

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4020**

BY DELEGATES HANSHAW AND FOSTER

(BY REQUEST OF THE WEST VIRGINIA SUPREME COURT OF APPEALS)

[Passed February 8, 2018; in effect ninety days from passage.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2018 FEB 20 P 4:11

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2018 FEB 20 P 4:31

FILED

1 AN ACT to amend and reenact §7-4-4 and §7-4-5 of the Code of West Virginia, 1931, as  
2 amended; to amend and reenact §7-7-2 of said code; to amend and reenact §7-10-2 of  
3 said code; to amend and reenact §15-11-2 of said code; to amend and reenact §15-2-15  
4 of said code; to amend and reenact §15-2C-1 of said code; to amend and reenact §15-9-  
5 3 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §16-  
6 2F-2 of said code; to amend and reenact §16-3C-1 of said code; to amend and reenact  
7 §16-9A-3 of said code; to amend and reenact §16-30-3 of said code; to amend and reenact  
8 §16-47-5 of said code; to amend and reenact §17C-5-6a of said code; to amend and  
9 reenact §18-5-15c of said code; to amend and reenact §18-8-6a of said code; to amend  
10 and reenact §18A-5-1d of said code; to amend and reenact §28-1-2 of said code; to amend  
11 and reenact §29-21-16 of said code; to amend and reenact §31-20-2 of said code; to  
12 amend and reenact §33-4-20 of said code; to amend and reenact §48-9-205 and §48-9-  
13 301a of said code; to amend and reenact §48-22-301 of said code; to amend and reenact  
14 §48-26-701 and §48-26-1002 of said code; to amend and reenact §48-27-403 of said  
15 code; to amend and reenact §49-1-201 of said code; to amend and reenact §51-2A-2 of  
16 said code; to amend and reenact §51-7-8 of said code; to amend and reenact §61-2-14h  
17 of said code; to amend and reenact §61-5-12b of said code; to amend and reenact §61-  
18 6-25 of said code; to amend and reenact §61-7-8 of said code; to amend and reenact §61-  
19 8-12 of said code; to amend and reenact §61-8B-11a of said code; to amend and reenact  
20 §61-8C-3b of said code; to amend and reenact §61-8D-9 of said code; to amend and  
21 reenact §61-11-23 of said code; to amend and reenact §61-12-10 of said code; and to  
22 amend and reenact §62-6B-5, all relating to clarifying and making technical corrections in  
23 the code when referencing chapter 49 of this code due to 2015 revisions to chapter 49 of  
24 said code; and defining terms.

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

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.**

#### **§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.**

1           The prosecutor's advisory council composed of elected prosecuting attorneys of each  
2 county of the state or a designated member of their staff is continued. The prosecutor's advisory  
3 council shall meet not less than one time each year. Annually, the council shall elect from among  
4 its membership a chairman of the council who shall set the agenda for the council's meetings and  
5 shall appoint necessary committees and direct the work of the council in carrying out its duties  
6 under the provisions of this section.

7           The council shall provide advice, assistance, training, and leadership to the offices of the  
8 various county prosecuting attorneys of this state in criminal and civil cases which involve child  
9 abuse or neglect or sexual assault or sexual abuse of children. The council shall also provide  
10 advice and assistance to the secretary of the Department of Health and Human Resources in the  
11 implementation of a multidisciplinary planning process as set forth in §49-4-401 through §49-4-  
12 413 of this code.

13           The council may seek funds and programs to provide each prosecuting attorney's office  
14 with a staff person to assist children who are crime victims to obtain services and assistance from  
15 other agencies and programs in the community. Prosecuting attorneys shall be reimbursed by  
16 their respective county commissions for necessary expenses actually incurred when attending  
17 meetings of the council.

18           The council may apply for and receive funds from any grant program of any agency or  
19 institution in the United States, public or private, to be used for carrying out the purposes of this  
20 section.

**§7-4-5. Multidisciplinary investigative teams.**

1           The prosecuting attorney of each county in the state shall maintain a multidisciplinary  
2           investigative team, in accordance with the provisions of §49-4-402 of this code.

**ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.**

**§7-7-2. Establishment of county in-service training programs; further additional duties for  
          prosecuting attorney in any county in excess of 200,000.**

1           (a) There are hereby established county in-service training programs as hereinafter set  
2           forth.

3           (b) The Attorney General may establish any in-service training programs that will do most  
4           to assist the prosecuting attorneys in the performance of their duties. The Attorney General is  
5           authorized to accept any federal aid which may be made available or any financial assistance  
6           which may be available from any private nonprofit organization for the purposes of this section.  
7           The prosecuting attorney in any county having a population in excess of 200,000 shall also  
8           discharge the additional duties imposed upon him or her by the provisions of §49-4-503 of this  
9           code.

10          (c) The State Auditor may establish any in-service training programs for county  
11          commissioners, county clerks, sheriffs, and their assistants and employees that will do most to  
12          modernize and improve the services of their respective offices. The State Auditor in conjunction  
13          with the West Virginia Supreme Court of Appeals shall establish in-service training programs for  
14          circuit clerks and their assistants and employees. The State Tax Commissioner is authorized and  
15          directed to establish such in-service training programs for assessors and their assistants and  
16          employees. The State Tax Commissioner, State Auditor, and the West Virginia Supreme Court of  
17          Appeals are authorized to accept any federal aid which may be made available or any financial  
18          assistance which may be available from any private nonprofit organization for the purpose of this  
19          article.

20 (d) Each of the county officials mentioned in this section, and, at his or her option, one or  
21 more of his or her assistants, deputies, and employees, shall participate in the programs  
22 established under this section.

23 (e) The county commission shall reimburse officials and employees for the actual amount  
24 expended by them for food, lodging, and registration while in attendance at authorized training for  
25 the purpose of this section.

## **ARTICLE 10. HUMANE OFFICERS.**

### **§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.**

1 (a) Humane officers shall prevent the perpetration or continuance of any act of cruelty  
2 upon any animal and investigate and, upon probable cause, cause the arrest and assist in the  
3 prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable  
4 cause, and, as provided by law, such officers have the right to access and inspect records and  
5 property reasonably necessary to any investigation.

6 (b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a  
7 reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse  
8 or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the  
9 grounds for the suspicion. In the event of suspected child abuse or neglect, the humane officer  
10 shall report to the local child protective services agency of the Department of Health and Human  
11 Resources in accordance with the provisions of §49-2-809 of this code. In the event of suspected  
12 abuse or neglect of an incapacitated or elderly person, he or she shall report to the department's  
13 local adult protective services agency in accordance with the provisions of §9-6-11 of this code.  
14 In the event of suspected domestic violence, he or she shall report to the State Police in  
15 accordance with the provisions of §48-27-101 *et seq.* of this code.

16 (c) Any person who interferes with, obstructs or resists any humane officer in the discharge  
17 of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less  
18 than \$100 nor more than \$500 or confined in jail not more than 30 days, or both fined and confined.  
19 Any penalties imposed for a violation of this subsection shall be imposed in addition to any  
20 penalties the person incurs for cruel or inhumane treatment of any animal.

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 11. THE CHILD PROTECTION ACT OF 2006.**

#### **§15-11-2. Legislative findings.**

1 (a) The purpose of “The Child Protection Act of 2006” is to put in place a series of  
2 programs, criminal law revisions, and other reforms to provide and promote the ability of the  
3 children of this state to live their lives without being exposed and subjected to neglect and physical  
4 and sexual abuse. The targeted increases in terms of incarceration, enhanced treatment, post-  
5 release supervision, and new approaches toward the state’s child protection system will, in the  
6 aggregate, strengthen government’s ability to address this most serious problem. The Legislature  
7 finds that the broad reaching measures encompassed in this Act will provide for greater  
8 intervention among and punishment and monitoring of individuals who create a risk to our  
9 children’s safety and well-being.

10 (b) The Legislature further finds that the following reforms implemented as part of this Act  
11 will provide protections to the children of this state and are all important to eliminate risks to  
12 children and are essential elements of “The Child Protection Act of 2006”:

13 (1) Creating a special unit in the State Police specializing in the investigation of child abuse  
14 and neglect — §15-2-15 of this code;

15 (2) Modifying the Sex Offender Registration Act to ensure more effective registration,  
16 identification, and monitoring of persons convicted of sexual offenses — §15-12-1 *et seq.* of this  
17 code;

18 (3) Establishing the Child Abuse and Neglect Registry, requiring the registry to disclose  
19 information to certain state and local officials — §15-13-1 *et seq.* of this code;

20 (4) Providing for coded driver's licenses and nondriver identification cards to more easily  
21 identify sexually violent predators — §17B-2-3 of this code;

22 (5) Prohibiting contractors and service providers convicted of certain offenses from  
23 accessing school grounds and providing for the release of criminal history information by the  
24 central abuse registry to county school boards — §18-5-15c of this code;

25 (6) Establishing a task force to study the feasibility of constructing separate correctional  
26 facilities for the incarceration and treatment of sex offenders — §25-1-22 of this code;

27 (7) Requiring the State Police and the Department of Health and Human Resources to  
28 maintain statewide child abuse and neglect statistical indices of all convictions and allegations,  
29 respectively — §15-2-15 and §49-2-813 of this code;

30 (8) Providing for increased terms of incarceration for first degree sexual assault and first  
31 degree sexual abuse committed against children under the age of 12 — §61-8B-3 and §61-8B-7  
32 of this code;

33 (9) Eliminating eligibility of certain sex offenders for probation, home incarceration, and  
34 alternative sentences and providing for enhanced terms of incarceration for certain subsequent  
35 sex offenses committed by recidivist sex offenders — §61-8B-9a and §61-8B-9b of this code;

36 (10) Providing for polygraph examinations for certain sex offenders on probation, parole,  
37 or supervised release — §62-11D-1 *et seq.* of this code;

38 (11) Providing for electronic monitoring of certain sex offenders on probation, parole, and  
39 supervised release — §62-11D-1 *et seq.* of this code;

40 (12) Establishing a task force to develop measures aimed at managing sexually violent  
41 predators released from confinement — §62-11E-1 *et seq.* of this code;

42 (13) Making psychiatric evaluations a condition of probation eligibility for certain sex  
43 offenders — §62-12-2 of this code;

44 (14) Authorizing the Department of Health and Human Resources to establish  
45 qualifications for sex offender treatment programs and counselors — §62-12-2 and §62-12-26 of  
46 this code;

47 (15) Providing for extended supervision of certain offenders and supervised release  
48 requirements for sexually violent offenders — §62-12-26 of this code; and

49 (16) Providing for prerelease risk assessments of certain sex offenders — §62-12-27 of  
50 this code.

51 (c) In addition, the Legislature finds that those enhanced terms of incarceration and post-  
52 conviction measures provided for in this Act which impact certain offenders convicted of sexual  
53 offenses against adults are necessary and appropriate to protect children from neglect and  
54 physical and sexual abuse given that: (1) Clinical research indicates that a substantial percentage  
55 of sexual offenders “cross over” among age groups in selecting their victims; (2) many of the risk  
56 factors prevalent among sex offenders that “cross over” (e.g., substance abuse, lack of empathy  
57 toward victim, inability to control inappropriate impulses, childhood abuse) also are prevalent  
58 among perpetrators of child abuse and neglect; and (3) enhanced terms of incarceration, post-  
59 conviction supervision, monitoring, and treatment measures will enable the criminal justice  
60 system to identify and address those “cross over” offenders before they can victimize additional  
61 children.

## **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

### **§15-2-15. State Police Child Abuse and Neglect Investigations Unit.**

1 (a) The superintendent shall maintain a special unit of the State Police called the Child  
2 Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying,  
3 investigating, and prosecuting criminal child abuse and neglect cases, in coordination with Child  
4 Protective Services, established pursuant to §49-2-802 of this code. The unit shall assist other  
5 State Police members with child abuse or neglect investigations as well as the Division of Child  
6 Protective Services. The unit may provide training, technical expertise, and coordination of

7 services for other law-enforcement agencies, Child Protective Services caseworkers, prosecuting  
8 attorneys, and multidisciplinary teams established pursuant to the provisions of §49-4-402 of this  
9 code, to identify, investigate, report, and prosecute criminal child abuse and criminal child neglect  
10 cases. However, nothing in this section may be construed to mean that the unit will assume the  
11 duties or investigations of other State Police members or other law-enforcement officers.

12 (b) The unit shall consist, at a minimum, six members of the State Police. The  
13 superintendent shall assign a unit director and five regional members, to be dedicated and trained  
14 to assist county Child Protective Services Offices and caseworkers in investigating and  
15 coordinating with other law-enforcement personnel, cases of suspected child abuse or neglect.  
16 Cases to be investigated include allegations received pursuant to §49-2-803 of this code, and any  
17 other credible child abuse or neglect allegations.

18 (c) The unit director's duties include:

19 (1) Overseeing State Police members assigned to the unit;

20 (2) Coordinating activities of the unit with Child Protection Services;

21 (3) Assisting Child Protective Services in developing and refining protocols for improving  
22 identification and prosecution of suspected criminal acts of child abuse or neglect; and

23 (4) Assuring that all other directives and responsibilities of the unit are fulfilled.

24 (d) The unit shall maintain a statewide statistical index on child abuse and neglect  
25 convictions resulting from convictions for violations of §61-8D-2, §61-8D-2a, §61-8D-3,  
26 §61-8D-3a, §61-8D-4 and §61-8D-4a of this code, to monitor the timely and proper investigation  
27 and disposition of child abuse or neglect cases. The statistical data index maintained by the unit  
28 shall not contain information of a specific nature that would identify individual cases or persons.

29 (e) On or before December 31, of each year, the unit director shall submit an annual report  
30 to the Joint Committee on Government and Finance. The annual report is to include the statistical  
31 index required under the provisions of subsection (d) of this section, and may include  
32 recommendations for statutory or program reforms that will assist the unit and further promote the

33 goals of the unit. The report may not contain information of a specific nature that would identify  
34 individual cases or persons.

35 (f) Every state law-enforcement agency of this state shall periodically provide statistical  
36 information regarding child abuse and neglect cases investigated and prosecuted by that law-  
37 enforcement agency to the unit.

38 (g) The superintendent may propose rules for legislative approval or procedural rules as  
39 necessary to effectuate the provisions of this section in accordance with the provisions of  
40 §29A-3-1 *et seq.* of this code. The superintendent shall provide forms to law-enforcement  
41 agencies, circuit clerks, and parole officers to facilitate submission of appropriate information  
42 necessary to prepare the statistical reports required by this section.

43 (h) There is continued a special account in the state Treasury, into which shall be  
44 deposited any gifts, grants or donations made to the unit, and any other funds directed to be  
45 deposited into the account by appropriation of the Legislature, and to be expended for the  
46 purposes of this section pursuant to appropriation of the Legislature.

## **ARTICLE 2C. CENTRAL ABUSE REGISTRY.**

### **§15-2C-1. Definitions.**

1 The following terms when used in this article have meanings ascribed to them in this  
2 section, except in those instances where the context clearly indicates a different meaning:

3 (a) “Central abuse registry” or “registry” means the registry created by this article which  
4 contains the names of individuals who have been convicted of a felony or a misdemeanor offense  
5 constituting abuse, neglect, or misappropriation of the property of a child or an incapacitated adult  
6 or an adult receiving behavioral health services.

7 (b) “Child abuse and neglect” or “child abuse or neglect” means those terms as defined in  
8 §49-1-201 of this code, and shall include any act with respect to a child which is a crime against  
9 the person pursuant to §61-2-1 *et seq.* of this code, any act which is unlawful pursuant to §61-

10 8D-1 *et seq.*, of this code and any offense with respect to a child which is enumerated in §15-2C-  
11 3 of this code.

12 (c) "Abuse or neglect of an incapacitated adult" means "abuse," "neglect," and  
13 "incapacitated adult" as those terms are defined in §9-6-1 of this code, and shall include any act  
14 with respect to an incapacitated adult which is a crime against the person pursuant to §61-2-1 *et*  
15 *seq.* of this code, and any offense with respect to an incapacitated adult which is enumerated in  
16 §15-2C-3 of this code.

17 (d) "Adult receiving behavioral health services" means a person over the age of 18 years  
18 who is receiving any behavioral health service from a licensed behavioral health provider or any  
19 behavioral health provider whose services are paid for, in whole or in part, by Medicaid or  
20 Medicare.

21 (e) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or  
22 jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

23 (f) "Residential care facility" means any facility where a child or an incapacitated adult or  
24 an adult receiving behavioral health services resides which is subject to registration, licensure, or  
25 certification by the Department of Health and Human Resources, and includes nursing homes,  
26 personal care homes, residential board and care homes, adult family care homes, group homes,  
27 legally unlicensed service providers, residential child care facilities, family based foster care  
28 homes, specialized family care homes, and intermediate care facilities for the mentally retarded.

29 (g) "Misappropriation of property" means any act which is a crime against property under  
30 §61-3-1 *et seq.* of this code with respect to a child in a residential care facility or an incapacitated  
31 adult or an adult receiving behavioral health services in a residential care facility or a child or an  
32 incapacitated adult or an adult receiving behavioral health services who is a recipient of home  
33 care services.

34 (h) "Home care" or "home care services" means services provided to children or  
35 incapacitated adults or adults receiving behavioral health services in the home through a hospice

36 provider, a community care provider, a home health agency, through the Medicaid waiver  
37 program, or through any person when that service is reimbursable under the state Medicaid  
38 program.

39 (i) "Requester" means the West Virginia Department of Education, any residential care  
40 facility, any state licensed day care center, any qualified entity as defined in this section, or any  
41 provider of home care services or an adult receiving behavioral health services, providing to the  
42 Central Abuse Registry the name of an individual and other information necessary to identify that  
43 individual, and either: (1) Certifying that the individual is being considered for employment or  
44 service as a volunteer by the requester or for a contractual relationship with the requester where  
45 the individual will provide services to a child or an incapacitated adult or an adult receiving  
46 behavioral health services for compensation; or contractors and vendors who have or may have  
47 unsupervised access to the child, disabled, or elderly person for whom the qualified entity  
48 provides care; or (2) certifying that an allegation of abuse, neglect, or misappropriation of property  
49 has been made against the individual.

50 (j) "Qualified entity" means any business, agency, or organization that provides care,  
51 treatment, education, training, instruction, supervision, or recreation for children, the elderly, or  
52 individuals with disabilities and is a public, private, or not-for-profit entity within the State of West  
53 Virginia and meets the definition of qualified entity under the federal National Child Protection Act  
54 of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

**ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND  
CORRECTION.**

**§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and  
correctional facilities.**

1 The Governor's Committee on Crime, Delinquency and Correction or its designee shall  
2 ascertain the compliance of juvenile detention and juvenile correctional facilities operated by or

3 under contract with the Division of Juvenile Services, created pursuant to §49-2-902 of this code,  
4 with standards for the structure, physical plant, operation, and maintenance of the facilities,  
5 promulgated by the juvenile facility standards commission, pursuant to §31-20-9a of this code:  
6 *Provided*, That the review shall not include educational programs in the facilities.

**ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.**

**§15-11-2. Payment of funeral expenses of law-enforcement, safety, and emergency workers killed in the line of duty.**

1 (a) The Secretary of Military Affairs and Public Safety shall, upon written request, direct  
2 payment from the fund in the form of a draft as provided in this article up to and including an  
3 amount not exceeding \$8,000 for the reasonable funeral expenses, including burial expenses, of  
4 a law-enforcement, safety, or emergency worker killed on or after January 1, 1999, while carrying  
5 out official duties: *Provided*, That funds shall not be expended for any funeral expense that is  
6 otherwise payable pursuant to the provisions of §23-4-1 *et seq.* of this code, as amended, or other  
7 benefit programs established by a provision of this code which does not involve employee  
8 participation: *Provided, however*, That where other funds for funeral expenses are provided  
9 pursuant to the laws of this state, from whatever source, which amount to less than \$8,000, funds  
10 provided by the provisions of this section shall be expended so as to ensure that at least \$8,000  
11 is available for reasonable funeral expenses. The secretary shall direct payment of the funeral  
12 expenses upon written request of an employer or head of a volunteer organization, as is  
13 appropriate pursuant to this article, certifying that the individual for whom funeral expenses are  
14 requested was killed while performing official duties.

15 (b) The secretary shall supply the draft in the name of the person contracting for the funeral  
16 services and, if known, the service provider to the employer or agency head making the request  
17 who shall tender the draft to the person who contracted for the services.

18 (c) For the purposes of this section, "law-enforcement, safety, or emergency worker"  
19 means:

20 (1) Any duly authorized member of a law-enforcement agency who is authorized to  
21 maintain public peace and order, prevent and detect crime, make arrests, and enforce the laws  
22 of the state or any county or municipality of the state, other than parking ordinances, and including  
23 those persons employed as security officers at municipal, county, regional, or state offices,  
24 authorities or institutions, although their employers may not be public law-enforcement agencies,  
25 employed by the Hatfield-McCoy Regional Recreation Authority, and members of the West  
26 Virginia National Guard while engaged in active duty service: *Provided*, That this section does not  
27 apply to those persons employed by private security firms or agencies;

28 (2) Any state, regional, county, or municipal correctional employee;

29 (3) Any firefighter employed by the state or any political subdivision of the state and any  
30 volunteer firefighter performing as a member of a volunteer fire department;

31 (4) Any “emergency medical services personnel”, as defined in §16-4C-3 of this code,  
32 employed by or volunteering for any state agency or institution or political subdivision of the state;  
33 or

34 (5) Any probation officer appointed under the provisions of either §62-12-5 or §49-4-719  
35 of this code.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.**

#### **§16-2F-2. Definitions.**

1 For purposes of this article, unless the context in which used clearly requires otherwise:

2 As used in this article:

3 (1) “Abortion” means the use of any instrument, medicine, drug, or any other substance  
4 or device with intent to terminate the pregnancy of a female known to be pregnant and with intent  
5 to cause the expulsion of a fetus other than by live birth. This article does not prevent the

6 prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices,  
7 or other generally medically accepted contraceptive devices, instruments, medicines or drugs for  
8 a female who is not known to be pregnant and for whom the contraceptive devices, instruments,  
9 medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for  
10 the purpose of inducing or causing the termination of a known pregnancy.

11 (2) "Medical emergency" means the same as that term is defined in §16-2M-2 of this code.

12 (3) "Secretary" means the Secretary of the West Virginia Department of Health and Human  
13 Resources.

14 (4) "Unemancipated minor" means any person less than 18 years of age who is not, or  
15 has not been, married, who is under the care, custody, and control of the person's parent or  
16 parents, guardian, or court of competent jurisdiction pursuant to applicable federal law or as  
17 provided in §49-4-115 of this code.

**ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS  
CONFIDENTIALITY ACT.**

**§16-3C-1. Definitions.**

1 When used in this article:

2 (a) "AIDS" means acquired immunodeficiency syndrome.

3 (b) "Bureau" means the Bureau for Public Health.

4 (c) "Commissioner" means the commissioner of the Bureau for Public Health.

5 (d) "Convicted" includes pleas of guilty and pleas of nolo contendere accepted by the court  
6 having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial, or a trial to  
7 a court and an adjudicated juvenile offender as defined in §49-1-202 of this code.

8 (e) "Department" means the State Department of Health and Human Resources.

9 (f) "Funeral director" has the same meaning ascribed to that term in §30-6-3 of this code.

10 (g) "Funeral establishment" has the same meaning ascribed to that term in §30-6-3 of this  
11 code.

12 (h) "HIV" means the human immunodeficiency virus identified as the causative agent of  
13 AIDS.

14 (i) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test  
15 approved by the bureau, the federal drug administration, or the Centers for Disease Control and  
16 Prevention.

17 (j) "Health facility" means a hospital, nursing home, physician's office, clinic, blood bank,  
18 blood center, sperm bank, laboratory, or other health care institution.

19 (k) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist,  
20 or other person providing medical, dental, nursing, psychological, or other health care services of  
21 any kind.

22 (l) "Health Information Exchange" means the electronic movement of health-related  
23 information in accord with law and nationally recognized standards.

24 (m) "High risk behavior" means behavior by a person including, but not limited to: (i)  
25 Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money  
26 or drugs; (iii) unprotected sex with multiple partners; (iv) anonymous unprotected sex; (v) or  
27 needle sharing; (vi) diagnosis of a sexually transmitted disease; or (vii) unprotected sex or sharing  
28 injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.

29 (n) "Medical or emergency responders" means paid or volunteer firefighters, law-  
30 enforcement officers, emergency medical technicians, paramedics, or other emergency service  
31 personnel, providers, or entities acting within the usual course of their duties; good samaritans  
32 and other nonmedical and nonemergency personnel providing assistance in emergencies; funeral  
33 directors; health care providers; the commissioner of the Bureau for Public Health; and all of their  
34 employees and volunteers.

35 (o) "Patient" or "test subject" or "subject of the test" means the person upon whom an HIV  
36 test is performed, or the person who has legal authority to make health care decisions for the test  
37 subject.

38 (p) "Permitted purpose" is a disclosure permitted by the Health Insurance Portability and  
39 Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a patient  
40 or test subject.

41 (q) "Person" includes any natural person, partnership, association, joint venture, trust,  
42 public or private corporation, or health facility.

43 (r) "Release of test results" means a permitted or authorized disclosure of HIV-related test  
44 results.

45 (s) "Significant exposure" means:

46 (1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery, or  
47 traumatic events;

48 (2) Exposure of mucous membranes to visible blood or body fluids, to which universal  
49 precautions apply according to the national Centers for Disease Control and Prevention, and  
50 laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or

51 (3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped,  
52 abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

53 (t) "Source patient" means any person whose body fluids have been the source of a  
54 significant exposure to a medical or emergency responder.

55 (u) "Targeted testing" means performing an HIV-related test for sub-populations at higher  
56 risk, typically defined on the basis of behavior, clinical, or demographic characteristics.

57 (v) "Victim" means the person or persons to whom transmission of bodily fluids from the  
58 perpetrator of the crimes of sexual abuse, sexual assault, incest, or sexual molestation occurred  
59 or was likely to have occurred in the commission of such crimes.

**ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.**

**§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products or vapor products by persons under the age of 18 years; penalties.**

1           A person under the age of 18 years shall not have on or about his or her person or  
2 premises or use any cigarette, or cigarette paper, or any other paper prepared, manufactured or  
3 made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing  
4 tobacco, tobacco product, or tobacco-derived product: *Provided*, That minors participating in the  
5 inspection of locations where tobacco products or tobacco-derived products are sold or distributed  
6 pursuant to §16-9A-7 of this code is not considered to violate the provisions of this section. Any  
7 person violating the provisions of this section shall for the first violation be fined \$50 and be  
8 required to serve eight hours of community service; for a second violation, the person shall be  
9 fined \$100 and be required to serve 16 hours of community service; and for a third and each  
10 subsequent violation, the person shall be fined \$200 and be required to serve 24 hours of  
11 community service. Notwithstanding the provisions of §49-4-701 of this code, the magistrate court  
12 has concurrent jurisdiction.

**ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**

**§16-30-3. Definitions.**

1           For the purposes of this article:

2           (a) “Actual knowledge” means the possession of information of the person’s wishes  
3 communicated to the health care provider orally or in writing by the person, the person’s medical  
4 power of attorney representative, the person’s health care surrogate, or other individuals resulting  
5 in the health care provider’s personal cognizance of these wishes. Constructive notice and other  
6 forms of imputed knowledge are not actual knowledge.

7           (b) “Adult” means a person who is 18 years of age or older, an emancipated minor who  
8 has been established as such pursuant to the provisions of §49-4-115 of this code, or a mature  
9 minor.

10 (c) "Advanced nurse practitioner" means a registered nurse with substantial theoretical  
11 knowledge in a specialized area of nursing practice and proficient clinical utilization of the  
12 knowledge in implementing the nursing process, and who has met the further requirements of the  
13 West Virginia Board of Examiners for registered professional nurses rule, advanced practice  
14 registered nurse, 19CSR 7, who has a mutually agreed upon association in writing with a  
15 physician, and has been selected by or assigned to the person and has primary responsibility for  
16 treatment and care of the person.

17 (d) "Attending physician" means the physician selected by or assigned to the person who  
18 has primary responsibility for treatment and care of the person and who is a licensed physician.  
19 If more than one physician shares that responsibility, any of those physicians may act as the  
20 attending physician under this article.

21 (e) "Capable adult" means an adult who is physically and mentally capable of making  
22 health care decisions and who is not considered a protected person pursuant to the provisions of  
23 chapter 44A of this code.

24 (f) "Close friend" means any adult who has exhibited significant care and concern for an  
25 incapacitated person who is willing and able to become involved in the incapacitated person's  
26 health care and who has maintained regular contact with the incapacitated person so as to be  
27 familiar with his or her activities, health, and religious and moral beliefs.

28 (g) "Death" means a finding made in accordance with accepted medical standards of  
29 either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible  
30 cessation of all functions of the entire brain, including the brain stem.

31 (h) "Guardian" means a person appointed by a court pursuant to the provisions of chapter  
32 44A of this code who is responsible for the personal affairs of a protected person and includes a  
33 limited guardian or a temporary guardian.

34 (i) "Health care decision" means a decision to give, withhold, or withdraw informed consent  
35 to any type of health care, including, but not limited to, medical and surgical treatments, including

36 life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a  
37 nursing home or other facility, home health care, and organ or tissue donation.

38 (j) "Health care facility" means a facility commonly known by a wide variety of titles,  
39 including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care  
40 facility, physicians' office and clinic, extended care facility operated in connection with a hospital,  
41 nursing home, a hospital extended care facility operated in connection with a rehabilitation center,  
42 hospice, home health care, and other facility established to administer health care in its ordinary  
43 course of business or practice.

44 (k) "Health care provider" means any licensed physician, dentist, nurse, physician's  
45 assistant, paramedic, psychologist, or other person providing medical, dental, nursing,  
46 psychological or other health care services of any kind.

47 (l) "Incapacity" means the inability because of physical or mental impairment to appreciate  
48 the nature and implications of a health care decision, to make an informed choice regarding the  
49 alternatives presented, and to communicate that choice in an unambiguous manner.

50 (m) "Life-prolonging intervention" means any medical procedure or intervention that, when  
51 applied to a person, would serve to artificially prolong the dying process or to maintain the person  
52 in a persistent vegetative state. Life-prolonging intervention includes, among other things, nutrition  
53 and hydration administered intravenously or through a feeding tube. The term "life-prolonging  
54 intervention" does not include the administration of medication or the performance of any other  
55 medical procedure considered necessary to provide comfort or to alleviate pain.

56 (n) "Living will" means a written, witnessed advance directive governing the withholding or  
57 withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with  
58 the requirements of §16-30-4 of this code.

59 (o) "Mature minor" means a person, less than 18 years of age, who has been determined  
60 by a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the  
61 capacity to make health care decisions.

62 (p) "Medical information" or "medical records" means and includes without restriction any  
63 information recorded in any form of medium that is created or received by a health care provider,  
64 health care facility, health plan, public health authority, employer, life insurer, school, or university  
65 or health care clearinghouse that relates to the past, present or future physical or mental health  
66 of the person, the provision of health care to the person, or the past, present, or future payment  
67 for the provision of health care to the person.

68 (q) "Medical power of attorney representative" or "representative" means a person, 18  
69 years of age or older, appointed by another person to make health care decisions pursuant to the  
70 provisions of §16-30-6 of this code or similar act of another state and recognized as valid under  
71 the laws of this state.

72 (r) "Parent" means a person who is another person's natural or adoptive mother or father  
73 or who has been granted parental rights by valid court order and whose parental rights have not  
74 been terminated by a court of law.

75 (s) "Persistent vegetative state" means an irreversible state as diagnosed by the attending  
76 physician or a qualified physician in which the person has intact brain stem function but no higher  
77 cortical function and has neither self-awareness or awareness of the surroundings in a learned  
78 manner.

79 (t) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an  
80 association, a government, a governmental subdivision or agency, or any other legal entity.

81 (u) "Physician orders for scope of treatment (POST) form" means a standardized form  
82 containing orders by a qualified physician that details a person's life-sustaining wishes as  
83 provided by §16-30-25 of this code.

84 (v) "Principal" means a person who has executed a living will or medical power of attorney.

85 (w) "Protected person" means an adult who, pursuant to the provisions of chapter 44A of  
86 this code, has been found by a court, because of mental impairment, to be unable to receive and  
87 evaluate information effectively or to respond to people, events, and environments to an extent

88 that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health,  
89 care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian;  
90 or (2) manage property or financial affairs to provide for his or her support or for the support of  
91 legal dependents without the assistance or protection of a conservator.

92 (x) "Qualified physician" means a physician licensed to practice medicine who has  
93 personally examined the person.

94 (y) "Qualified psychologist" means a psychologist licensed to practice psychology who has  
95 personally examined the person.

96 (z) "Surrogate decisionmaker" or "surrogate" means an individual 18 years of age or older  
97 who is reasonably available, is willing to make health care decisions on behalf of an incapacitated  
98 person, possesses the capacity to make health care decisions, and is identified or selected by  
99 the attending physician or advanced nurse practitioner in accordance with the provisions of this  
100 article as the person who is to make those decisions in accordance with the provisions of this  
101 article.

102 (aa) "Terminal condition" means an incurable or irreversible condition as diagnosed by the  
103 attending physician or a qualified physician for which the administration of life-prolonging  
104 intervention will serve only to prolong the dying process.

**ARTICLE 47. ALCOHOL AND DRUG OVERDOSE PREVENTION AND CLEMENCY  
ACT.**

**§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom  
emergency medical assistance was sought.**

1 (a) The immunity provisions in §16-47-4(a) of this code extend to the person for whom  
2 emergency medical assistance was sought if, after receiving emergency medical assistance, the  
3 person participates in, complies with, and completes a substance abuse treatment or recovery  
4 program approved by the court. Alternatively, a court may consider the following alternative  
5 sentencing and clemency options:

6 (1) Deferred prosecution under §60-6-26 or §60A-4-407 of this code;

7 (2) Pretrial diversion under §61-11-22 of this code;

8 (3) Adjudication in drug court under §62-15-1 *et seq.* of this code or §49-4-703 of this  
9 code; or

10 (4) Any other appropriate form of alternative sentencing or rehabilitation permitted by this  
11 code, including, but not limited to:

12 (A) Probation;

13 (B) Conditional discharge under §60-6-26 of this code; or

14 (C) The weekend jail program, the work program or the community service program under  
15 §62-11A-1a of this code.

16 (b) Notwithstanding any other provision of this section to the contrary, a person who may  
17 seek immunity or clemency pursuant to subsection (a) of this section and is charged with an  
18 offense not exempted by §16-47-4(a) of this code may enter a plea of guilty to an offense  
19 exempted by §16-47-4(a) of this code if the person, after consultation with his or her attorney, so  
20 desires.

## **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

### **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

#### **§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.**

1 (a) A preliminary breath analysis may be administered to a child whenever a law-  
2 enforcement official has reasonable cause to believe the child to have been driving a motor  
3 vehicle with any amount of alcohol in his or her blood for the purpose of determining the child's  
4 blood alcohol content. The breath analysis must be administered as soon as possible after the  
5 law-enforcement officer arrives at a reasonable belief that the child has been driving a motor  
6 vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis

7 administered pursuant to this subsection must be administered with a device and in a manner  
8 approved by the division of health for that purpose. If a preliminary breath analysis is administered,  
9 the results shall be used solely for the purpose of guiding the officer in deciding whether the child,  
10 at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0002  
11 of one percent or more, by weight, and should, therefore, be taken into custody to administer a  
12 secondary test in accordance with the provisions of this section.

13 (b) A child may be taken into custody by a law-enforcement official without a warrant or  
14 court order if the official has reasonable grounds to believe the child to have been driving a motor  
15 vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is  
16 administered and the results of the analysis indicate that the child has an alcohol concentration  
17 in his or her blood of less than .0002 of one percent, by weight, the child may not be taken into  
18 custody unless other grounds exist under §49-4-705(b) of this code. Upon taking a child into  
19 custody pursuant to the provisions of this section, the official shall take all reasonable steps to  
20 cause notification to be made to the child's parent or custodian or, if the parent or custodian  
21 cannot be located, to a close relative.

22 (c) Upon taking a child into custody pursuant to this section, the official shall take the child  
23 to a facility where a secondary test of the child's blood or urine may be administered at the  
24 direction of the official or a test of the child's breath may be administered by the official. The law-  
25 enforcement agency by which such law-enforcement official is employed shall designate whether  
26 the secondary test is a test of either blood, breath, or urine: *Provided*, That if the test is a blood  
27 test and the child refuses to submit to the blood test, then the law-enforcement official taking the  
28 child into custody shall designate in lieu thereof a breath test to be administered. Notwithstanding  
29 the provisions of §17C-5-7 of this code, a refusal to submit to a blood test only shall not result in  
30 the revocation of the child's license to operate a motor vehicle in this state. Any child taken into  
31 custody pursuant to this section shall be given a written statement advising him or her that a  
32 refusal to submit to a secondary test of either blood, breath, or urine, as finally designated by the

33 law-enforcement agency or official in accordance with this subsection, will result in the suspension  
34 of his or her license to operate a motor vehicle in this state for a period of at least 30 days or a  
35 revocation of the license for a period up to life.

36 (d) If the law-enforcement official taking the child into custody is employed by a law-  
37 enforcement agency which does not have available the testing equipment or facilities necessary  
38 to conduct any secondary breath test which may be administered pursuant to the provisions of  
39 this section, then the official who took the child into custody may request another qualified person  
40 to administer a secondary breath test: *Provided*, That the breath test shall be administered in the  
41 presence of the official who took the child into custody. The results of the breath test may be used  
42 in evidence to the same extent and in the same manner as if the test had been conducted by the  
43 law-enforcement official who took the child into custody. The qualified person administering the  
44 breath test must be a member of the West Virginia state police, the sheriff of the county where  
45 the child was taken into custody, or any deputy of the sheriff or a law-enforcement official of  
46 another municipality within the county wherein the child was taken into custody. Only the person  
47 actually administering the secondary breath test is competent to testify as to the results and the  
48 veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance  
49 with the provisions of §17C-5-6 of this code.

50 (e) After taking the child into custody, if the law-enforcement official has reasonable cause  
51 to believe that the act of the child in driving the motor vehicle is such that it would provide grounds  
52 for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an  
53 adult, then the official shall proceed to treat the child in the same manner as any other child taken  
54 into custody without a warrant or court order, in accordance with the provisions of §17C-5-8 of  
55 this code.

56 (f) If the results of any secondary test administered pursuant to this section indicate that  
57 the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood  
58 of .0008 of one percent or less, by weight, and if the law-enforcement official does not have

59 reasonable cause to believe that the act of the child in driving the motor vehicle is such that it  
60 would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this  
61 code if the child were an adult, then the official shall release the child: *Provided*, That if the results  
62 of any secondary test administered pursuant to this section indicate that the child, at the time of  
63 driving the motor vehicle, had an alcohol concentration in his or her blood of .0002 of one percent  
64 or more, by weight, the child shall only be released to a parent or custodian, or to some other  
65 responsible adult.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

#### **§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.**

1 (a) In recognition of the findings of the Legislature as set forth in §49-2-401 of this code,  
2 the Legislature further finds that public schools are able to provide a special environment for the  
3 training of children, parents, and school personnel in the prevention of child abuse and neglect  
4 and child assault and that child abuse and neglect prevention and child assault prevention  
5 programs in the public schools are an effective and cost-efficient method of reducing the incidents  
6 of child abuse and neglect, promoting a healthy family environment, and reducing the general  
7 vulnerability of children.

8 (b) County boards of education shall, to the extent funds are provided, establish programs  
9 for the prevention of child abuse and neglect and child assault. The programs shall be provided  
10 to students, parents and school personnel as considered appropriate. The programs comply with  
11 rules developed by the state Board of Education with the advice and assistance of the state  
12 Department of Health and Human Resources and the West Virginia State Police: *Provided*, That  
13 any programs which substantially comply with the rules adopted by the board and were in effect  
14 prior to the adoption of the rules may be continued.

15 (c) Funds for implementing the child abuse and neglect prevention and child assault  
16 prevention programs may be allocated to the county boards of education from the children's trust  
17 fund established pursuant to the provisions of §49-2-401 of this code or appropriated for such  
18 purpose by the Legislature.

19 (d) County boards of education shall request from the state Criminal Identification Bureau  
20 the record of any and all criminal convictions relating to child abuse, sex-related offenses, or  
21 possession of controlled substances with intent to deliver the controlled substances or all of its  
22 future employees. This request shall be made immediately after the effective date of this section,  
23 and thereafter as warranted.

24 (e) Contractors or service providers or their employees may not make direct,  
25 unaccompanied contact with students or access school grounds unaccompanied when students  
26 are present if it cannot be verified that the contractors, service providers, or employees have not  
27 previously been convicted of a qualifying offense, as defined in §15-12-2 of this code. For the  
28 purposes of this section, contractor and service provider shall be limited to any vendor, individual,  
29 or entity under contract with a county school board. County school boards may require contractors  
30 and service providers to verify the criminal records of their employees before granting contact or  
31 access. Where prior written consent is obtained, county school boards may obtain information  
32 from the Central Abuse Registry regarding contractors, service providers, and their employees  
33 for the purposes of this subsection. Where a contractor or service provider gives his or her prior  
34 written consent, the county school board also may share information provided by the Central  
35 Abuse Registry with other county school boards for the purposes of satisfying the requirements  
36 of this subsection.

## **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

### **§18-8-6a. Incentive for county board participation in circuit court juvenile probation truancy programs.**

1 A county board that enters into a truancy program agreement with the circuit court of the  
2 county that (1) provides for the referral of truant juveniles for supervision by the court's probation

3 office pursuant to §49-4-711 of this code and (2) requires the county board to pay for the costs of  
4 the probation officer or officers assigned to supervise truant juveniles, shall be reimbursed for one  
5 half of the costs of the probation officer or officers, subject to appropriation of the Legislature for  
6 this purpose to the West Virginia Department of Education. For any year in which the funds  
7 appropriated are insufficient to cover the reimbursement costs, the county's costs shall be  
8 reimbursed pro rata.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

#### **§18A-5-1d. Return to school through Juvenile Drug Court for certain students.**

1 (a) When a student is expelled from school pursuant to §18A-5-1a of this code, the county  
2 board, county superintendent, or principal for the school from which the student was expelled or  
3 the parent, guardian, or custodian may refer the student to a Juvenile Drug Court, operated  
4 pursuant to §49-4-703 of this code. Upon referral, the judge assigned to Juvenile Drug Court shall  
5 determine whether the student is an appropriate candidate for Juvenile Drug Court.

6 (b) If the judge determines the student is an appropriate candidate for Juvenile Drug Court,  
7 then the court has jurisdiction over the student in the same manner as it has jurisdiction over all  
8 other persons in Juvenile Drug Court. Jurisdiction over students includes the ability to issue any  
9 of the various sanctions available to the Juvenile Drug Court, including temporary detention.

10 (c)(1) Successful completion of Juvenile Drug Court or certification by the Juvenile Drug  
11 Court judge that the student is making satisfactory progress toward successful completion of  
12 Juvenile Drug Court warrants consideration for reduction of the expulsion period, pursuant to  
13 §18A-5-1a of this code.

14 (2) The Juvenile Drug Court shall notify the county superintendent of the completion or  
15 certification. The county superintendent shall arrange a meeting with the Juvenile Drug Court

16 treatment team, the court, and the student assistance team of the school from which the student  
17 was expelled to discuss the student's history, progress, and potential for improvement.

18 (3) The student assistance team shall evaluate and recommend whether the student's  
19 expulsion period should be reduced, and the student reinstated in school.

20 (4) The student assistance team's recommendation shall be presented to the  
21 superintendent, who shall make the final determination. The superintendent shall prepare a  
22 statement detailing reasons for or against school reinstatement and submit the statement to the  
23 county board. If the superintendent determines to reduce the expulsion period, he or she shall  
24 submit the statement required by §18A-5-1a(i) of this code and place the student in an appropriate  
25 school within the district.

26 (5) A student to be reinstated shall be permitted to return to school no later than the 10th  
27 regular school day following notice by the court to the superintendent regarding the student's  
28 successful completion or satisfactory progress toward successful completion of Juvenile Drug  
29 Court.

## **CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**

### **ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.**

#### **§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.**

1 (a) Any male youth between the ages of 10 and 18 years may be committed to the custody  
2 of the Commissioner of Corrections by a circuit court of this state in the manner prescribed in §49-  
3 4-701 through §49-4-725 of this code; and further, any male youth who has been adjudged  
4 delinquent pursuant to §49-1-202 of this code, who, as a result thereof, was placed on probation  
5 and has been found, in a proceeding pursuant to the procedural requirements of §49-4-701  
6 through §49-4-725 of this code, to have violated a term of probation, prior to the attainment of his

7 or her 20th birthday, which constitutes a criminal offense, may be committed to the custody of the  
8 Commissioner of Corrections as a youthful offender.

9 (b) Every youth committed under this article shall, following the dispositional proceeding,  
10 be transferred to the place or places designated by the Commissioner of Corrections for complete  
11 physical, educational, and psychological examinations, including all appropriate tests, to be  
12 completed as soon as possible, the completion of the physical examinations to be within 20 days.  
13 The youth shall be housed in a manner so as to prevent the spread of infectious disease.  
14 Following disposition and prior to transfer to the custody of the Commissioner of Corrections,  
15 each youth shall be allowed to visit with his or her relatives, without being committed to jail for a  
16 period of not less than one hour. The cost of the examinations in this subsection shall be borne  
17 by the committing county. The youth shall be provided all treatment and rehabilitation indicated  
18 by the examinations.

19 In lieu of the physical examinations and tests provided for in this subsection, the court  
20 may, in the absence of objection, have the county health officer or other local health care facility  
21 perform physical and mental examinations and tests, so long as the examinations and tests are  
22 performed prior to the dispositional proceeding. Except as otherwise provided by law, a child shall  
23 not be committed to a jail following a dispositional proceeding solely to await a physical,  
24 educational, or mental examination or the results of the exam.

25 (c) All examinations shall be private. A youth who is mentally ill or significantly intellectually  
26 disabled shall not be committed to, or retained by, the Commissioner of Corrections, but shall be  
27 returned to the committing court for further disposition. A youth who has a serious infectious  
28 disease shall not be retained in the custody of the Commissioner of Corrections, but shall be  
29 transferred to an appropriate treatment facility. Detailed medical records shall be kept of every  
30 youth.

31 (d) The results of any physical, educational, and psychological examinations, together with  
32 a copy of the petition, the adjudicatory order, and the dispositional order shall accompany every

33 youth committed to the Commissioner of Corrections, without which the youth shall not be  
34 accepted. The commissioner, or his or her designated representative, shall review the records of  
35 each youth committed to assure that a youth is not illegally detained in an inappropriate facility or  
36 custodial situation.

37 (e) The Commissioner of Corrections may transfer and place such youth in any of the  
38 established centers or homes or halfway programs and in less restrictive settings, whether under  
39 his or her jurisdiction or private nonprofit residential facilities, as he or she may determine  
40 appropriate to promote the rehabilitation of the youth. To the extent possible, a youth under the  
41 age of 15 shall not be in regular contact with youths between the ages of 16 and 18.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

#### **§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.**

1 (a) The agency shall establish, and periodically review and update financial guidelines for  
2 determining eligibility for legal representation made available under the provisions of this article.  
3 The agency shall adopt a financial affidavit form for use by persons seeking legal representation  
4 made available under the provisions of this article.

5 (b) All persons seeking legal representation made available under the provisions of this  
6 article shall complete the agency's financial affidavit form, which shall be considered as an  
7 application for the provision of publicly funded legal representation.

8 (c) Any juvenile shall have the right to be effectively represented by counsel at all stages  
9 of proceedings brought under the provisions of §49-4-701 through §49-4-725 of this code. If the  
10 child advises the court of his or her inability to pay for counsel, the court shall require the child's  
11 parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that

12 neither of the child's parents, or, if applicable, the child's custodian, has sufficient assets to pay  
13 for counsel, the court shall appoint counsel for the child. If the financial affidavit demonstrates that  
14 either of the child's parents, or, if applicable, the child's custodian, does have sufficient assets to  
15 pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by  
16 paying for, legal representation for the child in the proceedings.

17         The court may disregard the assets of the child's parents or custodian and appoint  
18 counsel for the child, as provided in this section, if the court concludes, as a matter of law, that  
19 the child and the parent or custodian have a conflict of interest that would adversely affect the  
20 child's right to effective representation of counsel, or concludes, as a matter of law, that requiring  
21 the child's parent or custodian to provide legal representation for the child would otherwise  
22 jeopardize the best interests of the child.

23         (d) In circuits in which no public defender office is in operation, circuit judges shall make  
24 all determinations of eligibility. In circuits in which a public defender office is in operation, all  
25 determinations of indigency shall be made by a public defender office employee designated by  
26 the executive director. The determinations shall be made after a careful review of the financial  
27 affidavit submitted by the person seeking representation. The review of the affidavit shall be  
28 conducted in accord with the financial eligibility guidelines established by the agency pursuant to  
29 subsection (a) of this section. In addition to the financial eligibility guidelines, the person  
30 determining eligibility shall consider other relevant factors, including, but not limited to, those set  
31 forth in subdivisions (1) through (9) of subsection (e) of this section. If there is substantial reason  
32 to doubt the accuracy of information in the financial affidavit, the person determining eligibility may  
33 make any inquiries necessary to determine whether the affiant has truthfully and completely  
34 disclosed the required financial information.

35         After reviewing all pertinent matters, the person determining eligibility may find the affiant  
36 eligible to have the total cost of legal representation provided by the state, or may find that the  
37 total cost of providing representation shall be apportioned between the state and the eligible

38 person. A person whose annual income exceeds the maximum annual income level allowed for  
39 eligibility may receive all or part of the necessary legal representation, or a person whose income  
40 falls below the maximum annual income level for eligibility may be denied all or part of the  
41 necessary legal representation if the person determining eligibility finds the person's particular  
42 circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis  
43 of one or more of the nine factors set forth in subsection (e) of this section. If legal representation  
44 is made available to a person whose income exceeds the maximum annual income level for  
45 eligibility, or if legal representation is denied to a person whose income falls below the maximum  
46 annual income level for eligibility, the person determining eligibility shall make a written statement  
47 of the reasons for the action and shall specifically relate those reasons to one or more of the  
48 factors set forth in subsection (e) of this section.

49 (e) The following factors shall be considered in determining eligibility for legal  
50 representation made available under the provisions of this article:

51 (1) Current income prospects, taking into account, seasonal variations in income;

52 (2) Liquid assets, assets which may provide collateral to obtain funds to employ private  
53 counsel, and other assets which may be liquidated to provide funds to employ private counsel;

54 (3) Fixed debts and obligations, including federal, state and local taxes, and medical  
55 expenses;

56 (4) Child care, transportation, and other expenses necessary for employment;

57 (5) Age or physical infirmity of resident family members;

58 (6) Whether the person seeking publicly funded legal representation has made reasonable  
59 and diligent efforts to obtain private legal representation, and the results of those efforts;

60 (7) The cost of obtaining private legal representation with respect to the particular matter  
61 in which assistance is sought;

62           (8) Whether the person seeking publicly funded legal representation has posted a cash  
63 bond for bail or has obtained release on bond for bail through the services of a professional  
64 bondsman for compensation and the amount and source of the money provided for the bond;

65           (9) The consequences for the individual if legal assistance is denied.

66           (f) Legal representation requested by the affiant may not be denied in whole or part unless  
67 the affiant can obtain legal representation without undue financial hardship. A person determined  
68 to be ineligible by public defender personnel may have the initial determination reviewed by a  
69 local circuit judge who may amend, modify or rewrite the initial determination. At any stage of the  
70 proceedings a circuit court may determine a prior finding of eligibility was incorrect or has become  
71 incorrect as the result of the affiant's changed financial circumstances, and may revoke any prior  
72 order providing legal representation. In that event, any attorney previously appointed shall be  
73 entitled to compensation under the provisions of law applicable to the appointment for services  
74 already rendered.

75           (g) In the circumstances and manner set forth below, circuit judges may order repayment  
76 to the state, through the office of the clerk of the circuit court having jurisdiction over the  
77 proceedings, of the costs of representation provided under this article:

78           (1) In every case in which services are provided to an indigent person and an adverse  
79 judgment has been rendered against such person, the court may require that person, and in  
80 juvenile cases, may require the juvenile's parents or custodian, to pay as costs the compensation  
81 of appointed counsel, the expenses of the defense, and any other fees and costs authorized by  
82 statute.

83           (2) The court shall not order a person to pay costs unless the person is able to pay without  
84 undue hardship. In determining the amount and method of repayment of costs, the court shall  
85 take account of the financial resources of the person, the person's ability to pay, and the nature  
86 of the burden that payment of costs will impose. The fact that the court initially determines, at the

87 time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude  
88 the court from subsequently ordering repayment if the person's financial circumstances change.

89 (3) When a person is ordered to repay costs, the court may order payment to be made  
90 immediately or within a specified period of time or in specified installments. If a person is  
91 sentenced to a term of imprisonment, an order for repayment of costs is not enforceable during  
92 the period of imprisonment unless the court expressly finds, at the time of sentencing, that the  
93 person has sufficient assets to pay the amounts ordered to be paid or finds there is a reasonable  
94 likelihood the person will acquire the necessary assets in the foreseeable future.

95 (4) A person who has been ordered to repay costs, and who is not in contumacious default  
96 in the payment thereof, may at any time petition the sentencing court for modification of the  
97 repayment order. If it appears to the satisfaction of the court that continued payment of the amount  
98 ordered will impose undue hardship on the person or the person's dependents, the court may  
99 modify the method or amount of payment.

100 (5) When a person ordered to pay costs is also placed on probation or imposition or  
101 execution of sentence is suspended, the court may make the repayment of costs a condition of  
102 probation or suspension of sentence.

103 (h) Circuit clerks shall keep a record of repaid counsel fees and defense expenses  
104 collected pursuant to this section and shall, quarterly, pay the moneys to the State Auditor who  
105 shall deposit the funds in the General Revenue Fund of the state.

106 (i) The making of an affidavit subject to inquiry under this section does not in any event  
107 give rise to criminal remedies against the affiant nor occasion any civil action against the affiant  
108 except for the recovery of costs as in any other case where costs may be recovered and the  
109 recovery of the value of services, if any, provided pursuant to this article. A person who has made  
110 an affidavit knowing the contents of the affidavit to be false may be prosecuted for false swearing  
111 as provided by law.

## CHAPTER 31. CORPORATIONS.

### ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

#### §31-20-2. Definitions.

1 Unless the context indicates clearly otherwise, as used in this article:

2 (a) "Adjacent regional juvenile detention facility" means a facility constructed or maintained  
3 on property owned or controlled by the Regional Jail Authority and designed (1) for the short term  
4 preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting  
5 transportation to or placement at another juvenile detention facility or juvenile correctional facility,  
6 or who are awaiting trial as an adult pursuant to §49-4-710 of this code; or (2) for the court-  
7 ordered, short term placement of juveniles in a facility that is characterized by programmatic  
8 intervention and by staff restrictions of the movements and activities of juveniles placed there,  
9 that limits the juveniles' access to the surrounding community and that is not characterized by  
10 construction fixtures designed to physically restrict the movements and activities of juveniles.

11 (b) "Authority" or "West Virginia Regional Jail Authority" means the West Virginia Regional  
12 Jail and Correctional Facility Authority created by this article.

13 (c) "Board" means the governing body of the authority.

14 (d) "Bonds" means bonds of the authority issued under this article.

15 (e) "Cost of construction or renovation of a local jail facility, regional jail facility or juvenile  
16 facility" means the cost of all lands, water areas, property rights, and easements, financing  
17 charges, interest prior to and during construction and for a period not exceeding six months  
18 following the completion of construction, equipment, engineering and legal services, plans,  
19 specifications, and surveys, estimates of costs and other expenses necessary or incidental to  
20 determining the feasibility or practicability of any project, together with any other expenses  
21 necessary or incidental to the financing and the construction or renovation of the facilities and the  
22 placing of the facilities in operation.

23 (f) "County" means any county of this state.

24 (g) "Federal agency" means the United States of America and any department,  
25 corporation, agency, or instrumentality created, designated, or established by the United States  
26 of America.

27 (h) "Fund" or "funds" means a Regional Jail and Correctional Facility Authority fund  
28 provided in §31-20-10 of this code, including those accounts that may be established by the  
29 authority for accurate accounting of the expenditure of public funds by that agency.

30 (i) "Government" means state and federal government, and any political subdivision,  
31 agency or instrumentality of the state or federal government, corporate or otherwise.

32 (j) "Inmate" means any adult person properly committed to a local or regional jail facility or  
33 a correctional facility.

34 (k) "Local jail facility" means any county facility for the confinement, custody, supervision,  
35 or control of adult persons convicted of misdemeanors, awaiting trial, or awaiting transportation  
36 to a state correctional facility.

37 (l) "Municipality" means any city, town, or village in this state.

38 (m) "Notes" means any notes as defined in §46-3-104 of this code issued under this article  
39 by the authority.

40 (n) "Correctional facility" means any correctional facility, penitentiary, or other correctional  
41 institution operated by the Division of Corrections for the incarceration of adults.

42 (o) "Regional jail facility" or "regional jail" means any facility operated by the authority and  
43 used jointly by two or more counties for the confinement, custody, supervision, or control of adult  
44 persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state  
45 correctional facility.

46 (p) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or  
47 interest on, loans and other investments, grants, contributions, and all other income received by  
48 the authority.

49 (q) "Security interest" means an interest in the loan portfolio of the authority which is  
50 secured by an underlying loan or loans and is evidenced by a note issued by the authority.

51 (r) "Work farm" has the same meaning as that term is used in §7-8-12 of this code  
52 authorizing work farms for individual counties.

53 (s) "Juvenile detention facility" or "juvenile detention center" means a facility operated by  
54 the Division of Juvenile Services (1) for the short term preadjudicatory detention of juveniles, for  
55 the confinement of juveniles who are awaiting transportation to or placement at another juvenile  
56 detention facility or juvenile correctional facility, or who are awaiting trial as an adult pursuant to  
57 §49-4-710 of this code; or (2) for the court-ordered, short term placement of juveniles in a facility  
58 that is characterized by programmatic intervention and by staff restrictions of the movements and  
59 activities of juveniles placed there, that limits the juveniles' access to the surrounding community  
60 and that is not characterized by construction fixtures designed to physically restrict the  
61 movements and activities of juveniles.

62 (t) "Juvenile correctional facility" means a facility operated by the Division of Juvenile  
63 Services (1) for the postdispositional confinement of juveniles adjudicated of offenses that would  
64 be criminal offenses if committed by an adult; or (2) for the court-ordered placement of juveniles  
65 in a facility that is characterized by programmatic intervention and by staff restrictions of the  
66 movements and activities of juveniles placed there, that limits the juveniles' access to the  
67 surrounding community, and that is not characterized by construction fixtures designed to  
68 physically restrict the movements and activities of juveniles.

69 (u) "Juvenile facility" means an adjacent regional juvenile detention facility, a juvenile  
70 detention facility, a juvenile detention center, or a juvenile correctional facility.

## **CHAPTER 33. INSURANCE.**

### **ARTICLE 4. GENERAL PROVISIONS.**

**§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.**

1 (a) For purposes of this section, the following definitions shall apply:

2 (1) "Abuse," as used in this section, means the occurrence of one or more of the following  
3 acts between family or household members:

4 (A) Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to  
5 another with or without dangerous or deadly weapons;

6 (B) Placing another in reasonable apprehension of physical harm;

7 (C) Creating fear of physical harm by harassment, psychological abuse, or threatening  
8 acts;

9 (D) Committing either sexual assault or sexual abuse as those terms are defined in  
10 §61-8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

11 (E) Holding, confining, detaining, or abducting another person against that person's will;

12 (F) Intentionally or recklessly damaging, destroying, or taking the tangible property of  
13 another individual;

14 (G) Insulting, taunting, or challenging another individual or engaging in a course of  
15 alarming or distressing conduct in a manner which is likely to provoke a violent or disorderly  
16 response or which is likely to cause humiliation, degradation, or fear in another individual;

17 (H) Trespassing on or in the property of another individual, or on or in property from which  
18 the trespasser has been excluded by court order;

19 (I) Child abuse or neglect, as defined in §49-1-201 of this code;

20 (J) Kidnapping, concealment, or removal of a minor child from his or her custodian or from  
21 a person entitled to visitation, as set forth in §61-2-14 through §61-2-14e of this code.

22 (2) "Family or household member" means current or former spouses, persons living as  
23 spouses, persons who formerly resided as spouses, parents, children and stepchildren, current  
24 or former sexual or intimate partners, other persons related by blood or marriage, persons who

25 are presently or in the past have resided or cohabited together, or a person with whom the victim  
26 has a child in common.

27 (3) "Victim of abuse," as used in this section, means an individual who has been or is  
28 subject to abuse, including, but not limited to, an individual who seeks, has sought, or should have  
29 sought medical or psychological treatment for abuse, protection from abuse or shelter from abuse.

30 (b) For all policies issued or renewed after the effective date of this section, a person or  
31 entity engaged in the business of providing life or health insurance, or both, in this state may not:

32 (1) Deny, refuse to issue, refuse to renew, refuse to reissue, cancel, or otherwise terminate  
33 an insurance policy or restrict coverage on any individual because that individual is, has been, or  
34 may be the victim of abuse;

35 (2) Add any surcharge or rating factor to a premium of an insurance policy because an  
36 individual has been or may be the victim of abuse;

37 (3) Exclude or limit coverage for losses or deny a claim incurred because an individual  
38 has been or may be the victim of abuse; or

39 (4) Require as part of the application process any information regarding whether that  
40 individual has been or may be the victim of abuse.

41 (c) Nothing in this section may be construed to prohibit a person from declining to issue  
42 an insurance policy insuring the life of an individual who is or has been the victim of abuse if the  
43 perpetrator of abuse is the applicant or would be the owner of the insurance policy.

44 (d) Nothing in this section may be construed to prohibit a person from underwriting or  
45 rating a risk on the basis of a preexisting physical or mental condition, even if the condition had  
46 been caused by abuse: *Provided, That:*

47 (1) The person routinely underwrites or rates the condition in the same manner with  
48 respect to an insured or an applicant who is not a victim of abuse;

49 (2) The fact that an individual is, has been, or may be the victim of abuse may not be  
50 considered a physical or mental condition; and

51 (3) The underwriting or rating is not used to evade the intent of this law or any other  
52 provision of law. A person may not be held civilly or criminally liable for any cause of action which  
53 may be brought because of compliance with this section.

## **CHAPTER 48. DOMESTIC RELATIONS.**

### **ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION- MAKING RESPONSIBILITY OF CHILDREN.**

#### **§48-9-205. Permanent parenting plan.**

1 (a) A party seeking a judicial allocation of custodial responsibility or decision-making  
2 responsibility under this article shall file a proposed parenting plan with the court. Parties may file  
3 a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably  
4 discoverable by the filing party or parties:

5 (1) The name, address, and length of residence of any adults with whom the child has  
6 lived for one year or more, or in the case of a child less than one year old, any adults with whom  
7 the child has lived since the child's birth;

8 (2) The name and address of each of the child's parents and any other individuals with  
9 standing to participate in the action under §48-9-103 of this code;

10 (3) A description of the allocation of care taking and other parenting responsibilities  
11 performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-  
12 four months preceding the filing of an action under this article;

13 (4) A description of the work and child-care schedules of any person seeking an allocation  
14 of custodial responsibility, and any expected changes to these schedules in the near future;

15 (5) A description of the child's school and extracurricular activities;

16 (6) A description of any of the limiting factors as described in §48-9-209 of this code that  
17 are present, including any restraining orders against either parent to prevent domestic or family  
18 violence, by case number and jurisdiction;

19 (7) Required financial information; and

20 (8) A description of the known areas of agreement and disagreement with any other  
21 parenting plan submitted in the case.

22 The court shall maintain the confidentiality of any information required to be filed under  
23 this section when the person giving that information has a reasonable fear of domestic abuse and  
24 disclosure of the information would increase that fear.

25 (b) The court shall develop a process to identify cases in which there is credible  
26 information that child abuse or neglect, as defined in §49-1-201 of this code, or domestic violence  
27 as defined in §48-27-202 of this code has occurred. The process shall include assistance for  
28 possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this  
29 section, and referral to appropriate resources for safe shelter, counseling, safety planning,  
30 information regarding the potential impact of domestic abuse on children, and information  
31 regarding civil and criminal remedies for domestic abuse. The process shall also include a system  
32 for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible  
33 information that child abuse or domestic abuse has occurred receive the court review that is  
34 mandated by §48-9-201(b) of this code.

35 (c) Upon motion of a party and after consideration of the evidence, the court shall order a  
36 parenting plan consistent with the provisions of §48-9-206, §48-9-207, §48-9-208 and §48-9-209  
37 of this code, containing:

38 (1) A provision for the child's living arrangements and each parent's custodial  
39 responsibility, which shall include either:

40 (A) A custodial schedule that designates in which parent's home each minor child will  
41 reside on given days of the year; or

42 (B) A formula or method for determining such a schedule in sufficient detail that, if  
43 necessary, the schedule can be enforced in subsequent proceedings by the court;

44 (2) An allocation of decision-making responsibility as to significant matters reasonably  
45 likely to arise with respect to the child;

46 (3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise  
47 under the plan, and remedies for violations of the plan; and

48 (4) A plan for the custody of the child should one or both of the parents as a member of  
49 the National Guard, a reserve component, or an active duty component be mobilized, deployed,  
50 or called to active duty.

51 (d) A parenting plan may, at the court's discretion, contain provisions that address matters  
52 that are expected to arise in the event of a party's relocation, or provide for future modifications  
53 in the parenting plan if specified contingencies occur.

### PART III - FACT FINDING.

#### **§48-9-301a. Child abuse allegations.**

1 (a) If allegations of child abuse are made during a child custody proceeding and the court  
2 has concerns regarding the child's safety, the court may take any reasonable, temporary steps  
3 as the court, in its discretion, considers appropriate under the circumstances to protect the child's  
4 safety until an investigation can be completed. Nothing in this subsection shall affect the  
5 applicability of §49-2-802 and §49-2-803 of this code.

6 (b) If allegations of child abuse are made during a child custody proceeding, the court may  
7 request that the local child protective service conduct an investigation of the allegations pursuant  
8 to §49-2-801 through §49-2-814 of this code. Upon completion of the investigation, the agency  
9 shall report its findings to the court.

### **ARTICLE 22. ADOPTION.**

#### PART III. CONSENT OR RELINQUISHMENT; ABANDONMENT.

#### **§48-22-301. Persons whose consent or relinquishment is required; exceptions.**

1 (a) Subject to the limitations hereinafter set forth, consent to or relinquishment for adoption  
2 of a minor child is required of:

3 (1) The parents or surviving parent of a marital child, whether adult or infant;

4 (2) The outsider father of a marital child who has been adjudicated to be the father of the  
5 child or who has filed a paternity action which is pending at the time of the filing of the petition for  
6 adoption;

7 (3) The birth mother of a nonmarital child, whether adult or infant; and

8 (4) The determined father.

9 (b) Consent or relinquishment shall not be required of a parent or of any other person  
10 having custody of the adoptive child:

11 (1) Whose parental rights have been terminated pursuant to the provisions of §49-4-114  
12 of this code;

13 (2) Whom the court finds has abandoned the child as set forth in §48-22-306 of this code;

14 or

15 (3) Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is  
16 married to the petitioning adoptive parent. In such stepparent adoption, the parent must assent to  
17 the adoption by joining as a party to the petition for adoption.

18 (c) If the mother, legal father, or determined father is under disability, the court may order  
19 the adoption if it finds:

20 (1) The parental rights of the person are terminated, abandoned, or permanently  
21 relinquished;

22 (2) The person is incurably insane; or

23 (3) The disability arises solely because of age and an otherwise valid consent or  
24 relinquishment has been given.

25 (d) If all persons entitled to parental rights of the child sought to be adopted are deceased  
26 or have been deprived of the custody of the child by law, then consent or relinquishment is  
27 required of the legal guardian or of any other person having legal custody of the child at the time.

28 If there is no legal guardian nor any person who has legal custody of the child, then consent or  
29 relinquishment is required from some discreet and suitable person appointed by the court to act  
30 as the next friend of the child in the adoption proceedings.

31 (e) If one of the persons entitled to parental rights of the child sought to be adopted is  
32 deceased, only the consent or relinquishment of the surviving person entitled to parental rights is  
33 required.

34 (f) If the child to be adopted is 12 years of age or over, the consent of the child is required  
35 to be given in the presence of a judge of a court of competent jurisdiction, unless for extraordinary  
36 cause, the requirement of such consent is waived by the court.

37 (g) Any consent to adoption or relinquishment of parental rights shall have the effect of  
38 authorizing the prospective adoptive parents or the agency to consent to medical treatment for  
39 the child, whether or not such authorization is expressly stated in the consent or relinquishment.

## **ARTICLE 26. DOMESTIC VIOLENCE ACT.**

### **PART VII. CONFIDENTIALITY.**

#### **§48-26-701. Confidentiality.**

1 (a) A program licensed pursuant to this article may not disclose, reveal, or release or be  
2 compelled to disclose, reveal, or release, any written records or personal or personally identifying  
3 information about a program participant created or maintained in providing services, regardless  
4 of whether the information has been encoded, encrypted, hashed, or otherwise protected,  
5 pursuant to this article except:

6 (1) Upon written consent, or upon oral consent in emergency situations defined by  
7 legislative rule, of the person seeking or who has sought services from the program;

8 (2) In any proceeding brought under §9-6-4 and §9-6-5 of this code or §49-4-601 through  
9 §49-4-610 of this code;

10 (3) As mandated by §49-2-801 through §49-2-814 and §9-6-1 *et seq.* of this code;

11 (4) Pursuant to an order of any court based upon a finding that the information is  
12 sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining  
13 the confidentiality established by this section;

14 (5) To protect against a clear and substantial danger of imminent injury by a person  
15 receiving services to himself or herself or another; or

16 (6) As authorized by the releases signed by batterer intervention and prevention program  
17 participants pursuant to the provisions of subsection (b) of this section.

18 (b) Batterer intervention and prevention program participants shall authorize the release  
19 of information by signing the following releases:

20 (1) Allowing the provider to inform the victim or alleged victim and the victim's advocates  
21 that the batterer is participating in a batterer intervention and prevention program with the provider  
22 and to provide information to the victim or alleged victim and her or his advocates, if necessary,  
23 for the victim's or alleged victim's safety;

24 (2) Allowing prior and current service providers to provide information about the batterer  
25 to the provider;

26 (3) Allowing the provider, for good cause, to provide information about the batterer to  
27 relevant legal entities, including courts, parole officers, probation officers, child protective  
28 services, adult protective services, law enforcement, licensed domestic violence programs, or  
29 other referral agencies;

30 (4) Allowing the provider to report to the court, if the participation was court ordered, and  
31 to the victim or alleged victim, if she or he requests and provides a method of notification, and to  
32 her or his advocate, any assault, failure to comply with program requirements, failure to attend  
33 the program, threat of harm by the batterer, reason for termination, and recommendations for  
34 changes in the court order; and

35 (5) Allowing the provider to report to the victim or alleged victim, or her or his advocate,  
36 without the participant's authorization, all perceived threats of harm, the participant's failure to  
37 attend, and reason for termination.

38 (c) Monitored parenting and exchange programs may disclose to one parent or guardian,  
39 without the permission of the other parent or guardian, any perceived threat of harm or violation  
40 of the court order or violation of the monitored parenting and exchange program rules by the other  
41 parent or guardian.

42 (d) A monitored parenting and exchange program may not release information about the  
43 child without consent of the parent with custodial responsibility or guardian.

44 (e) In addition to the provisions set forth in this section, the release of a victim's personally  
45 identifying information is subject to the provisions of 42 U.S.C. § 13925(b)(2).

46 (f) A consent or authorization for the transmission or disclosure of confidential information  
47 is not effective unless it is signed by the program participant whose information is being disclosed.  
48 Every person signing an authorization shall be given a copy.

49 (g) A victim of domestic violence, dating violence, sexual assault, or stalking shall not be  
50 required to provide consent to release his or her personally identifying information as a condition  
51 of eligibility for the services, nor may any personally identifying information be shared in order to  
52 comply with federal or state reporting, evaluation, or data collection requirements: *Provided*, That  
53 nothing in this section prohibits a program from reporting suspected abuse or neglect, as defined  
54 by law, when the program is mandated by law to report suspected abuse or neglect.

**§48-26-1002. Exclusions.**

1 The provisions of this part do not apply to therapeutic or supervised visitation or exchanges  
2 or any activity conducted by the state or others in abuse and neglect proceedings pursuant to  
3 §49-2-801 through §49-2-814 and §49-4-601 through §49-4-610 of this code in which  
4 assessment, evaluation, formulation of a treatment plan, case management, counseling, therapy,  
5 or similar activities occur.

**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

**§48-27-403. Emergency protective orders of court; hearings; persons present.**

1           (a) Upon the filing of a verified petition under this article, the magistrate court may enter  
2 an emergency protective order as it may determine necessary to protect the petitioner or minor  
3 children from domestic violence and, upon good cause shown, may do so ex parte without the  
4 necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and  
5 present danger of abuse to the petitioner or minor children constitutes good cause for the issuance  
6 of an emergency protective order pursuant to this section. If the respondent is not present at the  
7 proceeding, the petitioner or the petitioner's legal representative shall certify to the court, in  
8 writing, the efforts which have been made to give notice to the respondent or just cause why  
9 notice should not be required. Copies of medical reports or records may be admitted into evidence  
10 to the same extent as though the original reports or records. The custodian of the records is not  
11 required to be present to authenticate the records for any proceeding held pursuant to this  
12 subsection. If the magistrate court determines to enter an emergency protective order, the order  
13 shall prohibit the respondent from possessing firearms.

14           (b) Following the proceeding, the magistrate court shall order a copy of the petition to be  
15 served immediately upon the respondent, together with a copy of any emergency protective order  
16 entered pursuant to the proceedings, a notice of the final hearing before the family court, and a  
17 statement of the right of the respondent to appear and participate in the final hearing, as provided  
18 in subsection (d) of this section. Copies of any order entered under the provisions of this section,  
19 a notice of the final hearing before the family court, and a statement of the right of the petitioner  
20 to appear and participate in the final hearing, as provided in subsection (d) of this section, shall  
21 also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-  
22 enforcement agency having jurisdiction to enforce the order, including municipal police, the county  
23 sheriff's office and local office of the State Police, within 24 hours of the entry of the order. An  
24 emergency protective order is effective until modified by order of the family court upon hearing as

25 provided in subsection (d) of this section. The order is in full force and effect in every county in  
26 this state.

27 (c) Subsequent to the entry of the emergency protective order, service on the respondent,  
28 and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred  
29 to the office of the clerk of the circuit court for use by the family court.

30 (d) The family court shall schedule a final hearing on each petition in which an emergency  
31 protective order has been entered by a magistrate. The hearing shall be scheduled not later than  
32 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be  
33 served on the respondent and delivered to the petitioner, as provided in subsection (b) of this  
34 section, and must set forth the hearing date, time, and place and include a statement of the right  
35 of the parties to appear and participate in the final hearing. The notice must also provide that the  
36 petitioner's failure to appear will result in a dismissal of the petition and that the respondent's  
37 failure to appear may result in the entry of a protective order against him or her for a period of 90  
38 or 180 days, as determined by the court. The notice must also include the name, mailing address,  
39 physical location, and telephone number of the family court having jurisdiction over the  
40 proceedings. To facilitate the preparation of the notice of final hearing required by the provisions  
41 of this subsection, the family court must provide the magistrate court with a day and time in which  
42 final hearings may be scheduled before the family court within the time required by law.

43 (e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the  
44 allegation of domestic violence or that he or she reported or witnessed domestic violence against  
45 another and has, as a result, been abused, threatened, harassed, or has been the subject of other  
46 actions to attempt to intimidate him or her, or the petition shall be dismissed by the family court.  
47 If the respondent has not been served with notice of the emergency protective order, the hearing  
48 may be continued to permit service to be effected. The failure to obtain service upon the  
49 respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be

50 admitted into evidence to the same extent as though the original thereof, upon proper  
51 authentication, by the custodian of the records.

52 (f) A person requested by a party to be present during a hearing held under the provisions  
53 of this article shall not be precluded from being present unless that person is to be a witness in  
54 the proceeding and a motion for sequestration has been made and the motion has been granted.  
55 A person found by the court to be disruptive may be precluded from being present.

56 (g) Upon hearing, the family court may dismiss the petition or enter a protective order for  
57 a period of 90 days or, in the discretion of the court, for a period of 180 days. The hearing may  
58 be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing  
59 may be continued by the court no more than seven days. If a hearing is continued, the family  
60 court may modify the emergency protective order as it considers necessary.

61 (h) Notwithstanding any other provision of this code to the contrary, a petition filed  
62 pursuant to this section that results in the issuance of an emergency protective order naming a  
63 juvenile as the respondent in which the petition for the emergency protective order is filed by or  
64 on behalf of the juvenile's parent, guardian or custodian, or other person with whom the juvenile  
65 resides shall be treated as a petition authorized by §49-4-704 of this code, alleging the juvenile is  
66 a juvenile delinquent: *Provided*, That the magistrate court shall notify the prosecuting attorney in  
67 the county where the emergency protective order is issued within 24 hours of the issuance of the  
68 emergency protective order and the prosecuting attorney may file an amended verified petition to  
69 comply with the provisions of §49-4-704(a) of this code within two judicial days.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

#### **PART II. DEFINITIONS.**

##### **§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

1 When used in this chapter, terms defined in this section have the meanings ascribed to  
2 them that relate to, but are not limited to, child abuse and neglect, except in those instances where

3 a different meaning is provided or the context in which the word is used clearly indicates that a  
4 different meaning is intended.

5 “Abandonment” means any conduct that demonstrates the settled purpose to forego the  
6 duties and parental responsibilities to the child;

7 “Abused child” means:

8 (1) A child whose health or welfare is being harmed or threatened by:

9 (A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to  
10 inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury,  
11 upon the child or another child in the home. Physical injury may include an injury to the child as a  
12 result of excessive corporal punishment;

13 (B) Sexual abuse or sexual exploitation;

14 (C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of  
15 §61-2-14h of this code;

16 (D) Domestic violence as defined in §48-27-202 of this code; or

17 (E) Human trafficking or attempted human trafficking, in violation of §61-14-2 of this code.

18 (2) A child conceived as a result of sexual assault, as that term is defined in this section,  
19 or as a result of the violation of a criminal law of another jurisdiction which has the same essential  
20 elements: *Provided*, That no victim of sexual assault may be determined to be an abusive parent,  
21 as that term is defined in this section, based upon being a victim of sexual assault.

22 “Abusing parent” means a parent, guardian, or other custodian, regardless of his or her  
23 age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as  
24 alleged in the petition charging child abuse or neglect.

25 “Battered parent” for the purposes of §49-4-601 *et seq.* of this code means a respondent  
26 parent, guardian, or other custodian who has been adjudicated by the court to have not condoned  
27 the abuse or neglect and has not been able to stop the abuse or neglect of the child or children  
28 due to being the victim of domestic violence as defined by §48-27-202 of this code, which was

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

31 “Child abuse and neglect” or “child abuse or neglect” means any act or omission that  
32 creates an abused child or a neglected child as those terms are defined in this section.

33 “Child abuse and neglect services” means social services which are directed toward:

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

35 (B) Identifying, preventing, and remedying conditions which cause child abuse and  
36 neglect;

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

40 (D) In cases where children have been removed from their families, providing time-limited  
41 reunification services to the children and the families so as to reunify those children with their  
42 families, or some portion of the families;

43 (E) Placing children in suitable adoptive homes when reunifying the children with their  
44 families, or some portion of the families, is not possible or appropriate; and

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

47 “Condition requiring emergency medical treatment” means a condition which, if left  
48 untreated for a period of a few hours, may result in permanent physical damage; that condition  
49 includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture,  
50 unconsciousness, and evidence of ingestion of significant amounts of a poisonous substance.

51 “Imminent danger to the physical well-being of the child” means an emergency situation  
52 in which the welfare or the life of the child is threatened. These conditions may include an  
53 emergency situation when there is reasonable cause to believe that any child in the home is or

54 has been sexually abused or sexually exploited, or reasonable cause to believe that the following  
55 conditions threaten the health, life, or safety of any child in the home:

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

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

60 (C) Nutritional deprivation;

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

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

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

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

65 (H) The parent, guardian, or custodian's abuse of alcohol or drugs or other controlled  
66 substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a  
67 degree as to pose an imminent risk to a child's health or safety; or

68 (I) Any other condition that threatens the health, life or safety of any child in the home.

69 "Neglected child" means a child:

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

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

76 (C) "Neglected child" does not mean a child whose education is conducted within the  
77 provisions of §18-8-1 *et seq.* of this code.

78 "Petitioner or copetitioner" means the department or any reputable person who files a child  
79 abuse or neglect petition pursuant to §49-4-601 *et seq.* of this code.

80 "Permanency plan" means the part of the case plan which is designed to achieve a  
81 permanent home for the child in the least restrictive setting available.

82 "Respondent" means all parents, guardians, and custodians identified in the child abuse  
83 and neglect petition who are not petitioners or copetitioners.

84 "Sexual abuse" means:

85 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-  
86 3 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or  
87 knowingly procures another person to engage in, with a child notwithstanding the fact that for a  
88 child who is less than 16 years of age, the child may have willingly participated in that conduct or  
89 the child may have suffered no apparent physical, mental or emotional injury as a result of that  
90 conduct or, for a child 16 years of age or older, the child may have consented to that conduct or  
91 the child may have suffered no apparent physical injury or mental or emotional injury as a result  
92 of that conduct;

93 (B) Any conduct where a parent, guardian, or custodian displays his or her sex organs to  
94 a child, or procures another person to display his or her sex organs to a child, for the purpose of  
95 gratifying the sexual desire of the parent, guardian, or custodian, of the person making that  
96 display, or of the child, or for the purpose of affronting or alarming the child; or

97 (C) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

98 "Sexual assault" means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-  
99 5 of this code.

100 "Sexual contact" means sexual contact as that term is defined in §61-8b-1 of this code.

101 "Sexual exploitation" means an act where:

102 (A) A parent, custodian, or guardian, whether for financial gain or not, persuades, induces,  
103 entices or coerces a child to engage in sexually explicit conduct as that term is defined in §61-8c-  
104 1 of this code;

105 (B) A parent, guardian, or custodian persuades, induces, entices or coerces a child to  
106 display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a  
107 third person, or to display his or her sex organs under circumstances in which the parent,  
108 guardian, or custodian knows that the display is likely to be observed by others who would be  
109 affronted or alarmed; or

110 (C) A parent, guardian, or custodian knowingly maintains or makes available a child for  
111 the purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this  
112 code.

113 “Sexual intercourse” means sexual intercourse as that term is defined in §61-8b-1 of this  
114 code.

115 “Sexual intrusion” means sexual intrusion as that term is defined in §61-8b-1 of this code.

116 “Serious physical abuse” means bodily injury which creates a substantial risk of death,  
117 causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or  
118 impairment of the function of any bodily organ.

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

### **ARTICLE 2A. FAMILY COURTS.**

#### **§51-2A-2. Family court jurisdiction; exceptions; limitations.**

1 (a) The family court shall exercise jurisdiction over the following matters:

2 (1) All actions for divorce, annulment or separate maintenance brought under the  
3 provisions of §48-3-1 *et seq.*, §48-4-1 *et seq.*, or §48-5-1 *et seq.* of this code, except as provided  
4 in subsections (b) and (c) of this section;

5 (2) All actions to obtain orders of child support brought under the provisions of §48-11-1  
6 *et seq.*, §48-12-1 *et seq.*, and §48-14-1 *et seq.* of this code;

7 (3) All actions to establish paternity brought under the provisions of §48-24-1 *et seq.* of  
8 this code and any dependent claims related to such actions regarding child support, parenting  
9 plans or other allocation of custodial responsibility or decision-making responsibility for a child;

10 (4) All actions for grandparent visitation brought under the provisions of §48-10-1 *et seq.*  
11 of this code;

12 (5) All actions for the interstate enforcement of family support brought under §48-16-1 *et*  
13 *seq.* of this code and for the interstate enforcement of child custody brought under the provisions  
14 of §48-20-1 *et seq.* of this code;

15 (6) All actions for the establishment of a parenting plan or other allocation of custodial  
16 responsibility or decision-making responsibility for a child, including actions brought under the  
17 Uniform Child Custody Jurisdiction and Enforcement Act, as provided in §48-20-1 *et seq.* of this  
18 code;

19 (7) All petitions for writs of habeas corpus in which the issue contested is custodial  
20 responsibility for a child;

21 (8) All motions for temporary relief affecting parenting plans or other allocation of custodial  
22 responsibility or decision-making responsibility for a child, child support, spousal support or  
23 domestic violence;

24 (9) All motions for modification of an order providing for a parenting plan or other allocation  
25 of custodial responsibility or decision-making responsibility for a child or for child support or  
26 spousal support;

27 (10) All actions brought, including civil contempt proceedings, to enforce an order of  
28 spousal or child support or to enforce an order for a parenting plan or other allocation of custodial  
29 responsibility or decision-making responsibility for a child;

30 (11) All actions brought by an obligor to contest the enforcement of an order of support  
31 through the withholding from income of amounts payable as support or to contest an affidavit of  
32 accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

33 (12) All final hearings in domestic violence proceedings;

34 (13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

35 (14) All proceedings for payment of attorney fees if the family court judge has jurisdiction  
36 of the underlying action;

37 (15) All proceedings for property distribution brought under §48-7-1 *et seq.* of this code;

38 (16) All proceedings to obtain spousal support brought under §48-8-1 *et seq.* of this code;

39 (17) All proceedings relating to the appointment of guardians or curators of minor children  
40 brought pursuant to §44-10-3, §44-10-4 and §44-10-6 of this code, exercising concurrent  
41 jurisdiction with the circuit court; and

42 (18) All proceedings relating to petitions for sibling visitation.

43 (b) If an action for divorce, annulment, or separate maintenance does not require the  
44 establishment of a parenting plan or other allocation of custodial responsibility or decision-making  
45 responsibility for a child and does not require an award or any payment of child support, the circuit  
46 court has concurrent jurisdiction with the family court over the action if, at the time of the filing of  
47 the action, the parties also file a written property settlement agreement executed by both parties.

48 (c) If an action for divorce, annulment, or separate maintenance is pending and a petition  
49 is filed pursuant to the provisions of §49-4-601 through §49-4-610 of this code alleging abuse or  
50 neglect of a child by either of the parties to the divorce, annulment, or separate maintenance  
51 action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede  
52 and take precedence over an order of the family court respecting the allocation of custodial and  
53 decision-making responsibility for the child between the parents. If no order for the allocation of  
54 custodial and decision-making responsibility for the child between the parents has been entered  
55 by the family court in the pending action for divorce, annulment, or separate maintenance, the  
56 family court shall stay any further proceedings concerning the allocation of custodial and decision-  
57 making responsibility for the child between the parents and defer to the orders of the circuit court  
58 in the abuse or neglect proceedings.

59 (d) If a family court judge is assigned as a judicial officer of a domestic violence court then  
60 jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as

61 referenced in §48-27-301 of this code involving a family or household member as referenced in  
62 §48-27-204(1) through §48-27-204(6) and §48-27-204(7)(A), §48-27-204(7)(B), and  
63 §48-27-204(7)(H) of this code shall be concurrent with the circuit and magistrate courts.

64 (e) A family court is a court of limited jurisdiction. A family court is a court of record only  
65 for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court  
66 is specifically authorized in this section and in chapter 48 of this code. A family court may not  
67 exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers  
68 provided for courts of record in this code unless specifically authorized by the Legislature. A family  
69 court judge is not a “judge of any court of record” or a “judge of a court of record” as the terms are  
70 defined and used in §51-9-1 *et seq.* of this code.

## **ARTICLE 7. OFFICIAL REPORTERS.**

### **§51-7-8. Transcripts to be furnished indigent persons in juvenile delinquency and child abuse and neglect proceedings upon timely request; payment therefor.**

1 In any proceeding held pursuant to §49-4-601 through §49-4-725 of this code in which an  
2 indigent respondent or his or her counsel has filed a written request, in the manner prescribed by  
3 the Supreme Court of Appeals, evidencing an intent to appeal a decision of a circuit court in the  
4 proceeding, the court, upon presentation of a written request, presented within 30 days after the  
5 entry of the order sought to be appealed, shall authorize and direct the court reporter to furnish a  
6 transcript of the testimony of the proceeding or the part or parts of the transcript that have  
7 specifically been requested.

8 The court, after being sufficiently satisfied of the reasonableness of a voucher or claim  
9 submitted for payment of the cost of preparing the transcript, shall certify the cost to the State  
10 Auditor, who shall, in a timely manner, pay the court reporter’s fee from appropriations to the  
11 Supreme Court of Appeals.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 2. CRIMES AGAINST THE PERSON.

#### §61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

1           (a) Any person or agency who knowingly offers, gives, or agrees to give to another person  
2 money, property, service, or other thing of value in consideration for the recipient's locating,  
3 providing, or procuring a minor child for any purpose which entails a transfer of the legal or  
4 physical custody of the child, including, but not limited to, adoption or placement, is guilty of a  
5 felony and subject to fine and imprisonment as provided in this section.

6           (b) Any person who knowingly receives, accepts, or offers to accept money, property,  
7 service, or other thing of value to locate, provide or procure a minor child for any purpose which  
8 entails a transfer of the legal or physical custody of the child, including, but not limited to, adoption  
9 or placement, is guilty of a felony and subject to fine and imprisonment as provided in this section.

10           (c) Any person who violates the provisions of this section is guilty of a felony and, upon  
11 conviction thereof, may be confined in the state correctional facility for not less than one year nor  
12 more than 10 years or, in the discretion of the court, be confined in jail not more than one year  
13 and fined not less than \$2,000 nor more than \$10,000.

14           (d) A child whose parent, guardian, or custodian has sold or attempted to sell said child in  
15 violation of the provisions of §48-22-1 *et seq.* of this code may be deemed an abused child as  
16 defined by §49-1-201 of this code. The court may place such a child in the custody of the  
17 Department of Health and Human Resources or with another responsible person as dictated by  
18 the best interests of the child.

19           (e) This section does not prohibit the payment or receipt of the following:

20           (1) Fees paid for reasonable and customary services provided by the Department of  
21 Health and Human Resources or any licensed or duly authorized adoption or child-placing  
22 agency;

23 (2) Reasonable and customary legal, medical, hospital or other expenses incurred in  
24 connection with the pregnancy, birth, and adoption proceedings;

25 (3) Fees and expenses included in any agreement in which a woman agrees to become  
26 a surrogate mother; or

27 (4) Any fees or charges authorized by law or approved by a court in a proceeding relating  
28 to the placement plan, prospective placement, or placement of a minor child for adoption.

29 (f) At the final hearing on the adoption as provided in §48-22-1 *et seq.* of this code, an  
30 affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted  
31 to the court.

**ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

**§61-5-12b. Escape from custody of the Director of Juvenile Services.**

1 (a) Any person, under the age of 18 years of age, who escapes or attempts to escape  
2 from the custody of the Director of Juvenile Services, regardless of where that person is confined  
3 or where the escape occurs, is guilty of a delinquent act and subject to the jurisdiction of the circuit  
4 court of the county in which the escape occurred, pursuant to §49-4-701 of this code: *Provided,*  
5 That upon agreement of all parties, the prosecution of the escape may be transferred to the circuit  
6 court from which the juvenile was originally committed.

7 (b) Any person, over the age of 18 years of age or any juvenile who has been transferred  
8 to the adult jurisdiction of the committing court, who escapes or attempts to escape from the  
9 custody of the Director of Juvenile Services, regardless of where that person is confined or where  
10 the escape or attempted escape occurs, is guilty of escape and, if the person is detained or  
11 confined for an offense which is a felony or would have been a felony if committed by an adult is  
12 guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility  
13 not more than five years. Any person, over the age of 18 years of age or any juvenile who has  
14 been transferred to the adult jurisdiction of the committing court, who is detained for an offense  
15 which is a misdemeanor or would have been a misdemeanor if committed by an adult is guilty of

16 a misdemeanor and, upon conviction thereof, shall be confined in a regional jail for not more than  
17 one year.

**ARTICLE 6. CRIMES AGAINST THE PEACE.**

**§61-6-25. Falsely reporting child abuse.**

1 (a) Any person who knowingly and intentionally reports or causes to be reported to a law-  
2 enforcement officer, child protective service worker, or judicial officer that another has committed  
3 child sexual abuse, child abuse, or neglect as those terms are defined in §49-1-201 of this code  
4 who when doing so knows or has reason to know the accusation is false and who does it with the  
5 intent to influence a child custody decision shall be guilty of a misdemeanor, and, upon conviction,  
6 shall be fined not more than \$1,000, sentenced to not more than sixty hours of court-approved  
7 community service, or both.

8 (b) In addition to any other sanctions imposed by the provisions of this section, any person  
9 convicted of a violation of this section shall be required to attend and complete a court-approved  
10 parenting class.

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-8. Possession of deadly weapons by minors; prohibitions.**

1 Notwithstanding any other provision of this article to the contrary, a person under the age  
2 of 18 years who is not married or otherwise emancipated shall not possess or carry concealed or  
3 openly any deadly weapon: *Provided*, That a minor may possess a firearm upon premises owned  
4 by the minor or his or her family or on the premises of another with the permission of his or her  
5 parent or guardian and in the case of property other than his or her own or that of his or her family,  
6 with the permission of the owner or lessee of the property: *Provided, however*, That nothing in  
7 this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or  
8 while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting  
9 site, and returning to a place where he or she may lawfully possess the weapon.

10 A violation of this section by a person under the age of 18 years shall subject the child to  
11 the jurisdiction of the circuit court under the provisions of §49-4-701 through §49-4-725 of this  
12 code, and the minor may be proceeded against in the same manner as if he or she had committed  
13 an act which if committed by an adult would be a crime, and may be adjudicated delinquent.

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-12. Incest; penalty.**

- 1 (a) For the purposes of this section:
- 2 (1) "Aunt" means the sister of a person's mother or father;
- 3 (2) "Brother" means the son of a person's mother or father;
- 4 (3) "Daughter" means a person's natural daughter, adoptive daughter, or the daughter of  
5 a person's husband or wife;
- 6 (4) "Father" means a person's natural father, adoptive father, or the husband of a person's  
7 mother;
- 8 (5) "Granddaughter" means the daughter of a person's son or daughter;
- 9 (6) "Grandfather" means the father of a person's father or mother;
- 10 (7) "Grandmother" means the mother of a person's father or mother;
- 11 (8) "Grandson" means the son of a person's son or daughter;
- 12 (9) "Mother" means a person's natural mother, adoptive mother, or the wife of a person's  
13 father;
- 14 (10) "Niece" means the daughter of a person's brother or sister;
- 15 (11) "Nephew" means the son of a person's brother or sister;
- 16 (12) "Sexual intercourse" means any act between persons involving penetration, however  
17 slight, of the female sex organ by the male sex organ or involving contact between the sex organs  
18 of one person and the mouth or anus of another person;

19 (13) "Sexual intrusion" means any act between persons involving penetration, however  
20 slight, of the female sex organ or of the anus of any person by an object for the purpose of  
21 degrading or humiliating the person so penetrated or for gratifying the sexual desire of either  
22 party;

23 (14) "Sister" means the daughter of a person's father or mother;

24 (15) "Son" means a person's natural son, adoptive son, or the son of a person's husband  
25 or wife; and

26 (16) "Uncle" means the brother of a person's father or mother.

27 (b) A person is guilty of incest when such person engages in sexual intercourse or sexual  
28 intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother,  
29 grandson, granddaughter, nephew, niece, uncle, or aunt.

30 (c) Any person who violates the provisions of this section shall be guilty of a felony, and,  
31 upon conviction thereof, shall be imprisoned in the penitentiary not less than 5 years nor more  
32 than 15 years, or fined not less than \$500 nor more than \$5,000 and imprisoned in the penitentiary  
33 not less than five years nor more than fifteen years.

34 (d) In addition to any penalty provided under this section and any restitution which may be  
35 ordered by the court under §61-11A-1 *et seq.* of this code, the court may order any person  
36 convicted under the provisions of this section, where the victim is a minor, to pay all or any portion  
37 of the cost of medical, psychological, or psychiatric treatment of the victim, the need for which  
38 results from the act or acts for which the person is convicted, whether or not the victim is  
39 considered to have sustained bodily injury.

40 (e) In any case where a person is convicted of an offense described in this section against  
41 a child and further has or may have custodial, visitation, or other parental rights to the child, the  
42 court shall find that the person is an abusing parent within the meaning of §49-4-601 through §49-  
43 4-610 of this code, and shall take further action in accord with the provisions of those sections.

**ARTICLE 8B. SEXUAL OFFENSES.**

**§61-8B-11a. Convictions for offenses against children.**

1           In any case where a person is convicted of an offense described in this article against a  
2 child and the person has custodial, visitation, or other parental rights to the child who is the victim  
3 of the offense or any child who resides in the same household as the victim, the court shall, at the  
4 time of sentencing, find that the person is an abusing parent within the meaning of §49-4-601  
5 through §49-4-610 of this code as to the child victim, and may find that the person is an abusing  
6 parent as to any child who resides in the same household as the victim, and shall take further  
7 action in accord with the provisions of those sections.

**ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.**

**§61-8C-3b. Prohibiting juveniles from manufacturing, possessing and distributing nude or  
partially nude images of minors; creating exemptions; declaring a violation to be  
an act of juvenile delinquency; and providing for the punishment thereof.**

1           (a) Any minor who intentionally possesses, creates, produces, distributes, presents,  
2 transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing  
3 in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges, or  
4 otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual  
5 manner is guilty of an act of delinquency and, upon adjudication, disposition may be made by the  
6 circuit court pursuant to the provisions of §49-4-701 through §49-4-725 of this code.

7           (b) As used in this section:

8           (1) "Posing in an inappropriate sexual manner" means exhibition of a bare female breast,  
9 female or male genitalia, pubic, or rectal areas of a minor for purposes of sexual titillation.

10          (2) "Visual portrayal" means:

11          (A) A photograph;

12          (B) A motion picture;

13 (C) A digital image;

14 (D) A digital video recording; or

15 (E) Any other mechanical or electronic recording process or device that can preserve, for  
16 later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones,  
17 personal digital assistance, and other digital storage or transmitting devices;

18 (c) It shall be an affirmative defense to an alleged violation of this section that a minor  
19 charged with possession of the prohibited visual depiction did neither solicit its receipt nor  
20 distribute, transmit, or present it to another person by any means.

21 (d) Notwithstanding the provisions of §15-12-1 *et seq.* of this code, an adjudication of  
22 delinquency under the provisions of this section shall not subject the minor to the requirements of  
23 that article and chapter.

## **ARTICLE 8D. CHILD ABUSE.**

### **§61-8D-9. Convictions for offenses against children.**

1 In any case where a person is convicted of a felony offense against a child as set forth in  
2 this article and the person has custodial, visitation or other parental rights to the child who is the  
3 victim of the offense or any child who resides in the same household as the victim, the court shall,  
4 at the time of sentencing, find that the person is an abusing parent within the meaning of §49-4-  
5 601 through §49-4-610 of this code as to the child victim, and may find that the person is an  
6 abusing parent as to any child who resides in the same household as the victim, and shall take  
7 such further action in accord with the provisions of those sections.

## **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

### **§61-11-23. Punishment for juvenile convicted as an adult; eligibility for parole; factors to be considered prior to sentencing.**

1 (a) Notwithstanding any other provision of law to the contrary, a sentence of life  
2 imprisonment without the possibility of parole may not be imposed on a person who:

3 (1) Is convicted of an offense punishable by life imprisonment; and

4 (2) Was less than 18 years of age at the time the offense was committed.

5 (b) Unless otherwise provided by this code, the provisions of §62-12-1 *et seq.* of this code  
6 governs the eligibility for parole of a person who is convicted of an offense and sentenced to  
7 confinement if he or she was less than 18 years of age at the time the offense was committed,  
8 except that a person who is convicted of one or more offenses for which the sentence or any  
9 combination of sentences imposed is for a period that renders the person ineligible for parole until  
10 he or she has served more than 15 years shall be eligible for parole after he or she has served  
11 15 years if the person was less than 18 years of age at the time each offense was committed.

12 (c) In addition to other factors required by law to be considered prior to the imposition of a  
13 sentence, in determining the appropriate sentence to be imposed on a person who has been  
14 transferred to the criminal jurisdiction of the court pursuant to §49-4-710 of this code and who has  
15 been subsequently tried and convicted of a felony offense as an adult, the court shall consider  
16 the following mitigating circumstances:

17 (1) Age at the time of the offense;

18 (2) Impetuosity;

19 (3) Family and community environment;

20 (4) Ability to appreciate the risks and consequences of the conduct;

21 (5) Intellectual capacity;

22 (6) The outcomes of a comprehensive mental health evaluation conducted by a mental  
23 health professional licensed to treat adolescents in the State of West Virginia: *Provided*, That no  
24 provision of this section may be construed to require that a comprehensive mental health  
25 evaluation be conducted;

26 (7) Peer or familial pressure;

- 27 (8) Level of participation in the offense;
- 28 (9) Ability to participate meaningfully in his or her defense;
- 29 (10) Capacity for rehabilitation;
- 30 (11) School records and special education evaluations;
- 31 (12) Trauma history;
- 32 (13) Faith and community involvement;
- 33 (14) Involvement in the child welfare system; and
- 34 (15) Any other mitigating factor or circumstances.

35 (d)(1) Prior to the imposition of a sentence on a person who has been transferred to the  
36 criminal jurisdiction of the court pursuant to §49-4-710 of this code, and who has been  
37 subsequently tried and convicted of a felony offense as an adult, the court shall consider the  
38 outcomes of any comprehensive mental health evaluation conducted by an mental health  
39 professional licensed to treat adolescents in the State of West Virginia. The comprehensive  
40 mental health evaluation must include the following:

- 41 (A) Family interviews;
- 42 (B) Prenatal history;
- 43 (C) Developmental history;
- 44 (D) Medical history;
- 45 (E) History of treatment for substance use;
- 46 (F) Social history; and
- 47 (G) A psychological evaluation.

48 (2) The provisions of this subsection are only applicable to sentencing proceedings for  
49 convictions rendered after the effective date of this section and do not constitute sufficient grounds  
50 for the reconsideration of sentences imposed as the result of convictions rendered after the  
51 effective date of this section.

**ARTICLE 12. POSTMORTEM EXAMINATIONS.**

**§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.**

1 (a) If in the opinion of the chief medical examiner, or of the county medical examiner of  
2 the county in which the death in question occurred, it is advisable and in the public interest that  
3 an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge  
4 of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy  
5 shall be conducted by the chief medical examiner or his or her designee, by a member of his or  
6 her staff, or by a competent pathologist designated and employed by the chief medical examiner  
7 under the provisions of this article. For this purpose, the chief medical examiner may employ any  
8 county medical examiner who is a pathologist who holds board certification or board eligibility in  
9 forensic pathology or has completed an American Board of Pathology fellowship in forensic  
10 pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be  
11 in addition to the fee provided for investigations pursuant to §61-12-8 of this code. A full record  
12 and report of the findings developed by the autopsy shall be filed with the office of the chief  
13 medical examiner by the person making the autopsy.

14 (b) Within the discretion of the chief medical examiner, or of the person making the  
15 autopsy, or if requested by the prosecuting attorney of the county, or of the county where any  
16 injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall  
17 be furnished to the prosecuting attorney.

18 (c) The office of the chief medical examiner shall keep full, complete and properly indexed  
19 records of all deaths investigated, containing all relevant information concerning the death and  
20 the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement  
21 officer may secure copies of these records or information necessary for the performance of his or  
22 her official duties.

23 (d) Copies of these records or information shall be furnished, upon request, to any court  
24 of law, or to the parties therein to whom the cause of death is a material issue, except where the  
25 court determines that interests in a civil matter conflict with the interests in a criminal proceeding,  
26 in which case the interests in the criminal proceeding shall take precedence. The office of chief  
27 medical examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred  
28 in the production of records under this subsection and subsection (c) of this section.

29 (e) The chief medical examiner is authorized to release investigation records and autopsy  
30 reports to the multidisciplinary team authorized by §49-4-402 of this code and as authorized in  
31 subsection (h) of this section. At the direction of the Secretary of the Department of Health and  
32 Human Resources the chief medical examiner may release records and information to other state  
33 agencies when considered to be in the public interest.

34 (f) Any person performing an autopsy under this section may keep and retain, for and on  
35 behalf of the chief medical examiner, any tissue from the body upon which the autopsy was  
36 performed which may be necessary for further study or consideration.

37 (g) In cases of the death of any infant in the State of West Virginia where sudden infant  
38 death syndrome is the suspected cause of death and the chief medical examiner or the medical  
39 examiner of the county in which the death in question occurred considers it advisable to perform  
40 an autopsy, the chief medical examiner or the medical examiner of the county in which the death  
41 occurred shall notify the sudden infant death syndrome program within the division of maternal  
42 and child health and to inform the program of all information to be given to the infant's parents.

43 (h) If the chief medical officer determines that a drug overdose is the cause of death of a  
44 person, the chief medical examiner shall provide notice of the death to the West Virginia  
45 Controlled Substances Monitoring Program Database Review Committee established pursuant  
46 to §60A-9-5(b) of this code and shall include in the notice any information relating to the cause of  
47 the fatal overdose.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.

#### **§62-6B-5. Memorialization of statements of certain child witnesses; admissibility; hearing.**

1           (a) After the effective date of this section, whenever any law-enforcement officer,  
2 physician, psychologist, social worker, or investigator, in the course of his or her employment or  
3 profession or while engaged in an active criminal investigation as a law-enforcement officer or an  
4 agent of a prosecuting attorney, obtains a statement from a child 13 years of age or younger who  
5 is an alleged victim in an investigation or prosecution alleging a violation of the provisions of §61-  
6 8B-3, §61-8B-4, §61-8B-5, or §61-8B-7 of this code, he or she shall immediately make a  
7 contemporaneous written notation and recitation of the statement received or obtained. An audio  
8 recording or video recording with sound capability of the statement may be used in lieu of the  
9 written recitation required by the provisions of this section. Failure to comply with the provisions  
10 of this section creates a presumption that the statement is inadmissible. The statement may be  
11 admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that  
12 the failure to comply with the provisions of this section was a good faith omission and that the  
13 content of the proffered statement is an accurate recital of the information provided by the child  
14 and is otherwise admissible.

15           (b) The provisions of this section shall not apply to:

16           (1) Medical personnel and other persons performing a forensic medical examination of a  
17 child who is an alleged victim; and

18           (2) Prosecuting attorneys when counseling with a child in preparation for eliciting the  
19 child's testimony in court.

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

*Ray Humber*  
.....  
Chairman, House Committee

*Mark P. Hayward*  
.....  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Steph J. Harris*  
.....  
Clerk of the House of Delegates

*Joe Levin*  
.....  
Clerk of the Senate

*Paul M. A.*  
.....  
Speaker of the House of Delegates

*Michelle B. Combs*  
.....  
President of the Senate

OFFICE OF THE  
SECRETARY OF STATE  
2018 FEB 20 P 4:30

FILED

The within *is approved* this the *20th*  
day of *February* 2018.

*Jim Justice*  
.....  
Governor

PRESENTED TO THE GOVERNOR

FEB 14 2018

Time 9:49 Am