169 (vi) Been required by state or federal law to register with
170 a sex offender registry; or

171 (C) The parental rights of the parent to another child
172 have been terminated involuntarily; or

173 (D) A parent has been required by state or federal law to
174 register with a sex offender registry, and the court has

175 determined in consideration of the nature and circumstances
176 surrounding the prior charges against that parent, that the
177 child's interests would not be promoted by a preservation of
178 the family.

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

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

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

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

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

207 (5) The abusing parent or parents have repeatedly or
208 seriously injured the child physically or emotionally, or have
209 sexually abused or sexually exploited the child, and the
210 degree of family stress and the potential for further abuse

211 and neglect are so great as to preclude the use of resources to
212 mitigate or resolve family problems or assist the abusing
213 parent or parents in fulfilling their responsibilities to the
214 child;

215 (6) The abusing parent or parents have incurred emo-
216 tional illness, mental illness or mental deficiency of such
217 duration or nature as to render such parent or parents
218 incapable of exercising proper parenting skills or sufficiently
219 improving the adequacy of such skills; or

220 (7) The battered parent's parenting skills have been
221 seriously impaired and said person has willfully refused or is
222 presently unwilling or unable to cooperate in the develop-
223 ment of a reasonable treatment plan or has not adequately
224 responded to or followed through with the recommended and
225 appropriate treatment plan.

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

§49-6-6. Modification of dispositional orders.

1 (a) Upon motion of a child, a child's parent or custodian
2 or the department alleging a change of circumstances
3 requiring a different disposition, the court shall conduct a
4 hearing pursuant to section two of this article and may
5 modify a dispositional order if the court finds by clear and
6 convincing evidence a material change of circumstances and
7 that such modification is in the child's best interests:
8 *Provided*, That a dispositional order pursuant to subdivision
9 (6), subsection (a) of section five shall not be modified after

10 the child has been adopted, except as provided in subsections
11 (b) and (c) of this section. Adequate and timely notice of any
12 motion for modification shall be given to the child's counsel,
13 counsel for the child's parent or custodian, the department
14 and any person entitled to notice and the right to be heard.
15 The circuit court of origin has exclusive jurisdiction over
16 placement of the child, and such placement shall not be
17 disrupted or delayed by any administrative process of the
18 department.

19 (b) If the child is removed or relinquished from an
20 adoptive home or other permanent placement after the case
21 has been dismissed, any party with notice thereof and the
22 receiving agency shall promptly report the matter to the
23 circuit court of origin, the department and the child's
24 counsel, and the court shall schedule a permanency hearing
25 within sixty days of the report to the circuit court, with
26 notice given to any appropriate parties and persons entitled
27 to notice and the right to be heard. The department shall
28 convene a multidisciplinary treatment team meeting within
29 thirty days of the receipt of notice of permanent placement
30 disruption.

31 (c) If a child has not been adopted, the child or depart-
32 ment may move the court to place the child with a parent or
33 custodian whose rights have been terminated and/or restore
34 such parent's or guardian's rights. Under these circum-
35 stances, the court may order such placement and/or restora-
36 tion of a parent's or guardian's rights if it finds by clear and
37 convincing evidence a material change of circumstances and
38 that such placement and/or restoration is in the child's best
39 interests.

§49-6-8. Permanency hearing and permanent placement review.

1 (a) If the court finds, pursuant to any provision of this
2 article, that the department is not required to make reason-
3 able efforts to preserve the family, then, notwithstanding any
4 other provision, a permanency hearing must be held within
5 thirty days following the entry of the court order so finding,
6 and a permanent placement review hearing must be con-

7 ducted at least once every three calendar months thereafter
8 until a permanent placement is achieved.

9 (b) If, twelve months after receipt by the department or
10 its authorized agent of physical custody of a child either by
11 a court ordered placement or by a voluntary agreement, the
12 department has not placed a child in an adoptive home or
13 placed the child with a natural parent or placed the child in
14 legal guardianship or permanently placed the child with a fit
15 and willing relative, the court shall hold a permanency
16 hearing. The department shall file a report with the court
17 detailing the efforts that have been made to place the child
18 in a permanent home and copies of the child's case plan,
19 including the permanency plan as defined in section five,
20 article six of this chapter. Copies of the report shall be sent
21 to the parties and all persons entitled to notice and the right
22 to be heard. The court shall schedule a hearing, giving notice
23 and the right to be present to: The child's attorney; the child,
24 if twelve years of age or older; the child's parents; the child's
25 guardians; the child's foster parents; any preadoptive parent
26 or any relative providing care for the child; any person
27 entitled to notice and the right to be heard; and such other
28 persons as the court may, in its discretion, direct. The child's
29 presence may be waived by the child's attorney at the
30 request of the child or if the child would suffer emotional
31 harm. The purpose of the hearing is to review the child's
32 case, to determine whether and under what conditions the
33 child's commitment to the department shall continue and to
34 determine what efforts are necessary to provide the child
35 with a permanent home. In the case of a child who will not
36 be returned to his or her parent, the court shall consider in-
37 state and out-of-state placement options, and, if the court
38 considers an out-of-state placement, the court shall deter-
39 mine whether such placement is in the best interests of the
40 child; in the case of a child who has attained sixteen years of
41 age, the court shall determine the services needed to assist
42 the child to make the transition from foster care to independ-
43 ent living. In any case in which the court decides to order the
44 child placed in an out-of-state facility or program it shall set
45 forth in the order directing the placement the reasons why

46 the child was not placed in an in-state facility or program.
47 At the conclusion of the hearing the court shall, in accor-
48 dance with the best interests of the child, enter an order
49 containing all such appropriate findings. The court order
50 shall state: (1) Whether or not the department made reason-
51 able efforts to preserve the family and to prevent out-of-
52 home placement or that the specific situation made such
53 effort unreasonable; (2) whether or not the department made
54 reasonable efforts to finalize the permanency plan for the
55 child; and (3) identify services required to meet the child's
56 needs.

57 (c) The court shall conduct another permanency hearing
58 within twelve months thereafter for each child who remains
59 in the physical or legal custody of the department until the
60 child is placed in an adoptive home or returned to his or her
61 parents or placed in legal guardianship or permanently
62 placed with a fit and willing relative.

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

67 (e) The state department shall file a report with the court
68 in any case where any child in the temporary or permanent
69 custody of the state receives more than three placements in
70 one year no later than thirty days after the third placement.
71 This report shall be provided to all parties and persons
72 entitled to notice and the right to be heard. Upon motion by
73 any party, the court shall review these placements and
74 determine what efforts are necessary to provide the child
75 with a permanent home: *Provided*, That no report shall be
76 provided to any parent or parent's attorney whose parental
77 rights have been terminated pursuant to this article.

78 (f) The state department shall notify, in writing, the
79 court, the child, if over the age of twelve, the child's attor-
80 ney, the parents and the parents' attorney forty-eight hours
81 prior to the move if this is a planned move, or within forty-
82 eight hours of the next business day after the move if this is

83 an emergency move, except where such notification would
84 endanger the child or the foster family. This notice shall not
85 be required in any case where the child is in imminent
86 danger in the child's current placement. The location of the
87 child need not be disclosed, but the purpose of the move
88 should be. This requirement is not waived by placement of
89 the child in a home or other residence maintained by a
90 private provider. No notice shall be provided pursuant to this
91 provision to any parent or parent's attorney whose parental
92 rights have been terminated pursuant to this article.

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

98 (h) Any foster parent, preadoptive parent or relative
99 providing care for the child shall be given notice of and the
100 right to be heard at the permanency hearing provided in this
101 section.

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

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

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

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

12 (3) In the order granting the improvement period, the
13 court (A) orders that a hearing be held to review the matter
14 within sixty days of the granting of the improvement period;
15 or (B) orders that a hearing be held to review the matter

16 within ninety days of the granting of the improvement period
17 and that the department submit a report as to the respon-
18 dents progress in the improvement period within sixty days
19 of the order granting the improvement period; and

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

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

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

30 (2) The respondent demonstrates, by clear and convinc-
31 ing evidence, that the respondent is likely to fully participate
32 in the improvement period and the court further makes a
33 finding, on the record, of the terms of the improvement
34 period;

35 (3) In the order granting the improvement period, the
36 court (A) orders that a hearing be held to review the matter
37 within sixty days of the granting of the improvement period;
38 or (B) orders that a hearing be held to review the matter
39 within ninety days of the granting of the improvement period
40 and that the department submit a report as to the respon-
41 dent's progress in the improvement period within sixty days
42 of the order granting the improvement period;

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

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

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

58 (1) The respondent moves in writing for the improvement
59 period;

60 (2) The respondent demonstrates, by clear and convinc-
61 ing evidence, that the respondent is likely to fully participate
62 in the improvement period and the court further makes a
63 finding, on the record, of the terms of the improvement
64 period;

65 (3) In the order granting the improvement period, the
66 court:

67 (A) Orders that a hearing be held to review the matter
68 within sixty days of the granting of the improvement period;
69 or

70 (B) Orders that a hearing be held to review the matter
71 within ninety days of the granting of the improvement period
72 and that the department submit a report as to the respon-
73 dent's progress in the improvement period within sixty days
74 of the order granting the improvement period;

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

83 (5) The order granting the improvement period shall
84 require the department to prepare and submit to the court an

85 individualized family case plan in accordance with the
86 provisions of section three, article six-d of this chapter.

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

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

103 (f) When any respondent is granted an improvement
104 period pursuant to the provisions of this article, the depart-
105 ment shall monitor the progress of such person in the
106 improvement period. When the respondent fails to partici-
107 pate in any service mandated by the improvement period, the
108 state department shall initiate action to inform the court of
109 that failure. When the department demonstrates that the
110 respondent has failed to participate in any provision of the
111 improvement period, the court shall forthwith terminate the
112 improvement period.

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

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

126 (i) This section may not be construed to prohibit a court
127 from ordering a respondent to participate in services de-
128 signed to reunify a family or to relieve the department of any
129 duty to make reasonable efforts to reunify a family required
130 by state or federal law.

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

137 (k) Any hearing to be held at the end of an improvement
138 period shall be held as nearly as practicable on successive
139 days and shall be held as close in time as possible after the
140 end of said improvement period and shall be held no later
141 than sixty days of the termination of such improvement
142 period.

143 (l) Notwithstanding any other provision of this section,
144 no combination of any improvement periods or extensions
145 thereto may cause a child to be in foster care more than
146 fifteen months of the most recent twenty-two months, unless
147 the court finds compelling circumstances by clear and
148 convincing evidence that it is in the child's best interests to
149 extend the time limits contained in this paragraph.

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED OF BEING
ABUSED OR NEGLECTED.**

§49-6A-5. Reporting procedures.

1 (a) Reports of child abuse and neglect pursuant to this
2 article shall be made immediately by telephone to the local
3 state department child protective service agency and shall be
4 followed by a written report within forty-eight hours if so

5 requested by the receiving agency. The state department
6 shall establish and maintain a twenty-four hour, seven-day-
7 a-week telephone number to receive such calls reporting
8 suspected or known child abuse or neglect.

9 (b) A copy of any report of serious physical abuse, sexual
10 abuse or assault shall be forwarded by the department to the
11 appropriate law-enforcement agency, the prosecuting
12 attorney or the coroner or medical examiner's office. All
13 reports under this article shall be confidential. Reports of
14 known or suspected institutional child abuse or neglect shall
15 be made and received as all other reports made pursuant to
16 this article.

ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.

§49-6D-3. Unified child and family case plans.

1 (a) The Department of Health and Human Resources
2 shall develop a unified child and family case plan for every
3 family wherein a person has been referred to the department
4 after being allowed an improvement period or where the
5 child is placed in foster care. The case plan must be filed
6 within sixty days of the child coming into foster care or
7 within thirty days of the inception of the improvement
8 period, whichever occurs first. The department may also
9 prepare a case plan for any person who voluntarily seeks
10 child abuse and neglect services from the department, or who
11 is referred to the department by another public agency or
12 private organization. The case plan provisions shall comply
13 with federal law and the rules of procedure for child abuse
14 and neglect proceedings.

15 (b) The department shall convene a multidisciplinary
16 treatment team, which shall develop the case plan. Parents,
17 guardians or custodians shall participate fully in the devel-
18 opment of the case plan, and the child shall also fully
19 participate if sufficiently mature and the child's participa-
20 tion is otherwise appropriate. The case plan may be modified
21 from time to time to allow for flexibility in goal develop-
22 ment, and in each such case the modifications shall be

23 submitted to the court in writing. Reasonable efforts to place
24 a child for adoption or with a legal guardian may be made at
25 the same time as reasonable efforts are being made to
26 prevent removal or to make it possible for a child to return
27 safely home. The court shall examine the proposed case plan
28 or any modification thereof, and upon a finding by the court
29 that the plan or modified plan can be easily communicated,
30 explained and discussed so as to make the participants
31 accountable and able to understand the reasons for any
32 success or failure under the plan, the court shall inform the
33 participants of the probable action of the court if goals are
34 met or not met.

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

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

46 (2) For the establishment and maintenance of centers,
47 serving defined geographic areas, staffed by
48 multidisciplinary teams and community teams of personnel
49 trained in the prevention, identification and treatment of
50 child abuse and neglect cases, to provide a broad range of
51 services related to child abuse and neglect, including direct
52 support as well as providing advice and consultation to
53 individuals, agencies and organizations which request such
54 services;

55 (3) For furnishing services of multidisciplinary teams and
56 community teams, trained in the prevention, identification
57 and treatment of child abuse and neglect cases, on a consult-
58 ing basis to small communities where such services are not
59 available;

60 (4) For other innovative programs and projects that show
61 promise of successfully identifying, preventing or remedying
62 the causes of child abuse and neglect, including, but not
63 limited to, programs and services designed to improve and
64 maintain parenting skills, programs and projects for parent
65 self help, and for prevention and treatment of drug-related
66 child abuse and neglect; and

67 (5) Assisting public agencies or nonprofit private organi-
68 zations or combinations thereof in making applications for
69 grants from, or in entering into contracts with, the Secretary
70 of the federal Department of Health and Human Services for
71 demonstration programs and projects designed to identify,
72 prevent and treat child abuse and neglect.

73 (d) Agencies, organizations and programs funded to carry
74 out the purposes of this section shall be structured so as to
75 comply with any applicable federal law, any regulation of
76 the federal Department of Health and Human Services or the
77 secretary thereof, and any final comprehensive plan of the
78 federal advisory board on child abuse and neglect. In funding
79 organizations, the department shall, to the extent feasible,
80 ensure that parental organizations combating child abuse
81 and neglect receive preferential treatment.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

1 (a) Except as otherwise provided in this chapter or by
2 order of the court, all records and information concerning a
3 child or juvenile which are maintained by the Division of
4 Juvenile Services, the Department of Health and Human
5 Resources, a child agency or facility, court or law-enforce-
6 ment agency shall be kept confidential and shall not be
7 released or disclosed to anyone, including any federal or
8 state agency.

9 (b) Notwithstanding the provisions of subsection (a) of
10 this section or any other provision of this code to the con-
11 trary, records concerning a child or juvenile, except adoption
12 records and records disclosing the identity of a person

13 making a complaint of child abuse or neglect shall be made
14 available:

15 (1) Where otherwise authorized by this chapter;

16 (2) To:

17 (A) The child;

18 (B) A parent whose parental rights have not been
19 terminated; or

20 (C) The attorney of the child or parent;

21 (3) With the written consent of the child or of someone
22 authorized to act on the child's behalf; or

23 (4) Pursuant to an order of a court of record: *Provided*,
24 That the court shall review such record or records for
25 relevancy and materiality to the issues in the proceeding and
26 safety, and may issue an order to limit the examination and
27 use of the records or any part thereof.

28 (c) In addition to those persons or entities to whom
29 information may be disclosed under subsection (b) of this
30 section, information related to child abuse or neglect
31 proceedings, except information relating to the identity of
32 the person reporting or making a complaint of child abuse or
33 neglect, shall be made available, upon request, to:

34 (1) Federal, state or local government entities, or any
35 agent of such entities, including law-enforcement agencies
36 and prosecuting attorneys, having a need for such informa-
37 tion in order to carry out its responsibilities under law to
38 protect children from abuse and neglect;

39 (2) The child fatality review team;

40 (3) Child abuse citizen review panels;

41 (4) Multidisciplinary investigative and treatment teams;
42 or

43 (5) A grand jury, circuit court or family court, upon a
44 finding that information in the records is necessary for the

45 determination of an issue before the grand jury, circuit court
46 or family court.

47 (d) In the event of a child fatality or near fatality due to
48 child abuse and neglect, information relating to such fatality
49 or near fatality shall be made public by the Department of
50 Health and Human Resources and to the entities described in
51 subsection (c) of this section, all under the circumstances
52 described in that subsection: *Provided*, That information
53 released by the Department of Health and Human Resources
54 pursuant to this subsection shall not include the identity of
55 a person reporting or making a complaint of child abuse or
56 neglect. For purposes of this subsection, "near fatality"
57 means any medical condition of the child which is certified
58 by the attending physician to be life threatening.

59 (e) Except in juvenile proceedings which are transferred
60 to criminal proceedings, law-enforcement records and files
61 concerning a child or juvenile shall be kept separate from the
62 records and files of adults and not included within the court
63 files. Law-enforcement records and files concerning a child
64 or juvenile shall only be open to inspection pursuant to the
65 provisions of sections seventeen and eighteen, article five of
66 this chapter.

67 (f) Any person who willfully violates the provisions of
68 this section is guilty of a misdemeanor and, upon conviction
69 thereof, shall be fined not more than \$1,000, or confined in
70 the county or regional jail for not more than six months, or
71 be both fined and confined. A person convicted of violating
72 the provisions of this section shall also be liable for damages
73 in the amount of \$300 or actual damages, whichever is
74 greater.

75 (g) Notwithstanding the provisions of this section, or any
76 other provision of this code to the contrary, the name and
77 identity of any juvenile adjudicated or convicted of a violent
78 or felonious crime shall be made available to the public.

§49-7-36. Quarterly status review and yearly permanency hearings.

1 (a) For each child who remains in foster care as a result
2 of a juvenile proceeding or as a result of a child abuse and

3 neglect proceeding, the circuit court with the assistance of
4 the multidisciplinary treatment team shall conduct quarterly
5 status reviews in order to determine the safety of the child,
6 the continuing necessity for and appropriateness of the
7 placement, the extent of compliance with the case plan, and
8 the extent of progress which has been made toward alleviat-
9 ing or mitigating the causes necessitating placement in foster
10 care, and to project a likely date by which the child may be
11 returned to and safety maintained in the home or placed for
12 adoption or legal guardianship. Quarterly status reviews
13 shall commence three months after the entry of the place-
14 ment order. The permanency hearing provided for in subsec-
15 tion (c) of this section may be considered a quarterly status
16 review.

17 (b) For each transitioning adult as that term is defined in
18 §49-2B-2(x) who remains in foster care, the circuit court
19 shall conduct status review hearings as described in subsec-
20 tion (a) of this section once every three months until perma-
21 nency is achieved.

22 (c) For each child or transitioning adult who continues to
23 remain in foster care, the circuit court shall conduct a
24 permanency hearing no later than twelve months after the
25 date the child or transitioning adult is considered to have
26 entered foster care, and at least once every twelve months
27 thereafter until permanency is achieved. For purposes of
28 permanency planning for transitioning adults, the circuit
29 court shall make factual findings and conclusions of law as
30 to whether the department made reasonable efforts to
31 finalize a permanency plan to prepare a transitioning adult
32 for emancipation or independence or another approved
33 permanency option such as, but not limited to, adoption or
34 legal guardianship pursuant to the West Virginia Guardian-
35 ship and Conservatorship Act.

36 (d) Nothing in this section shall be construed to abrogate
37 the responsibilities of the circuit court from conducting
38 required hearings as provided in other provisions of this
39 code, procedural court rules, or setting required hearings at
40 the same time.

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

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

FILED

2012 APR -2 PM 4: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

The within *is approved* this the *2nd*
Day of *April*, 2012.

Governor

PRESENTED TO THE GOVERNOR

MAR 29 2012

Time 4:20 pm