

RECEIVED
1993 MAY -6 PM 3:29
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1993

ENROLLED

Com. Sub. for
SENATE BILL NO. 358

(By Senator Whitton et al)

PASSED April 10, 1993

In Effect 90 days from Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 358

(SENATORS WOOTON, ANDERSON, DITTMAR, FELTON,
GRUBB, HOLLIDAY, HUMPHREYS, MACNAUGHTAN, PLYMALE,
WIEDEBUSCH AND YODER, *original sponsors*)

[Passed April 10, 1993; in effect ninety days from passage.]

AN ACT to repeal section twenty-two, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section nineteen, article one, chapter fifty-one of said code; to amend article ten, chapter eight of said code by adding thereto a new section, designated section two-b; to amend article three, chapter seventeen-b of said code by adding thereto a new section, designated section three-c; to amend and reenact sections eleven, thirteen, fifteen and thirty-three, article two, chapter forty-eight of said code; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact section eight, article two of said chapter; to amend and reenact article four of said chapter; to amend article five of said chapter by adding thereto three new sections, designated sections seven, seven-a and nine; to amend and reenact sections one, two, four and five, article six of said chapter; to amend and

reenact sections fifteen and sixteen-b, article five, chapter forty-nine of said code; to amend and reenact section four, article five-b of said chapter; to amend and reenact section three, article two, chapter fifty of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact section two-a, article three of said chapter; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact section thirteen, article five of said chapter; to amend and reenact sections four, five, five-a, six, seven, seven-a, eight, fifteen, sixteen, seventeen, eighteen and twenty, article one, chapter fifty-two of said code; to amend and reenact sections three and thirteen, article two of said chapter; to amend article one, chapter fifty-nine of said code by adding thereto a new section, designated section twelve; to amend and reenact section one, article two of said chapter; to amend article four, chapter sixty-two of said code by adding thereto a new section, designated section seventeen; to amend and reenact sections five, nine and fifteen, article twelve of said chapter; and to amend and reenact section two, article thirteen of said chapter, all relating to promoting the cost-efficient administration of courts; suspension of licenses for failure to pay fines imposed by municipal courts; suspending vehicle operating licenses for failure to pay fines; hearing; guardian for infants, incompetents and insane parties; temporary relief in divorce annulment or separate maintenance; relief upon granting final order of divorce, annulment or separate maintenance; disclosure of assets; recodifying the laws relating to family law masters; misrepresentation of delinquent support payments; providing equitable remedy for establishment of paternity and support; child welfare, juvenile proceedings; transferring appointment of juvenile probation officers from the division of health and human services to circuit courts with approval of the supreme court of appeals; salaries and all expenses of said officer to be paid by the supreme court of appeals; county commissions to provide office facilities for said officers; authority of the juvenile review facilities review panel; sunset provisions for said panel;

magistrate courts granted jurisdiction to conduct preliminary examinations on probation violations; authorizing magistrates to suspend sentences and impose unsupervised probation; exception; conditions of probation; revocation of probation; suspension of driver's license and hunting and fishing license for failure to pay fines and penalties imposed; suspension of driver's license for failure to appear to answer criminal charges; failure to pay fines and penalties constitutes a lien against property of defendant; notice to defendant of consequences of failure to pay fines and penalties effect of financial inability to pay; deposits of moneys collected by magistrates to be in interest-bearing accounts; payment of interest into general revenue fund of state treasury; appeals from magistrate court in criminal cases; exception as to traffic offenses; jury selection; eliminating jury commissions; petit jurors to be selected by clerks of the circuit courts; reimbursement of expenses of jurors; assessment of jury costs; amount; waiver of assessment of jury costs by order of circuit court; jury costs remitted to sheriff by court clerk; surety liable for remission of costs on clerk's official bond; jury costs to be paid into state treasury; grand juries; selection of grand jurors by clerk of circuit court; reimbursement of expenses of grand jurors; suits by poor persons financially unable to pay; procedures; appeals; eligibility of civil litigants to proceed in forma pauperis; factors to be considered for eligibility; probationer to pay for costs of supervision; fees collected to be deposited in the state general revenue fund; and commissioner of corrections to supervise all persons released on parole and probationers released from other states residing in this state pursuant to any interstate compact.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nineteen, article one, chapter fifty-one of said code be repealed; that article ten, chapter eight of said code be amended by adding thereto a new section, designated section two-b; that

article three, chapter seventeen-b of said code be amended by adding thereto a new section, designated section three-c; that sections eleven, thirteen, fifteen and thirty-three, article two, chapter forty-eight of said code be amended and reenacted; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; that section eight, article two of said chapter be amended and reenacted; that article four of said chapter be amended and reenacted; that article five of said chapter be amended by adding thereto three new sections, designated section seven, seven-a and nine; that sections one, two, four and five, article six of said chapter be amended and reenacted; that sections fifteen and sixteen-b, article five, chapter forty-nine of said code be amended and reenacted; that section four, article five-b of said chapter be amended and reenacted; that section three, article two, chapter fifty of said code be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section three-a; that section two-a, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section six-a; that section thirteen, article five of said chapter be amended and reenacted; that sections four, five, five-a, six, seven, seven-a, eight, fifteen, sixteen, seventeen, eighteen and twenty, article one, chapter fifty-two of said code be amended and reenacted; that sections three and thirteen, article two of said chapter be amended and reenacted; that article one, chapter fifty-nine of said code be amended by adding thereto a new section, designated section twelve; that section one, article two of said chapter be amended and reenacted; that article four, chapter sixty-two of said code be amended by adding thereto a new section, designated section seventeen; that sections five, nine and fifteen, article twelve of said chapter be amended and reenacted; and that section two, article thirteen of said chapter be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2b. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

- 1 (a) If costs, fines, forfeitures or penalties imposed by

2 the municipal court upon conviction of a person for a
3 criminal offense as defined in section three-c, article
4 three, chapter seventeen-b of this code are not paid in
5 full within ninety days of the judgment, the municipal
6 court clerk or, upon a judgment rendered on appeal,
7 the circuit clerk shall notify the division of motor
8 vehicles of such failure to pay: *Provided*, That at the
9 time the judgment is imposed, the judge shall provide
10 the person with written notice that failure to pay the
11 same as ordered shall result in the suspension of such
12 person's license or privilege to operate a motor vehicle
13 in this state and that such suspension could result in
14 the cancellation of, the failure to renew or the failure
15 to issue an automobile insurance policy providing
16 coverage for such person or such person's family:
17 *Provided, however*, That the failure of the judge to
18 provide such notice shall not affect the validity of any
19 suspension of such person's license or privilege to
20 operate a motor vehicle in this state. For purposes of
21 this section, payment shall be stayed during any
22 period an appeal from the conviction which resulted in
23 the imposition of such costs, fines, forfeitures or
24 penalties is pending.

25 Upon such notice, the division of motor vehicles
26 shall suspend the person's driver's license or privilege
27 to operate a motor vehicle in this state until such time
28 that the costs, fines, forfeitures or penalties are paid.

29 (b) Notwithstanding the provisions of this section to
30 the contrary, the notice of the failure to pay such
31 costs, fines, forfeitures or penalties shall not be given
32 where the municipal court, upon application of the
33 person upon whom the same were imposed filed prior
34 to the expiration of the period within which the same
35 are required to be paid, enters an order finding that
36 such person is financially unable to pay all or a portion
37 of the same: *Provided*, That where the municipal
38 court, upon finding that the person is financially
39 unable to pay a portion thereof, requires the person to
40 pay the remaining portion thereof, the municipal
41 court shall notify the division of motor vehicles of such
42 person's failure to pay the same if the same is not paid

43 within the period of time ordered by such court.

44 (c) If a person charged with a criminal offense fails
45 to appear or otherwise respond in court, the municipal
46 court shall notify the division of motor vehicles
47 thereof within fifteen days of the scheduled date to
48 appear unless such person sooner appears or otherwise
49 responds in court to the satisfaction of the judge. Upon
50 such notice, the division of motor vehicles shall
51 suspend the person's driver's license or privilege to
52 operate a motor vehicle in this state until such time
53 that the person appears as required.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-3c. Suspending license for failure to pay fines or penalties imposed by as the result of criminal conviction or for failure to appear in court.

1 (a) The division shall suspend the license of any
2 resident of this state or the privilege of a nonresident
3 to drive a motor vehicle in this state upon receiving
4 notice from a circuit court, magistrate court or munic-
5 ipal court of this state, pursuant to section two-b,
6 article three, chapter fifty, or section two-b, article
7 ten, chapter eight, or section seventeen, article four,
8 chapter sixty-two of this code, that such person has
9 defaulted on the payment of costs, fines, forfeitures,
10 penalties or restitution imposed on the person by the
11 circuit court, magistrate court or municipal court upon
12 conviction for any criminal offense by the date such
13 court had required such person to pay the same, or
14 that such person has failed to appear in court when
15 charged with such an offense. For the purposes of this
16 section; section two-b, article three, chapter fifty;
17 section two-b, article ten, chapter eight; and section
18 seventeen, article four, chapter sixty-two of this code,
19 "criminal offense" shall be defined as any violation of
20 the provisions of this code, or the violation of any
21 municipal ordinance, for which the violation thereof
22 may result in a fine, confinement in jail or imprison-
23 ment in the penitentiary of this state: *Provided, That*

24 any parking violation or other violation for which a
 25 citation may be issued to an unattended vehicle shall
 26 not be considered a criminal offense for the purposes
 27 of this section; section two-b, article ten, chapter eight;
 28 section two-b, article three, chapter fifty; or section
 29 seventeen, article four, chapter sixty-two of this code.

30 (b) A copy of the order of suspension shall be
 31 forwarded to such person by certified mail, return
 32 receipt requested. No order of suspension becomes
 33 effective until ten days after receipt of a copy of such
 34 order. The order of suspension shall advise the person
 35 that because of the receipt of notice of the failure to
 36 pay costs, fines, forfeitures or penalties, or the failure
 37 to appear, a presumption exists that the person named
 38 in the order of suspension is the same person named
 39 in the notice. The commissioner may grant an admin-
 40 istrative hearing which substantially complies with the
 41 requirements of the provisions of section two, article
 42 five-a, chapter seventeen-c of this code upon a prelim-
 43 inary showing that a possibility exists that the person
 44 named in the notice of conviction is not the same
 45 person whose license is being suspended. Such request
 46 for hearing shall be made within ten days after receipt
 47 of a copy of the order of suspension. The sole purpose
 48 of this hearing shall be for the person requesting the
 49 hearing to present evidence that he or she is not the
 50 person named in the notice. In the event the commis-
 51 sioner grants an administrative hearing, the commis-
 52 sioner shall stay the license suspension pending the
 53 commissioner's order resulting from the hearing.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAIN- TENANCE.

§48-2-11. Infant, incompetent and insane parties.

1 (a) In any action for divorce or annulment, an infant
 2 party shall sue, answer and plead by a next friend, and
 3 an incompetent or insane party shall sue, answer and
 4 plead by his committee, and no guardian ad litem shall
 5 be required unless specifically ordered by the court or
 6 judge hearing said action.

7 (b) If, in an action for divorce or annulment, either
8 party shall allege that a person, other than the
9 husband, is the father of a child born during the
10 marriage of the parties, the court shall appoint a
11 competent attorney to act as guardian ad litem on
12 behalf of the child. The attorney shall be appointed
13 without motion and prior to an the entry of any order
14 requiring blood testing.

**§48-2-13. Temporary relief during pendency of action for
divorce, annulment or separate maintenance.**

1 (a) At the time of the filing of the complaint or at
2 any time after the commencement of an action for
3 divorce, annulment or separate maintenance under
4 the provisions of this article and upon motion for
5 temporary relief, notice of hearing and hearing, the
6 court may order all or any portion of the following
7 temporary relief, which order shall govern the marital
8 rights and obligations of the parties during the pen-
9 dency of the action:

10 (1) The court may require either party to pay
11 temporary alimony in the form of periodic install-
12 ments, or a lump sum, or both, for the maintenance of
13 the other party.

14 (2) The court may provide for the custody of minor
15 children of the parties subject to such rights of
16 visitation, both in and out of the residence of the
17 custodial parent or other person or persons having
18 custody, as may be appropriate under the
19 circumstances.

20 (3) In every action where visitation is awarded, the
21 court shall specify a schedule for visitation by the
22 noncustodial parent: *Provided*, That with respect to
23 any existing order of temporary relief which provides
24 for visitation but which does not provide a schedule
25 for visitation by the noncustodial parent, upon motion
26 of any party, notice of hearing and hearing, the court
27 shall issue an order which provides a specific schedule
28 for visitation by the noncustodial parent.

29 (4) When the action involves a minor child or

30 children, the court shall require either party to pay
31 temporary child support in the form of periodic
32 installments for the maintenance of the minor child-
33 ren of the parties in accordance with section eight,
34 article two, chapter forty-eight-a of this code.

35 (5) When the action involves a minor child or
36 children, the court shall provide for medical support
37 for any minor children in accordance with section
38 fifteen-a, article two of this chapter.

39 (6) (A) The court may compel either party to pay
40 attorney's fees and court costs reasonably necessary to
41 enable the other party to prosecute or defend the
42 action in the trial court. The question of whether or
43 not a party is entitled to temporary alimony is not
44 decisive of that party's right to a reasonable allowance
45 of attorney's fees and court costs. An order for
46 temporary relief awarding attorney fees and court
47 costs may be modified at any time during the penden-
48 cy of the action, as the exigencies of the case or equity
49 and justice may require, including, but not limited to,
50 a modification which would require full or partial
51 repayment of fees and costs by a party to the action to
52 whom or on whose behalf payment of such fees and
53 costs was previously ordered. If an appeal be taken or
54 an intention to appeal be stated, the court may further
55 order either party to pay attorney fees and costs on
56 appeal.

57 (B) When it appears to the court that a party has
58 incurred attorney fees and costs unnecessarily because
59 the opposing party has asserted unfounded claims or
60 defenses for vexatious, wanton or oppressive purposes,
61 thereby delaying or diverting attention from valid
62 claims or defenses asserted in good faith, the court
63 may order the offending party, or his or her attorney,
64 or both, to pay reasonable attorney fees and costs to
65 the other party.

66 (6) As an incident to requiring the payment of
67 temporary alimony, the court may order either party
68 to continue in effect existing policies of insurance
69 covering the costs of health care and hospitalization of

70 the other party. If there is no such existing policy or
71 policies, the court may order that such health care
72 insurance coverage be paid for by a party if the court
73 determines that such health care coverage is available
74 to that party at a reasonable cost. Payments made to
75 an insurer pursuant to this subdivision, either directly
76 or by a deduction from wages, may be deemed to be
77 temporary alimony.

78 (7) The court may grant the exclusive use and
79 occupancy of the marital home to one of the parties
80 during the pendency of the action, together with all or
81 a portion of the household goods, furniture and
82 furnishings, reasonably necessary for such use and
83 occupancy. The court may require payments to third
84 parties in the form of home loan installments, land
85 contract payments, rent, payments for utility services,
86 property taxes and insurance coverage: When such
87 third party payments are ordered, the court shall
88 specify whether such payments or portions of pay-
89 ments are temporary alimony, temporary child sup-
90 port, a partial distribution of marital property or an
91 allocation of marital debt: *Provided*, That if the court
92 does not set forth in the order that a portion of such
93 payments is to be deemed temporary child support,
94 then all such payments made pursuant to this subdivi-
95 sion shall be deemed to be temporary alimony:
96 *Provided, however*, That the court may order such
97 payments to be made without denominating them
98 either as temporary alimony or temporary child
99 support, reserving such decision until such time as the
100 court determines the interests of the parties in marital
101 property and equitably divides the same: *Provided*
102 *further*, That at the time the court determines the
103 interests of the parties in marital property and equit-
104 ably divides the same, the court may consider the
105 extent to which payments made to third parties under
106 the provisions of this subdivision have affected the
107 rights of the parties in marital property and may treat
108 such payments as a partial distribution of marital
109 property notwithstanding the fact that such payments
110 have been denominated temporary alimony or tempo-
111 rary child support or not so denominated under the

112 provisions of this subdivision. If the payments are not
113 designated in an order and the parties have waived
114 any right to receive alimony, the court may designate
115 the payments upon motion by any party. Nothing
116 contained in this subdivision shall abrogate an existing
117 contract between either of the parties and a third
118 party, or affect the rights and liabilities of either party
119 or a third party under the terms of such contract.

120 (8) As an incident to requiring the payments of
121 temporary alimony, the court may grant the exclusive
122 use and possession of one or more motor vehicles to
123 either of the parties during the pendency of the action.
124 The court may require payments to third parties in
125 the form of automobile loan installments or insurance
126 coverage, and any such payments made pursuant to
127 this subdivision shall be deemed to be temporary
128 alimony: *Provided*, That the court may order such
129 payments to be made without denominating them as
130 temporary alimony, reserving such decision until such
131 time as the court determines the interests of the
132 parties in marital property and equitably divides the
133 same: *Provided, however*, That at the time the court
134 determines the interests of the parties in marital
135 property and equitably divides the same, the court
136 may consider the extent to which payments made to
137 third parties under the provisions of this subdivision
138 have affected the rights of the parties in marital
139 property and may treat such payments as a partial
140 distribution of marital property notwithstanding the
141 fact that such payments have been denominated
142 temporary alimony or not so denominated under the
143 provisions of this subdivision. Nothing contained in
144 this subdivision shall abrogate an existing contract
145 between either of the parties and a third party or
146 affect the rights and liabilities of either party or a
147 third party under the terms of such contract.

148 (9) When the pleadings include a specific request for
149 specific property or raise issues concerning the equita-
150 ble division of marital property, the court may enter
151 such order as is reasonably necessary to preserve the
152 estate of either or both of the parties, including the

153 imposition of a constructive trust, so that such proper-
154 ty be forthcoming to meet any order which may be
155 made in the action, and may compel either party to
156 give security to abide such order, or may require the
157 property in question to be delivered into the tempo-
158 rary custody of a third party. The court may further
159 order either or both of the parties to pay the costs and
160 expenses of maintaining and preserving the property
161 of the parties during the pendency of the action:
162 *Provided*, That at the time the court determines the
163 interests of the parties in marital property and equit-
164 ably divides the same, the court may consider the
165 extent to which payments made for the maintenance
166 and preservation of property under the provisions of
167 this subdivision have affected the rights of the parties
168 in marital property and may treat such payments as a
169 partial distribution of marital property. The court may
170 release all or any part of such protected property for
171 sale and substitute all or a portion of the proceeds of
172 the sale for such property.

173 (10) Unless a contrary disposition is ordered pursu-
174 ant to other provisions of this section, then upon the
175 motion of a party, the court may compel a party to
176 deliver to the moving party any of his or her separate
177 estate which may be in the possession or control of the
178 respondent party and may make any further order
179 that is necessary to prevent either party from interfer-
180 ing with the separate estate of the other party.

181 (11) The court may, enjoin the offending party from
182 molesting or interfering with the other, or otherwise
183 imposing any restraint on the personal liberty of the
184 other, or interfering with the custodial or visitation
185 rights of the other. This order may permanently enjoin
186 the offending party from entering the school, business
187 or place of employment of the other for the purpose of
188 molesting or harassing the other; or from contacting
189 the other, in person or by telephone, for the purpose of
190 harassment or threats; or from harassing or verbally
191 abusing the other in a public place. Any order entered
192 by the court to protect a party from abuse may grant
193 the relief provided in article two-a of this chapter.

194 (b) In ordering temporary relief under the provi-
195 sions of this section, the court shall consider the
196 financial needs of the parties, the present income of
197 each party from any source, their income-earning
198 abilities and the respective legal obligations of each
199 party to support himself or herself and to support any
200 other persons. Except in extraordinary cases supported
201 by specific findings set forth in the order granting
202 relief, payments of temporary alimony and temporary
203 child support are to be made from a party's income
204 and not from the corpus of a party's separate estate,
205 and an award of such relief shall not be disproportion-
206 ate to a party's ability to pay as disclosed by the
207 evidence before the court: *Provided*, That child sup-
208 port shall be established in accordance with support
209 guidelines promulgated pursuant to section eight,
210 article two, chapter forty-eight-a of this code.

211 (c) At any time after a party is abandoned or
212 deserted or after the parties to a marriage have lived
213 separate and apart in separate places of abode without
214 any cohabitation, the party abandoned or either party
215 living separate and apart may apply for relief pursu-
216 ant to this section by instituting an action for divorce
217 as provided in section ten of this article, alleging that
218 the plaintiff reasonably believes that the period of
219 abandonment or of living separate and apart will
220 continue for the period prescribed by the applicable
221 provisions of section four of this article. If the period
222 of abandonment or living separate and apart continues
223 for the period prescribed by the applicable provisions
224 of section four of this article, the divorce action may
225 proceed to a hearing as provided in sections twenty-
226 four and twenty-five of this article without a new
227 complaint being filed: *Provided*, That the party desir-
228 ing to proceed to a hearing shall give the opposing
229 party at least twenty days' notice of the time, place
230 and purpose of the hearing, unless the opposing party
231 files a waiver of notice of further proceedings, signed
232 by the opposing party. If such notice is required to be
233 served, it shall be served in the same manner as a
234 complaint, regardless of whether the opposing party
235 has appeared or answered.

236 (d) To facilitate the resolution of issues arising at a
237 hearing for temporary relief, the court may, or upon
238 the motion of either party shall, order the parties to
239 comply with the disclosure requirements set forth in
240 section thirty-three of this article prior to the hearing
241 for temporary relief. The form for this disclosure shall
242 substantially comply with the form promulgated by
243 the supreme court of appeals, pursuant to said section.
244 If either party fails to timely file a complete disclosure
245 as required by this section or as ordered by the court,
246 the court may accept the statement of the other party
247 as accurate.

248 (e) An ex parte order granting all or part of the
249 relief provided for in this section may be granted
250 without written or oral notice to the adverse party if:

251 (1) It appears from specific facts shown by affidavit
252 or by the verified complaint that immediate and
253 irreparable injury, loss or damage will result to the
254 applicant before the adverse party or such party's
255 attorney can be heard in opposition. The potential
256 injury, loss or damage may be anticipated when the
257 following conditions exist: *Provided*, That the follow-
258 ing list of conditions is not exclusive:

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

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

266 (C) The adverse party is preparing to remove
267 property from the state or is preparing to transfer,
268 convey, alienate, encumber or otherwise deal with
269 property which could otherwise be subject to the
270 jurisdiction of the court and subject to judicial order
271 under the provisions of this section or section fifteen
272 of this article; and

273 (2) The moving party or his or her attorney certifies
274 in writing any effort that has been made to give the

275 notice and the reasons supporting his or her claim that
276 notice should not be required.

277 (f) Every ex parte order granted without notice shall
278 be endorsed with the date and hour of issuance; shall
279 be filed forthwith in the circuit clerk's office and
280 entered of record; and shall set forth the finding of the
281 court that unless the order is granted without notice
282 there is probable cause to believe that existing condi-
283 tions will result in immediate and irreparable injury,
284 loss or damage to the moving party before the adverse
285 party or his or her attorney can be heard in opposi-
286 tion. The order granting ex parte relief shall fix a time
287 for a hearing for temporary relief to be held within a
288 reasonable time, not to exceed twenty days, unless
289 before the time so fixed for hearing, such hearing is
290 continued for good cause shown or with the consent of
291 the party against whom the ex parte order is directed.
292 The reasons for the continuance shall be entered of
293 record. Within the time limits described herein, when
294 an ex parte order is made, a motion for temporary
295 relief shall be set down for hearing at the earliest
296 possible time and shall take precedence of all matters
297 except older matters of the same character. If the
298 party who obtained the ex parte order fails to proceed
299 with a motion for temporary relief, the court shall set
300 aside the ex parte order. At any time after ex parte
301 relief is granted, and on two days' notice to the party
302 who obtained such relief or on such shorter notice as
303 the court may direct, the adverse party may appear
304 and move the court to set aside or modify the ex parte
305 order on the grounds that the effects of such order are
306 onerous or otherwise improper. In such event, the
307 court shall proceed to hear and determine such motion
308 as expeditiously as the ends of justice require.

309 (g) No order granting temporary relief may be the
310 subject of an appeal or a petition for review.

311 (h) (1) Unless the best interests of the child require
312 otherwise, every temporary order which provides for
313 the custody of a minor child of the parties shall also
314 provide for the following:

315 (A) The custodial parent shall be required to autho-
316 rize school authorities in the school in which the child
317 is enrolled to release to the noncustodial parent copies
318 of any and all information concerning the child which
319 would otherwise be properly released to the custodial
320 parent;

321 (B) The custodial parent shall be required, promptly
322 after receipt, to transmit to the noncustodial parent a
323 copy of the child's grades or report card and copies of
324 any other reports reflecting the status or progress of
325 the child;

326 (C) The custodial parent shall be required, when
327 practicable, to arrange appointments for parent-
328 teacher conferences at a time when the noncustodial
329 parent can be present;

330 (D) The custodial parent shall be required to autho-
331 rize medical providers to release to the noncustodial
332 parent copies of any and all information concerning
333 medical care provided to the child which would
334 otherwise be properly released to the custodial parent;

335 (E) The custodial parent shall be required to
336 promptly inform the noncustodial parent of any illness
337 of the child which requires medical attention; or, if the
338 child is in the actual physical custody of the noncus-
339 todial parent during a period of visitation, the noncus-
340 todial parent shall be required to promptly inform the
341 custodial parent of any illness of the child which
342 requires medical attention;

343 (F) The custodial parent shall be required to consult
344 with the noncustodial parent prior to any elective
345 surgery being performed on the child; and in the
346 event emergency medical procedures are undertaken
347 for the child which requires the parental consent of
348 either parent, if time permits, the other parent shall
349 be consulted, or if time does not permit such consul-
350 tation, the other parent shall be promptly informed of
351 such emergency medical procedures: *Provided*, That
352 the same duty to inform the custodial parent applies to
353 the noncustodial parent in the event that the emer-
354 gency medical procedures are required while the child

355 is in the physical custody of the noncustodial parent
356 during a period of visitation: *Provided, however,* That
357 nothing contained herein shall be deemed to alter or
358 amend the law of this state as it otherwise pertains to
359 physicians or health care facilities obtaining parental
360 consent prior to providing medical care or performing
361 medical procedures.

362 (2) In the event a custodial parent shall fail or refuse
363 to authorize the release of school or medical records as
364 provided for by subdivision (1) of this subsection, then
365 upon the ex parte application of the noncustodial
366 parent, the family law master shall prepare an order
367 for entry by the circuit court which appoints the
368 family law master as a special commissioner autho-
369 rized to execute a consent for the release of such
370 records, and direct it to the appropriate school author-
371 ities or medical providers.

**§48-2-15. Relief upon ordering divorce or annulment or
granting decree of separate maintenance.**

1 (a) Upon ordering a divorce or granting a decree of
2 separate maintenance, the court may require either
3 party to pay alimony in the form of periodic instal-
4 lments, or a lump sum, or both, for the maintenance
5 of the other party. Payments of alimony are to be
6 ordinarily made from a party's income, but when the
7 income is not sufficient to adequately provide for those
8 payments, the court may, upon specific findings set
9 forth in the order, order the party required to make
10 those payments to make them from the corpus of his
11 or her separate estate. An award of alimony shall not
12 be disproportionate to a party's ability to pay as
13 disclosed by the evidence before the court.

14 (b) Upon ordering the annulment of a marriage or a
15 divorce or granting of decree of separate maintenance,
16 the court may further order all or any part of the
17 following relief:

18 (1) The court may provide for the custody of minor
19 children of the parties, subject to such rights of
20 visitation, both in and out of the residence of the
21 custodial parent or other person or persons having

22 custody, as may be appropriate under the circumstan-
23 ces. In every action where visitation is awarded, the
24 court shall specify a schedule for visitation by the
25 noncustodial parent: *Provided*, That with respect to
26 any existing order which provided for visitation but
27 which does not provide a specific schedule for visita-
28 tion by the noncustodial parent, upon motion of any
29 party, notice of hearing, and hearing, the court shall
30 issue an order which provides a specific schedule of
31 visitation by the noncustodial parent.

32 (2) When the action involves a minor child or
33 children, the court shall require either party to pay
34 child support in the form of periodic installments for
35 the maintenance of the minor children of the parties
36 in accordance with support guidelines promulgated
37 pursuant to section eight, article two, chapter forty-
38 eight-a of this code. Payments of child support are to
39 be ordinarily made from a party's income, but in cases
40 when the income is not sufficient to adequately
41 provide for those payments, the court may, upon
42 specific findings set forth in the order, order the party
43 required to make those payments to make them from
44 the corpus of his or her separate estate.

45 (3) When the action involves a minor child or
46 children, the court shall provide for medical support
47 for any minor children in accordance with section
48 fifteen-a of this article.

49 (4) As an incident to requiring the payment of
50 alimony or child support, the court may order either
51 party to continue in effect existing policies of insur-
52 ance covering the costs of health care and hospitaliza-
53 tion of the other party: *Provided*, That if the other
54 party is no longer eligible to be covered by such
55 insurance because of the granting of an annulment or
56 divorce, the court may require a party to substitute
57 such insurance with a new policy to cover the other
58 party or may consider the prospective cost of such
59 insurance in awarding alimony to be paid in periodic
60 installments. Payments made to an insurer pursuant
61 to this subdivision, either directly or by a deduction
62 from wages, shall be deemed to be alimony or install-

63. ment payments for the distribution of marital proper-
64 ty, in such proportion as the court shall direct;
65 *Provided, however,* That if the court does not set forth
66 in the order that a portion of such payments is to be
67 deemed installment payments for the distribution of
68 marital property, then all such payments made pursu-
69 ant to this subdivision shall be deemed to be alimony;
70 *Provided further,* That the designation of insurance
71 coverage as alimony under the provisions of this
72 subdivision shall not, in and of itself, give rise to a
73 subsequent modification of the order to provide for
74 alimony other than insurance for covering the costs of
75 health care and hospitalization.

76 (5) The court may grant the exclusive use and
77 occupancy of the marital home to one of the parties,
78 together with all or a portion of the household goods,
79 furniture and furnishings reasonably necessary for
80 such use and occupancy. Such use and occupancy shall
81 be for a definite period, ending at a specific time set
82 forth in the order, subject to modification upon the
83 petition of either party. Except in extraordinary cases
84 supported by specific findings set forth in the order
85 granting relief, a grant of the exclusive use and
86 occupancy of the marital home shall be limited to
87 those situations when such use and occupancy is
88 reasonably necessary to accommodate the rearing of
89 minor children of the parties. The court may require
90 payments to third parties in the form of home loan
91 installments, land contract payments, rent, property
92 taxes and insurance coverage if the amount of such
93 coverage is reduced to a fixed monetary amount set
94 forth in the court's order. When such third party
95 payments are ordered, the court shall specify whether
96 such payments or portions of payments are alimony,
97 child support, a partial distribution of marital property
98 or an allocation of marital debt: *Provided,* That if the
99 court does not set forth in the order that a portion of
100 such payments is to be deemed child support or
101 installment payments for the distribution of marital
102 property, then all such payments made pursuant to
103 this subdivision shall be deemed to be alimony. When
104 such third party payments are ordered, the court shall

105 specify whether such payments or portions of pay-
106 ments are alimony, child support, a partial distribution
107 of marital property or an allocation of marital debt. If
108 the payments are not designated in an order and the
109 parties have waived any right to receive alimony, the
110 court may designate the payments upon motion by
111 any party. Nothing contained in this subdivision shall
112 abrogate an existing contract between either of the
113 parties and a third party or affect the rights and
114 liabilities of either party or a third party under the
115 terms of such contract.

116 (6) As an incident to requiring the payment of
117 alimony, the court may grant the exclusive use and
118 possession of one or more motor vehicles to either of
119 the parties. The court may require payments to third
120 parties in the form of automobile loan installments or
121 insurance coverage if available at reasonable rates,
122 and any such payments made pursuant to this subdivi-
123 sion for the benefit of the other party shall be
124 deemed to be alimony or installment payments for the
125 distribution of marital property, as the court may
126 direct. Nothing contained in this subdivision shall
127 abrogate an existing contract between either of the
128 parties and a third party or affect the rights and
129 liabilities of either party or a third party under the
130 terms of such contract.

131 (7) When the pleadings include a specific request for
132 specific property or raise issues concerning the equita-
133 ble division of marital property as defined in section
134 one of this article, the court shall order such relief as
135 may be required to effect a just and equitable distri-
136 bution of the property and to protect the equitable
137 interests of the parties therein.

138 (8) Unless a contrary disposition is ordered pursuant
139 to other provisions of this section, then upon the
140 motion of either party, the court may compel the
141 other party to deliver to the moving party any of his
142 or her separate estate which may be in the possession
143 or control of the respondent party and may make such
144 further order as is necessary to prevent either party
145 from interfering with the separate estate of the other.

146 (9) When allegations of abuse have been proven, the
147 court shall enjoin the offending party from molesting
148 or interfering with the other, or otherwise imposing
149 any restraint on the personal liberty of the other, or
150 interfering with the custodial or visitation rights of the
151 other. Such order may permanently enjoin the offend-
152 ing party from entering the school, business or place
153 of employment of the other for the purpose of molest-
154 ing or harassing the other; or from contacting the
155 other, in person or by telephone, for the purpose of
156 harassment or threats; or from harassing or verbally
157 abusing the other in a public place.

158 (10) The court may order either party to take
159 necessary steps to transfer utility accounts and other
160 accounts for recurring expenses from the name of one
161 party into the name of the other party or from the
162 joint names of the parties into the name of one party.
163 Nothing contained in this subdivision shall affect the
164 liability of the parties for indebtedness on any such
165 account incurred before the transfer of such account.

166 (c) When an annulment or divorce is denied, the
167 court shall retain jurisdiction of the case and may
168 order all or any portion of the relief provided for in
169 subsections (a) and (b) of this section which has been
170 demanded or prayed for in the pleadings.

171 (d) When a divorce or annulment is granted in this
172 state upon constructive service of process and personal
173 jurisdiction is thereafter obtained of the defendant in
174 such case, the court may order all or any portion of
175 the relief provided for in subsections (a) and (b) of this
176 section which has been demanded or prayed for in the
177 pleadings.

178 (e) At any time after the entry of an order pursuant
179 to the provisions of this section, the court may, upon
180 motion of either party, revise or alter the order
181 concerning the maintenance of the parties, or either of
182 them, and make a new order concerning the same,
183 issuing it forthwith, as the altered circumstances or
184 needs of the parties may render necessary to meet the
185 ends of justice.

186 The court may also from time to time afterward,
187 upon motion of either of the parties and upon proper
188 service, revise or alter such order to grant relief
189 pursuant to subdivision (9), subsection (b) of this
190 section, and make a new order concerning the same,
191 issuing it forthwith, as the circumstances of the parties
192 and the benefit of children may require. The court
193 may also from time to time afterward, upon the
194 motion of either of the parties or other proper person
195 having actual or legal custody of the minor child or
196 children of the parties, revise or alter the order
197 concerning the custody and support of the children,
198 and make a new order concerning the same, issuing it
199 forthwith, as the circumstances of the parents or other
200 proper person or persons and the benefit of the
201 children may require: *Provided*, That all orders
202 modifying child support shall be in conformance with
203 the requirements of support guidelines promulgated
204 pursuant to section eight, article two, chapter forty-
205 eight-a of this code: *Provided, however*, That an order
206 providing for child support payments may be revised
207 or altered for the reason, inter alia, that the existing
208 order provides for child support payments in an
209 amount that is less than eighty-five percent or more
210 than one hundred fifteen percent of the amount that
211 would be required to be paid under the child support
212 guidelines promulgated pursuant to the provisions of
213 said section.

214 In granting relief under this subsection, the court
215 may, when other means are not conveniently avail-
216 able, alter any prior order of the court with respect to
217 the distribution of marital property, if such property is
218 still held by the parties, and if necessary to give effect
219 to a modification of alimony, child support or child
220 custody or necessary to avoid an inequitable or unjust
221 result which would be caused by the manner in which
222 the modification will affect the prior distribution of
223 marital property.

224 (f) When a separation agreement is the basis for an
225 award of alimony, the court, in approving the agree-
226 ment, shall examine the agreement to ascertain

227 whether it clearly provides for alimony to continue
228 beyond the death of the payor party or to cease in
229 such event. When alimony is to be paid pursuant to
230 the terms of a separation agreement which does not
231 state whether the payment of alimony is to continue
232 beyond the death of the payor party or is to cease, or
233 when the parties have not entered into a separation
234 agreement and alimony is to be awarded, the court
235 shall specifically state as a part of its order whether
236 such payments of alimony are to be continued beyond
237 the death of the payor party or cease.

238 (g) When a separation agreement is the basis for an
239 award of alimony, the court, in approving the agree-
240 ment, shall examine the agreement to ascertain
241 whether it clearly provides for alimony to continue
242 beyond the remarriage of the payee party or to cease
243 in such event. When alimony is to be paid pursuant to
244 the terms of a separation agreement which does not
245 state whether the payment of alimony is to continue
246 beyond the remarriage of the payee party or is to
247 cease, or where when the parties have not entered
248 into a separation agreement and alimony is to be
249 awarded, the court shall specifically state as a part of
250 its order whether such payments of alimony are to be
251 continued beyond the remarriage of the payee party
252 or cease.

253 (h) In addition to the disclosure requirements set
254 forth in section thirty-three of this article, the court
255 may order accounts to be taken as to all or any part
256 of marital property or the separate estates of the
257 parties and may direct that the accounts be taken as
258 of the date of the marriage, the date upon which the
259 parties separated or any other time in assisting the
260 court in the determination and equitable division of
261 property.

262 (i) In determining whether alimony is to be
263 awarded, or in determining the amount of alimony, if
264 any, to be awarded under the provisions of this
265 section, the court shall consider and compare the fault
266 or misconduct of either or both of the parties and the
267 effect of such fault or misconduct as a contributing

268 factor to the deterioration of the marital relationship.
269 However, alimony shall not be awarded when both
270 parties prove grounds for divorce and are denied a
271 divorce, nor shall an award of alimony under the
272 provisions of this section be ordered which directs the
273 payment of alimony to a party determined to be at
274 fault, when, as a grounds granting the divorce, such
275 party is determined by the court:

276 (1) To have committed adultery; or

277 (2) To have been convicted for the commission of a
278 crime which is a felony, subsequent to the marriage if
279 such conviction has become final; or

280 (3) To have actually abandoned or deserted his or
281 her spouse for six months.

282 (j) Whenever under the terms of this section or
283 section thirteen of this article a court enters an order
284 requiring the payment of alimony or child support, if
285 the court anticipates the payment of such alimony or
286 child support or any portion thereof to be paid out of
287 "disposable retired or retainer pay" as that term is
288 defined in 10 U.S.C. §1408, relating to members or
289 former members of the uniformed services of the
290 United States, the court shall specifically provide for
291 the payment of an amount, expressed in dollars or as
292 a percentage of disposable retired or retainer pay,
293 from the disposable retired or retainer pay of the
294 payor party to the payee party.

295 (k) Any order which provides for the custody or
296 support of a minor child shall include:

297 (1) The name of the custodian;

298 (2) The amount of the support payments;

299 (3) The date the first payment is due;

300 (4) The frequency of the support payments;

301 (5) The event or events which trigger termination of
302 the support obligation;

303 (6) A provision regarding wage withholding;

304 (7) The address where payments shall be sent;

305 (8) A provision for medical support;

306 (9) When child support guidelines are not followed,
307 a specific written finding pursuant to section eight,
308 article two, chapter forty-eight-a of this code.

309 (l) (1) Unless the best interests of the child require
310 otherwise, every final order and every modification
311 order which provides for the custody of a minor child
312 of the parties shall also provide for the following:

313 (A) The custodial parent shall be required to autho-
314 rize school authorities in the school in which the child
315 is enrolled to release to the noncustodial parent copies
316 of any and all information concerning the child which
317 would otherwise be properly released to the custodial
318 parent;

319 (B) The custodial parent shall be required, promptly
320 after receipt, to transmit to the noncustodial parent a
321 copy of the child's grades or report card and copies of
322 any other reports reflecting the status or progress of
323 the child;

324 (C) The custodial parent shall be required, when
325 practicable, to arrange appointments for parent-
326 teacher conferences at a time when the noncustodial
327 parent can be present;

328 (D) The custodial parent shall be required to autho-
329 rize medical providers to release to the noncustodial
330 parent copies of any and all information concerning
331 medical care provided to the child which would
332 otherwise be properly released to the custodial parent;

333 (E) The custodial parent shall be required to
334 promptly inform the noncustodial parent of any illness
335 of the child which requires medical attention; or, if the
336 child is in the actual physical custody of the noncus-
337 todial parent during a period of visitation, the noncus-
338 todial parent shall be required to promptly inform the
339 custodial parent of any illness of the child which
340 requires medical attention;

341 (F) The custodial parent shall be required to consult

342 with the noncustodial parent prior to any elective
343 surgery being performed on the child; and in the
344 event emergency medical procedures are undertaken
345 for the child which require the parental consent of
346 either parent, if time permits, the other parent shall
347 be consulted, or if time does not permit such consul-
348 tation, the other parent shall be promptly informed of
349 such emergency medical procedures: *Provided*, That
350 the same duty to inform the custodial parent applies to
351 the noncustodial parent in the event that the emer-
352 gency medical procedures are required while the child
353 is in the physical custody of the noncustodial parent
354 during a period of visitation: *Provided, however*, That
355 nothing contained herein shall be deemed to alter or
356 amend the law of this state as it otherwise pertains to
357 physicians or health care facilities obtaining parental
358 consent prior to providing medical care or performing
359 medical procedures.

360 (2) In the event a custodial parent shall fail or refuse
361 to authorize the release of school or medical records as
362 provided for by subdivision (1) of this subsection, then
363 upon the ex parte application of the noncustodial
364 parent, the family law master shall prepare an order
365 for entry by the circuit court which appoints the
366 family law master as a special commissioner autho-
367 rized to execute a consent for the release of such
368 records and direct it to the appropriate school author-
369 ities or medical providers.

§48-2-33. Disclosure of assets required.

1 (a) In all divorce actions and in any other action
2 involving child support, all parties shall fully disclose
3 their assets and liabilities within forty days after the
4 service of summons or at such earlier time as ordered
5 by the court. The information contained on these
6 forms shall be updated on the record to the date of the
7 hearing.

8 (b) The disclosure required by this section may be
9 made by each party individually or by the parties
10 jointly. Assets required to be disclosed shall include,
11 but shall not be limited to, real property, savings

12 accounts, stocks and bonds, mortgages and notes, life
13 insurance, health insurance coverage, interest in a
14 partnership or corporation, tangible personal property,
15 income from employment, future interests whether
16 vested or nonvested and any other financial interest or
17 source.

18 (c) The supreme court of appeals shall make avail-
19 able to the circuit courts a standard form for the
20 disclosure of assets and liabilities required by this
21 section. The clerk of the circuit court shall make these
22 forms available to all parties in any divorce action or
23 action involving child support. All disclosure required
24 by this section shall be on a form that substantially
25 complies with the form promulgated by the supreme
26 court of appeals. The form used shall contain a
27 statement in conspicuous print that complete disclo-
28 sure of assets and liabilities is required by law and
29 deliberate failure to provide complete disclosure as
30 ordered by the court constitutes false swearing.

31 (d) Nothing contained in this section shall be con-
32 strued to prohibit the court from ordering discovery
33 pursuant to rule eighty-one of the rules of civil
34 procedure. Additionally, the court may on its own
35 initiative and shall at the request of either party
36 require the parties to furnish copies of all state and
37 federal income tax returns filed by them for the past
38 two years, and may require copies of such returns for
39 prior years.

40 (e) Information disclosed under this section shall be
41 confidential and may not be made available to any
42 person for any purpose other than the adjudication,
43 appeal, modification or enforcement of judgment of an
44 action affecting the family of the disclosing parties.
45 The court shall include in any order compelling
46 disclosure of assets such provisions as the court
47 considers necessary to preserve the confidentiality of
48 the information ordered disclosed.

49 (f) Any failure to timely or accurately disclose
50 financial information required by this section may be
51 considered as follows:

52 (1) Upon the failure by either party timely to file a
53 complete disclosure statement as required by this
54 section or as ordered by the court, the court may
55 accept the statement of the other party as accurate.

56 (2) If any party deliberately or negligently fails to
57 disclose information which is required by this section
58 and in consequence thereof any asset or assets with a
59 fair market value of five hundred dollars or more is
60 omitted from the final distribution of property, the
61 party aggrieved by such nondisclosure may at any
62 time petition a court of competent jurisdiction to
63 declare the creation of a constructive trust as to all
64 undisclosed assets, for the benefit of the parties and
65 their minor or dependent children, if any, with the
66 party in whose name the assets are held declared the
67 constructive trustee, such trust to include such terms
68 and conditions as the court may determine. The court
69 shall impose the trust upon a finding of a failure to
70 disclose such assets as required under this section.

71 (3) Any assets with a fair market value of five
72 hundred dollars or more which would be considered
73 part of the estate of either or both of the parties if
74 owned by either or both of them at the time of the
75 action, but which was transferred for inadequate
76 consideration, wasted, given away or otherwise unac-
77 counted for by one of the parties, within five years
78 prior to the filing of the petition or length of the
79 marriage, whichever is shorter, shall be presumed to
80 be part of the estate and shall be subject to the
81 disclosure requirement contained in this section. With
82 respect to such transfers the spouse shall have the
83 same right and remedies as a creditor whose debt was
84 contracted at the time the transfer was made under
85 article one-a, chapter forty of this code. Transfers
86 which resulted in an exchange of assets of substantial-
87 ly equivalent value need not be specifically disclosed
88 when such assets are otherwise identified in the
89 statement of net worth.

90 (4) A person who knowingly provides incorrect

91 information or who deliberately fails to disclose
92 information pursuant to the provisions of this section
93 is guilty of false swearing.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-8. Guidelines for child support awards.

1 (a) The director of the child advocate office shall, by
2 legislative rule, establish guidelines for child support
3 award amounts so as to ensure greater uniformity by
4 those persons who make child support recommenda-
5 tions and enter child support orders and to increase
6 predictability for parents, children and other persons
7 who are directly affected by child support orders.
8 There shall be a rebuttable presumption, in any
9 proceeding before a family law master or circuit court
10 judge for the award of child support, that the amount
11 of the award which would result from the application
12 of such guidelines is the correct amount of child
13 support to be awarded. A written finding or specific
14 finding on the record that the application of the
15 guidelines would be unjust or inappropriate in a
16 particular case shall be sufficient to rebut the pre-
17 sumption in that case. The guidelines shall not be
18 followed:

19 (1) When the child support award proposed to be
20 made pursuant to the guidelines has been disclosed to
21 the parties and each party has made a knowing and
22 intelligent waiver of said amount, and the support
23 obligors have entered into an agreement which pro-
24 vides for the custody and support of the child or
25 children of the parties; or

26 (2) When the child support award proposed to be
27 made pursuant to the guidelines would be contrary to
28 the best interests of the child or children, or contrary
29 to the best interests of the parties.

30 (b) The Legislature, by the enactment of this article,
31 recognizes that children have a right to share in their

32 natural parents' level of living. Accordingly, guidelines
33 promulgated under the provisions of this section shall
34 not be based upon any schedule of minimum costs for
35 rearing children based upon subsistence level amounts
36 set forth by various agencies of government. The
37 Legislature recognizes that expenditures in families
38 are not made in accordance with subsistence level
39 standards, but are rather made in proportion to
40 household income, and as parental incomes increase or
41 decrease, the actual dollar expenditures for children
42 also increase or decrease correspondingly. In order to
43 ensure that children properly share in their parents'
44 resources, regardless of family structure, the guide-
45 lines shall be structured so as to provide that after a
46 consideration of respective parental incomes, that
47 child support will be related, to the extent practicable,
48 to the level of living which such children would enjoy
49 if they were living in a household with both parents
50 present.

51 (c) The guidelines promulgated under the provisions
52 of this section shall take into consideration the finan-
53 cial contributions of both parents. The Legislature
54 recognizes that expenditures in households are made
55 in aggregate form and that total family income is
56 pooled to determine the level at which the family can
57 live. The guidelines shall provide for examining the
58 financial contributions of both parents in relationship
59 to total income, so as to establish and equitably
60 apportion the child support obligation. Under the
61 guidelines, the child support obligation of each parent
62 will vary proportionately according to their individual
63 incomes.

64 (d) The guidelines shall be structured so as to take
65 into consideration any preexisting support orders
66 which impose additional duties of support upon an
67 obligor outside of the instant case and shall provide
68 direction in cases involving split or shared custody.

69 (e) The guidelines shall have application to cases of
70 divorce, paternity, actions for support and modifica-
71 tions thereof.

72 (f) In promulgating the legislative rule provided for
73 under the provisions of this section, the director shall
74 be directed by the following legislative findings:

75 (1) That amounts to be fixed as child support should
76 not include awards for alimony, notwithstanding the
77 fact that any amount fixed as child support will impact
78 upon the living conditions of custodial parents;

79 (2) That parental expenditures on children represent
80 a relatively constant percentage of family consumption
81 as family consumption increases, so that as family
82 income increases, the family's level of consumption
83 increases, and the children should share in and benefit
84 from this increase;

85 (3) That parental expenditures on children represent
86 a declining proportion of family income as the gross
87 income of the family increases, so that while total
88 dollar outlays for children have a positive relationship
89 to the family's gross income, the proportion of gross
90 family income allotted for the children has a negative
91 relationship to gross income;

92 (4) That expenditures on children vary according to
93 the number of children in the family, and as the
94 number of children in the family increase, the expen-
95 ditures for the children as a group increase and the
96 expenditures on each individual child decrease; so that
97 due to increasing economies of scale and the increased
98 sharing of resources among family members, spending
99 will not increase in direct proportion to the number of
100 children;

101 (5) That as children grow older, expenditures on
102 children increase, particularly during the teenage
103 years.

104 (g) The director of the child advocate office shall
105 review the guidelines at least once every four years to
106 ensure that their application results in the determina-
107 tion of appropriate child support awards. Such four-
108 year period shall begin on the first day of July, one
109 thousand nine hundred eighty-nine. Upon completion
110 of the four-year review period ending on the thirtieth

111 day of June, one thousand nine hundred ninety-three,
112 after consulting with the supreme court of appeals,
113 circuit judges and family law masters, the director
114 shall propose for promulgation a legislative rule in
115 accordance with the provisions of article three, chap-
116 ter twenty-nine-a of this code which amends and
117 updates the guidelines required by this section. Such
118 proposed amended rule, shall include, but not be
119 limited to, provisions regarding the following subject
120 matters:

121 (1) In determining the child support obligation of a
122 parent whose employment income consists, in part, of
123 compensation for overtime hours worked, the guide-
124 lines shall provide for a child support order which
125 includes a consideration of such overtime compensa-
126 tion, balancing the interest of children to share in the
127 resources of such parent with the interest of the
128 parent in not being penalized for accepting overtime
129 work. Any formula which is used to compute antici-
130 pated overtime compensation shall allow for the
131 irregular nature of such compensation.

132 (2) In determining the child support obligation of a
133 parent whose employment income consists of compen-
134 sation for seasonal employment, the guidelines shall
135 provide for discretionary use of alternative payment
136 schedules which may vary the periodic amounts
137 required to be paid.

138 (3) In determining the child support obligation of a
139 parent whose support obligation extends to the child-
140 ren of more than one family, the guidelines shall be
141 structured so as to equitably provide for all children to
142 whom the obligor owes a duty of support.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

1 (a) The family law masters holding office on the
2 effective date of this section by virtue of appointments
3 made under the prior enactments of this article shall
4 continue their service for a term of office ending on

5 the thirtieth day of June, one thousand-nine hundred
6 ninety-four. Before the first day of July, one thousand
7 nine hundred ninety-four, the governor shall appoint
8 family law masters in such numbers and to serve such
9 areas of the state as provided for under the provisions
10 of this article, with terms commencing on the first day
11 of July, one thousand nine hundred ninety-four, and
12 on a like date in every fourth year thereafter, and
13 ending on the thirtieth day of June, one thousand nine
14 hundred ninety-eight, and on a like date in every
15 fourth year thereafter. Upon the expiration of his or
16 her term, a family law master may continue to
17 perform the duties of the office until the governor
18 makes the appointment, or for sixty days after the
19 date of the expiration of the master's term, whichever
20 is earlier. If a vacancy occurs in the office of family
21 law master, the governor shall, within thirty days
22 after such vacancy occurs, fill the vacancy by appoint-
23 ment for the unexpired term: *Provided*, That if the
24 remaining portion of the unexpired term to be filled is
25 less than one year, the governor may, in his or her
26 discretion, simultaneously appoint an individual to the
27 unexpired term and to the next succeeding full four-
28 year term.

29 (b) An individual may be reappointed to succeeding
30 terms as a family law master to serve in the same or
31 a different region of the state.

32 (c) Removal of a master during the term for which
33 he or she is appointed shall be as follows:

34 (1) Upon a recommendation by the judicial hearing
35 board created pursuant to the rules of procedure for
36 the handling of complaints against justices, judges,
37 magistrates and family law masters, if the supreme
38 court of appeals shall find that a family law master has
39 violated the judicial code of ethics or that the master,
40 because of advancing years and attendant physical or
41 mental incapacity, should not continue to serve, the
42 supreme court of appeals may, in lieu of or in addition
43 to any disposition authorized by such rules, remove
44 the family law master from office.

45 (2) The supreme court of appeals may remove a
46 master when conduct of the family law master eviden-
47 ces incompetence, unsatisfactory performance, miscon-
48 duct, neglect of duty or physical or mental disability.

§48A-4-2. Qualifications of family law masters.

1 (a) No individual may be appointed to serve as a
2 family law master unless he or she is a member in
3 good standing of the West Virginia state bar.

4 (b) No person may assume the duties of family law
5 master unless he or she has first attended and com-
6 pleted a course of instruction in principles of family
7 law and procedure which is given in accordance with
8 the supervisory rules of the supreme court of appeals.
9 All family law masters shall attend all courses of
10 continuing educational instruction as may be required
11 by supervisory rule of the supreme court of appeals.
12 Failure to attend such courses of continuing education-
13 al instruction without good cause shall constitute a
14 neglect of duty. These courses shall be provided at
15 least once every other year. Persons attending such
16 courses outside of the county of their residence shall
17 be reimbursed by the state for expenses actually
18 incurred in accordance with the supervisory rules of
19 the supreme court of appeals.

20 (c) A family law master may not engage in any
21 other business, occupation or employment inconsistent
22 with the expeditious, proper and impartial perfor-
23 mance of his or her duties as a judicial officer. A full-
24 time family law master shall not engage in the outside
25 practice of law and shall devote full time to his or her
26 duties as a judicial officer. Part-time family law
27 masters who do not engage in the practice of criminal
28 law shall be exempt from the appointments in indi-
29 gent cases which would otherwise be required pursu-
30 ant to article twenty-one, chapter twenty-nine of this
31 code.

32 (d) All family law masters and all necessary clerical
33 and secretarial assistants employed in the offices of
34 family law masters are officers of employees of the
35 judicial branch of state government.

§48A-4-3. Compensation and expenses of family law masters and their staffs.

1 (a) Prior to the first day of July, one thousand nine
2 hundred ninety-four, a family law master shall receive
3 as full compensation for his or her services an annual
4 salary of thirty-five thousand dollars.

5 (b) After the first day of July, one thousand nine
6 hundred ninety-four, a full-time family law master
7 shall receive as full compensation for his or her
8 services an annual salary of fifty-thousand dollars and
9 a part-time family law master shall receive as full
10 compensation for his or her services an annual salary
11 of thirty-seven thousand five-hundred dollars.

12 (c) The secretary-clerk of the family law master
13 shall be appointed by the family law master and serve
14 at his or her will and pleasure and shall receive an
15 annual salary of seventeen thousand five hundred
16 dollars: *Provided*, That subsequent to the first day of
17 July, one thousand nine hundred ninety-three, the
18 secretary-clerk may receive such percentage or pro-
19 portional salary increases as may be provided for by
20 general law for other public employees and shall
21 receive the annual incremental salary increase as
22 provided for in article five, chapter five of this code.

23 (d) A temporary or special family law master shall
24 be compensated by the supreme court of appeals at an
25 hourly rate not to exceed the hourly rate paid to panel
26 attorneys for performing work in court pursuant to
27 the provisions of section thirteen-a, article twenty-one,
28 chapter twenty-nine of this code.

29 (e) Disbursement of salaries for family law masters
30 and members of their staffs shall be made by or
31 pursuant to the order of the director of the adminis-
32 trative office of the supreme court of appeals.

33 (f) Family law masters members of their staffs, and
34 temporary family law masters shall be allowed their
35 actual and necessary expenses incurred in the perfor-
36 mance of their duties. Such expenses and compensa-
37 tion shall be determined and paid by the director of

38 the administrative office of the supreme court of
39 appeals under such guidelines as he or she may
40 prescribe as approved by the supreme court of appeals.

§48A-4-4. Assignment of family law masters by geographical regions.

1 (a) Prior to the first day of July, one thousand nine
2 hundred ninety-four, the offices of the family law
3 masters shall be distributed geographically so as to
4 provide an office of the family law master for each of
5 the following regions:

6 (1) The counties of Brooke, Hancock and Ohio;

7 (2) The counties of Marshall, Tyler and Wetzel;

8 (3) The counties of Pleasants, Ritchie, Wirt and
9 Wood;

10 (4) The counties of Calhoun, Jackson and Roane;

11 (5) The counties of Mason and Putnam;

12 (6) The county of Cabell;

13 (7) The counties of McDowell and Wyoming;

14 (8) The counties of Logan and Mingo;

15 (9) The county of Kanawha;

16 (10) The county of Raleigh;

17 (11) The counties of Mercer and Summers;

18 (12) The counties of Fayette and Nicholas;

19 (13) The counties of Greenbrier, Pocahontas and
20 Monroe;

21 (14) The counties of Braxton, Clay, Gilmer and
22 Webster;

23 (15) The counties of Doddridge, Harrison, Lewis and
24 Upshur;

25 (16) The counties of Marion and Taylor;

26 (17) The counties of Monongalia and Preston;

27 (18) The counties of Barbour, Randolph and Tucker;

28 (19) The counties of Grant, Hampshire, Hardy,
29 Mineral and Pendleton;

30 (20) The counties of Berkeley, Jefferson and Morgan;
31 and

32 (21) The counties of Boone, Lincoln and Wayne.

33 There shall be a total of twenty-two family law
34 masters serving throughout the state. Two masters
35 shall be assigned to the office of the family law master
36 for the region of Kanawha county. In each of the other
37 regions defined by this subsection, one individual shall
38 be assigned as family law master for each such region.

39 (b) On and after the first day of July, one thousand
40 nine hundred ninety-four, there shall be a total of
41 twenty-six family law masters, not more than fourteen
42 of whom shall be full-time masters, to serve through-
43 out the state. During the year immediately preceding
44 the appointment of law masters as provided for in
45 section one of this article, the supreme court of
46 appeals shall apportion the state into geographical
47 regions which may be single-master regions or multi-
48 master regions, or a combination of both. County
49 boundaries shall be strictly observed and no county
50 may be divided among two or more regions. Other-
51 wise, in making such apportionment, the supreme
52 court of appeals shall construct regions which provide,
53 as nearly as is practicable, for the case-load of each
54 master to be equal to that of other masters. Mathemat-
55 ical exactness as to case-load is not required and
56 deviations from an absolute standard may be based
57 upon concerns, other than case-load, including, but not
58 limited to, deviations dictated by the following
59 considerations:

60 (1) Judicial circuits;

61 (2) Geographical features which affect the time and
62 expense of travel;

63 (3) Traditional patterns of practice by members of
64 the bar; and

65 (4) Population variances between regions.

66 (c) In the region which includes Kanawha county, of
67 the masters appointed, not less than two shall be part-
68 time masters.

69 (d) Nothing contained herein shall prohibit the chief
70 justice of the supreme court of appeals from temporar-
71 ily assigning a family law master from one geograph-
72 ical region to another geographical region, as case-load,
73 disqualification, recusal, vacation or illness may
74 dictate.

75 (e) The administrative office of the supreme court
76 shall promulgate any procedural rule necessary to
77 delineate the duties of the part-time and full-time law
78 masters consistent with this article.

§48A-4-5. Rules.

1 (a) Pleading, practice and procedure in matters
2 before a family law master shall be governed by rules
3 of practice and procedure for family law made and
4 promulgated by the supreme court of appeals pursuant
5 to the provisions of section four, article one, chapter
6 fifty-one of this code.

7 (b) The West Virginia rules of evidence shall apply
8 to proceedings before a family law master.

9 (c) The judge of a circuit court, or the chief judge
10 thereof, may promulgate local administrative rules
11 governing the conduct and administration of family
12 law master offices serving the court, which rules shall
13 be subordinate and subject to the rules of the supreme
14 court of appeals or the orders of the chief justice
15 thereof. Rules promulgated by the judge of a circuit
16 court, or the chief judge thereof, shall be made by
17 order entered upon the order book of the circuit court,
18 as hereinafter provided, and shall be effective when
19 filed with the clerk of the supreme court of appeals.

§48A-4-6. Matters to be heard by a family law master.

1 (a) A circuit court or the chief judge thereof shall
2 refer to the master the following matters for hearing
3 to be conducted pursuant to sections eight and nine of
4 this article:

5 (1) Actions to obtain orders of support brought under
6 the provisions of section one, article five of this
7 chapter;

8 (2) All actions to establish paternity brought under
9 the provisions of article six of this chapter and any
10 dependent claims related to such action regarding
11 child support, custody and visitation;

12 (3) All petitions for writs of habeas corpus wherein
13 the issue contested is child custody;

14 (4) All motions for temporary relief affecting child
15 custody, visitation, child support, spousal support or
16 family violence, wherein either party has requested
17 such referral or the court on its own motion in
18 individual cases or by general order has referred such
19 motions to the master: *Provided*, That if the family
20 law master determines, in his or her discretion, that
21 the pleadings raise substantial issues concerning the
22 identification of separate property or the division of
23 marital property which may have a bearing on an
24 award of support, the family law master shall notify
25 the court of this fact and the circuit court shall refer
26 the case to a temporary or special law master or
27 commissioner of the court designated by the chief
28 justice of the supreme court.

29 (5) All petitions for modification of an order involv-
30 ing child custody, child visitation, child support or
31 spousal support;

32 (6) All actions for divorce, annulment or separate
33 maintenance brought pursuant to article two, chapter
34 forty-eight of this code: *Provided*, That an action for
35 divorce, annulment or separate maintenance which
36 does not involve child custody or child support shall be
37 heard by the circuit judge if, at the time of the filing
38 of the action, the parties file a written property
39 settlement agreement which has been signed by both
40 parties;

41 (7) All actions wherein an obligor is contesting the
42 enforcement of an order of support through the
43 withholding from income of amounts payable as

44 support or is contesting an affidavit of accrued sup-
45 port, filed with a circuit clerk, which seeks to collect
46 arrearages;

47 (8) All actions commenced under the provisions of
48 article seven of this chapter or under the provisions of
49 the revised uniform reciprocal enforcement of support
50 act of any other state;

51 (9) Proceedings for the enforcement of support,
52 custody or visitation orders: *Provided*, That contempt
53 actions shall be heard by a circuit judge; and

54 (10) All actions to establish custody of a minor child
55 or visitation with a minor child, including actions
56 brought pursuant to the uniform child custody juris-
57 diction act and actions brought to establish grandpar-
58 ent visitation: *Provided*, That any action instituted
59 under article six, chapter forty-nine shall be heard by
60 a circuit judge.

61 (b) On its own motion or upon motion of a party, the
62 circuit court may revoke the referral of a particular
63 matter to a master if the master is recused, if the
64 matter is uncontested, or for other good cause, or if
65 the matter will be more expeditiously and inexpen-
66 sively heard by the circuit judge without substantially
67 affecting the rights of parties in actions which must be
68 heard by the circuit court.

§48A-4-7. Fees for the services of a family law master.

1 (a) The payment of initial fees for a hearing before
2 a master shall be paid before the commencement of
3 the hearing. Any additional hourly fees beyond the
4 initial fee shall be paid at the conclusion of the
5 hearing, unless a party is excused from payment
6 thereof under the provisions of section one, article
7 two, chapter fifty-nine of this code. Such initial fees
8 may be paid at any time prior to such hearing, but
9 shall not be required at the time the action is filed,
10 and no advance payment shall be required for addi-
11 tional fees beyond the initial fees required by this
12 section. Any payment of fees for a hearing shall be
13 refunded by the clerk of the circuit court if the master

14 verifies that such hearing was not held, upon the
15 request of the person paying such fees.

16 (b) Fees for hearings before a master shall be taxed
17 as court costs, which costs may be assessed against
18 either party or apportioned between the parties, in the
19 discretion of the master. The assessment of court costs
20 shall be made at the conclusion of the hearing and
21 included as findings in each case of a master's recom-
22 mended order. The fees for hearings before a master
23 shall be as follows:

24 (1) For an action to establish an order of support,
25 fifty dollars;

26 (2) For an action to establish paternity, one hundred
27 dollars;

28 (3) For a motion for temporary relief affecting
29 custody, visitation, child support or spousal support,
30 fifty dollars;

31 (4) For a petition for modification of an order
32 involving child custody, child visitation, child support
33 or spousal support, fifty dollars: *Provided*, That if the
34 matter is contested, the fee shall be fifty dollars for the
35 first hour or any portion thereof, and thirty dollars per
36 hour for each subsequent hour or any portion thereof;

37 (5) For an uncontested divorce, annulment or sepa-
38 rate maintenance action, fifty dollars;

39 (6) For a proceeding for the enforcement of an
40 order, fifty dollars: *Provided*, That if the matter is
41 contested, the fee shall be fifty dollars for the first
42 hour or any portion thereof, and thirty dollars per
43 hour for each subsequent hour or any portion thereof;

44 (7) For a contested divorce, annulment or separate
45 maintenance action matured for final hearing, fifty
46 dollars for the first hour or any portion thereof, and
47 thirty dollars per hour for each subsequent hour or
48 any portion thereof;

49 (8) For an action to establish custody of a minor
50 child, including habeas corpus proceedings, fifty
51 dollars: *Provided*, That if the matter is contested, the

52 fee shall be fifty dollars for the first hour or any
53 portion thereof, and thirty dollars per hour for each
54 subsequent hour or any portion thereof; and

55 (9) For an action to establish visitation with a minor
56 child, including grandparent visitation, fifty dollars:
57 *Provided*, That if the matter is contested, the fee shall
58 be fifty dollars for the first hour or any portion
59 thereof, and thirty dollars per hour for each subse-
60 quent hour or any portion thereof.

§48A-4-8. Hearings before a master.

1 (a) Persons entitled to notice of a master's hearing
2 shall be timely informed of:

3 (1) The time, place and nature of the hearing;

4 (2) The legal authority and jurisdiction under which
5 the hearing is to be held; and

6 (3) The matters of fact and law asserted.

7 (b) The master shall give all interested parties
8 opportunity for the submission and consideration of
9 facts, arguments, offers of settlement or proposals of
10 adjustment when time, the nature of the proceedings
11 and the public interest permit. To the extent that the
12 parties are unable to settle or compromise a controver-
13 sy by consent, the master shall provide the parties a
14 hearing and make a recommended order in accor-
15 dance with the provisions of sections nine and thirteen
16 of this article.

17 (c) The master who presides at the reception of
18 evidence pursuant to section nine of this article shall
19 prepare the default order or make and enter the
20 temporary order provided for in section twelve of this
21 article, or make the recommended order required by
22 section thirteen of this article, as the case may be.
23 Except to the extent required for disposition of ex
24 parte matters as authorized by this chapter, a master
25 may not consult a person or party on a fact in issue,
26 unless on notice and opportunity for all parties to
27 participate; nor shall the master attempt to supervise
28 or direct an employee or agent engaged in the perfor-

29 mance of investigative or prosecuting functions for a
30 prosecuting attorney, the division of human services
31 or any other agency or political subdivision of this
32 state.

§48A-4-9. Hearing procedures.

1 (a) This section applies, according to the provisions
2 thereof, to hearings required by section six of this
3 article to be conducted in accordance with this section.

4 (b) A master to whom a matter is referred pursuant
5 to the provisions of section six of this article shall
6 preside at the taking of evidence.

7 (c) A master presiding at a hearing under the
8 provisions of this chapter may:

9 (1) Administer oaths and affirmations, compel the
10 attendance of witnesses and the production of docu-
11 ments, examine witnesses and parties and otherwise
12 take testimony, receive relevant evidence and estab-
13 lish a record;

14 (2) Rule on motions for discovery and offers of proof;

15 (3) Take depositions or have depositions taken when
16 the ends of justice may be served;

17 (4) Regulate the course of the hearing;

18 (5) Hold pre-trial conferences for the settlement or
19 simplification of issues and enter time frame orders
20 which shall include, but not be limited to, discovery
21 cut-offs, exchange of witness lists and agreements on
22 stipulations, contested issues, and hearing schedules;

23 (6) Make and enter temporary orders on procedural
24 matters, including, but not limited to, substitution of
25 counsel, amendment of pleadings, requests for hear-
26 ings and other similar matters;

27 (7) Accept voluntary acknowledgements of support
28 liability or paternity;

29 (8) Accept stipulated agreements;

30 (9) Prepare default orders for entry if the person
31 against whom an action is brought does not respond to

32 notice or process within the time required;

33 (10) Recommend orders in accordance with the
34 provisions of section thirteen of this article;

35 (11) Require the issuance of subpoenas and subpoe-
36 nas duces tecum, issue writs of attachment, hold
37 hearings in aid of execution and propound interroga-
38 tories in aid of execution and fix bond or other
39 security in connection with an action for enforcement
40 in a child or spousal support matter; and

41 (12) Take other action authorized by general order of
42 the circuit court or the chief judge thereof consistent
43 with the provisions of this chapter.

44 (d) Except as otherwise provided by law, a moving
45 party has the burden of proof on a particular question
46 presented. Any oral or documentary evidence may be
47 received, but the master shall exclude irrelevant,
48 immaterial, or unduly repetitious evidence. A party is
49 entitled to present his or her case or defense by oral
50 or documentary evidence, to submit rebuttal evidence
51 and to conduct such cross-examination as may be
52 required for a full and true disclosure of the facts. In
53 determining claims for money due or the amount of
54 payments to be made, when a party will not be
55 prejudiced thereby, the master may adopt procedures
56 for the submission of all or part of the evidence in
57 written form.

58 (e) Hearings before a master shall be recorded
59 electronically. A magnetic tape or other electronic
60 recording medium on which a hearing is recorded
61 shall be indexed and securely preserved by the
62 secretary clerk of the family law master and shall not
63 be placed in the case file in the office of the circuit
64 clerk: *Provided*, That upon the request of the family
65 law master, such magnetic tapes or other electronic
66 recording media shall be stored by the clerk of the
67 circuit court. When requested by either of the parties,
68 a master shall provide a duplicate copy of the tape or
69 other electronic recording medium of each hearing
70 held. For evidentiary purposes, a duplicate of such
71 electronic recording prepared by the secretary clerk

72 shall be a "writing" or "recording" as those terms are
73 defined in rule 1001 of the West Virginia rules of
74 evidence, and unless the duplicate is shown not to
75 reflect the contents accurately, it shall be treated as an
76 original in the same manner that data stored in a
77 computer or similar data is regarded as an "original"
78 under such rule. The party requesting the copy shall
79 pay to the master an amount equal to the actual cost
80 of the tape or other medium or the sum of five dollars,
81 whichever is greater. Unless otherwise ordered by the
82 court, the preparation of a transcript and the payment
83 of the cost thereof shall be the responsibility of the
84 party requesting the transcript.

85 (f) The recording of the hearing or the transcript of
86 testimony, as the case may be, and the exhibits,
87 together with all papers and requests filed in the
88 proceeding, constitute the exclusive record for recom-
89 mending an order in accordance with section thirteen
90 of this article, and on payment of lawfully prescribed
91 costs, shall be made available to the parties. When a
92 master's final recommended order rests on official
93 notice of a material fact not appearing in the evidence
94 in the record, a party is entitled, on timely request, to
95 an opportunity to show the contrary.

**§48A-4-10. Acts or failures to act in the physical presence of
family law masters.**

1 (a) If in the master's presence a party, witness or
2 other person conducts himself in a manner which
3 would constitute direct contempt if committed in the
4 presence of a circuit judge, the master shall halt any
5 proceeding which may be in progress and inform the
6 person that their conduct constitutes direct contempt
7 and give notice of the procedures and possible dispo-
8 sitions which may result.

9 (b) (1) If a circuit judge is sitting in the same county
10 in which the conduct occurred, or is otherwise avail-
11 able, the alleged contemnor shall be immediately
12 taken before the circuit judge. Disposition of these
13 matters shall be given priority over any other matters,
14 with the exception of a criminal trial in progress.

15 (2) If a circuit judge is unavailable then the master
16 shall schedule a hearing before the circuit court and
17 the alleged contemnor shall be advised, on the record,
18 of the time and place of the hearing. The master may
19 elect, in his or her discretion, to obtain a warrant for
20 the arrest of the alleged contemnor from the magis-
21 trate court on the charge of contempt with the matter
22 to be heard by the circuit court.

23 (c) At the hearing, the circuit court shall be advised
24 of the charges, receive the evidence and rule in the
25 same manner as would be appropriate if the conduct
26 complained of occurred in the physical presence of a
27 circuit judge. In addition to other sanctions the court
28 may award attorney's fees and costs.

29 (d) Prior to or during any hearing before a master,
30 if the master determines that a situation exists which
31 warrants the presence of security during such hearing,
32 the master shall inform the sheriff of the need for
33 such security and the time and place of the hearing,
34 and the sheriff shall assign a deputy to act as bailiff
35 during such hearing.

§48A-4-11. Family law master's docket.

1 (a) Every family law master shall establish a regular
2 docket or other means for hearing urgent motions
3 regarding child support, child custody or visitation,
4 protection from family violence or abuse, possession of
5 the home or other urgent matter. The family law
6 master shall make all decisions and rulings before him
7 or her within thirty days, or sooner after the close of
8 the evidence in the proceeding before the master. If
9 the master's recommended decision is not so timely
10 made the master shall, in writing, notify the adminis-
11 trator of the West Virginia supreme court as to why he
12 or she has not so ruled; and the administrator of the
13 West Virginia supreme court may take appropriate
14 action against said master including pay suspensions,
15 or reprimand or dismissal without pay for up to six
16 months.

17 (b) Upon the request of the family law master, the
18 clerk of the circuit court shall, under the general

19 direction of the master, maintain the master's docket,
20 schedule trials and hearings and deliver case files to
21 the master.

§48A-4-12. Default orders; temporary orders.

1 (a) In any proceeding in which the amount of
2 support is to be established, if the obligor has been
3 served with notice of a hearing before a master and
4 does not enter an appearance, the family law master
5 shall prepare a default order for entry by the circuit
6 judge, which order fixes support in an amount at least
7 equal to the amount paid as public assistance under
8 section four, article three, chapter nine of this code, if
9 the obligee or custodian receives public assistance, or
10 in an amount at least equal to the amount that would
11 be paid as public assistance if the obligee or custodian
12 were eligible to receive public assistance, unless the
13 family law master has sufficient information in the
14 record so as to determine the amount to be fixed in
15 accordance with the child support guidelines.

16 (b) A master who presides at a hearing under the
17 provisions of section nine of this article is authorized
18 to make and enter temporary support and custody
19 orders which, when entered, shall be enforceable and
20 have the same force and effect under law as tempo-
21 rary support orders made and entered by a judge of
22 the circuit court, unless and until such support orders
23 are modified, vacated, or superseded by an order of
24 the circuit court.

25 (c) All orders prepared by a master shall provide for
26 automatic withholding from income of the obligor if
27 arrearages in support occur, if no such provision
28 already exists in prior orders or if the existing order
29 as it relates to withholding is not in compliance with
30 applicable law.

§48A-4-13. Recommended orders.

1 (a) This section applies, according to the provisions
2 thereof, when a hearing has been conducted in accor-
3 dance with section nine of this article.

4 (b) A master who has presided at the hearing

5 pursuant to section nine of this article shall recom-
6 mend an order and findings of fact and conclusions of
7 law to the circuit court within ten days following the
8 close of the evidence. Before the recommended order
9 is made, the master may, in his discretion, require the
10 parties to submit proposed findings and conclusions
11 and the supporting reasons therefor.

12 (c) The master shall sign and send the recommended
13 order, any separate document containing the findings
14 of fact and conclusions of law and the notice of
15 recommended order as set forth in section fourteen of
16 this article to the attorney for each party, or if a party
17 is unrepresented, directly to the party, in the same
18 manner as pleadings subsequent to an original com-
19 plaint are served in accordance with rule five of the
20 rules of civil procedure for trial courts of record. The
21 master shall file the recommended order and the
22 record in the office of the circuit clerk prior to the
23 expiration of the ten-day period during which excep-
24 tions can be filed.

25 (d) A copy of any supporting documents or a sum-
26 mary of supporting documents, prepared or used by
27 the children's advocate or an employee of the child
28 advocate office, and all documents introduced into
29 evidence before the master, shall be made available to
30 the attorney for each party and to each of the parties
31 before the circuit court takes any action on the
32 recommendation.

33 (e) All recommended orders of the master shall
34 include the statement of findings of fact and conclu-
35 sions of law, and the reasons or basis therefor, on all
36 the material issues of fact, law, or discretion presented
37 on the record; and the appropriate sanction, relief, or
38 denial thereof. In every action where visitation is
39 recommended, the master shall specify a schedule for
40 visitation by the noncustodial parent: *Provided*, That
41 with respect to any existing order which provided for
42 visitation but which does not provide a specific
43 schedule for visitation by the noncustodial parent,
44 upon motion of any party, notice of hearing, and
45 hearing, the master shall recommend an order which

46 provides a specific schedule of visitation by the
47 noncustodial parent.

§48A-4-14. Form of notice of recommended order.

1 IN THE CIRCUIT COURT OF _____ COUNTY,
2 WEST VIRGINIA,

3 _____

4 Plaintiff,

5 vs. CIVIL ACTION NO. _____

6 _____

7 Defendant.

8 NOTICE OF RECOMMENDED ORDER

9 The undersigned family law master hereby recom-
10 mends the enclosed order to the circuit court of
11 _____county. If you wish
12 to file objections to this decision, you must file a
13 written petition in accordance with the provisions of
14 chapter 48A-4-18 of the West Virginia Code within a
15 period of ten days ending on _____, 19____, with
16 the circuit clerk of _____ county
17 and send a copy to counsel for the opposing party or
18 if the party is unrepresented to the party, and to the
19 office of the family law master located at _____

20 If no written petition for review is filed by _____,
21 19 ____, then the recommended order will be sent to
22 the circuit judge assigned to this case. A recommended
23 order which is not signed by a party, or counsel for a
24 party who is represented, by the end of the ten-day
25 period will still be sent to the circuit judge for entry.

26 YOUR FAILURE TO SIGN THE ORDER AS HAVING
27 BEEN INSPECTED OR APPROVED WILL NOT
28 DELAY THE ENTRY THEREOF.

29 _____
30 Family Law Master

§48A-4-15. Orders to be entered by circuit court exclusively.

1 With the exception of temporary support and custo-
2 dy orders entered by a master in accordance with the
3 provisions of section twelve of this article and section

4 twenty-two, article two, chapter forty-eight of this
5 code, and procedural orders entered pursuant to the
6 provisions of section nine of this article, an order
7 imposing sanctions or granting or deny relief may not
8 be made and entered except by as authorized by law.
9 Upon entry of a final order in any action for divorce,
10 separate maintenance or annulment, the clerk of the
11 circuit court shall deliver an attested copy of such
12 order to the parties who have appeared in such action
13 or their counsel of record by personal delivery or by
14 first class mail.

§48A-4-16. Circuit court review of master's action or recommended order.

1 (a) A person who alleges that he or she will be
2 adversely affected or aggrieved by a recommended
3 order of a master is entitled to review of the proceed-
4 ings. The recommended order of the master is the
5 subject of review by the circuit court and a procedural
6 action or ruling not otherwise directly reviewable is
7 subject to review only upon the review of the recom-
8 mended order by the circuit court.

9 (b) When a master's action or recommended order is
10 presented to the circuit court for review upon the
11 petition of any party and such action or recommended
12 order is subject to review, the family law master or
13 circuit court shall enter a temporary support and
14 custody order or otherwise provide for relief during
15 the pendency of the review proceedings upon any
16 party's request therefor or on the master's or court's
17 own motion if the family law master or court deems
18 such order or other relief to be fair and equitable.

§48A-4-17. Procedure for review by circuit court.

1 (a) Within ten days after the master's recommended
2 order, any separate document with findings of fact and
3 conclusions of law and the notice of recommended
4 order is served on the parties as set forth in section
5 thirteen of this article, any party may file exceptions
6 thereto in a petition requesting that the action by the
7 master be reviewed by the circuit court. Failure to
8 timely file the petition shall constitute a waiver of

9 exceptions, unless the petitioner, prior to the expira-
10 tion of the ten-day period, moves for and is granted an
11 extension of time from the circuit court. At the time
12 of filing the petition, a copy of the petition for review
13 shall be served on all parties to the proceeding, in the
14 same manner as pleadings subsequent to an original
15 complaint are served under rule five of the rules of
16 civil procedure for trial courts of record.

17 (b) Not more than ten days after the filing of the
18 petition for review, a responding party wishing to file
19 a cross-petition that would otherwise be untimely may
20 file, with proof of service on all parties, a cross-petition
21 for review.

§48A-4-18. Form of petition for review.

1 (a) The petition for review shall contain a list of
2 exceptions in the form of questions presented for
3 review, expressed in the terms and circumstances of
4 the case, designating and pointing out the errors
5 complained of with reasonable certainty, so as to direct
6 the attention of the circuit court specifically to them,
7 but without unnecessary detail. The statement of
8 questions should be short and concise and should not
9 be argumentative or repetitious. The statement of a
10 question presented will be deemed to comprise every
11 subsidiary question fairly included therein. Only the
12 questions set forth in the petition or fairly included
13 therein will be considered by the court. Parts of the
14 master's report not excepted to are admitted to be
15 correct, not only as regards the principles, but as to
16 the evidence, upon which they are founded.

17 (b) The circuit court may require, or a party may
18 choose to submit with the petition for review, a brief
19 in support thereof, which should include a direct and
20 concise argument amplifying the reasons relied upon
21 for modification of the master's recommended order
22 and citing the constitutional provisions, statutes and
23 regulations which are applicable.

§48A-4-19. Answer in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing

2 of a petition within which to file an answer disclosing
3 any matter or ground why the recommended order of
4 the master should not be modified by the court in the
5 manner sought by the petition. The judge may
6 require, or a party may choose to submit with the
7 answer, a brief in opposition to the petition, which
8 should include a direct and concise argument in
9 support of the master's recommended order and citing
10 the constitutional provisions, statutes and regulations
11 which are applicable.

12 (b) No motion by a respondent to dismiss a petition
13 for review will be received.

14 (c) Any party may file a supplemental brief at any
15 time while a petition for review is pending, calling
16 attention to new cases or legislation or other interven-
17 ing matter not available at the time of the party's last
18 filing.

§48A-4-20. Circuit court review of master's recommended order.

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the master when:

3 (1) No petition has been filed within the time
4 allowed, or the parties have expressly waived the right
5 to file a petition;

6 (2) A petition and an answer in opposition have been
7 filed, or the time for filing an answer in opposition has
8 expired, or the parties have expressly waived the right
9 to file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when
11 presented, the circuit court shall decide all relevant
12 questions of law, interpret constitutional and statutory
13 provisions and determine the appropriateness of the
14 terms of the recommended order of the master.

15 (c) The circuit court shall examine the recom-
16 mended order of the master, along with the findings
17 and conclusions of the master, and may enter the
18 recommended order, may recommit the case, with
19 instructions, for further hearing before the master or

20 may, in its discretion, enter an order upon different
21 terms, as the ends of justice may require. The circuit
22 court shall not follow the recommendation, findings
23 and conclusions of a master found to be:

24 (1) Arbitrary, capricious, an abuse of discretion or
25 otherwise not in conformance with the law;

26 (2) Contrary to constitutional right, power, privilege
27 or immunity;

28 (3) In excess of statutory jurisdiction, authority or
29 limitations or short of statutory right;

30 (4) Without observance of procedure required by
31 law;

32 (5) Unsupported by substantial evidence; or

33 (6) Unwarranted by the facts.

34 (d) In making its determinations under this section,
35 the circuit court shall review the whole record or
36 those parts of it cited by a party. If the circuit court
37 finds that a master's recommended order is deficient
38 as to matters which might be affected by evidence not
39 considered or inadequately developed in the master's
40 recommended order, the court may recommit the
41 recommended order to the master, with instructions
42 indicating the court's opinion, or the circuit court may
43 proceed to take such evidence without recommitting
44 the matter.

45 (e) The order of the circuit court entered pursuant
46 to the provisions of subsection (d) of this section shall
47 be entered not later than ten days after the time for
48 filing pleadings or briefs has expired or after the filing
49 of a notice or notices waiving the right to file such
50 pleading or brief.

51 (f) If a case is recommitted by the circuit court, the
52 master shall retry the matter within twenty days.

53 (g) At the time a case is recommitted, the circuit
54 court shall enter appropriate temporary orders award-
55 ing custody, visitation, child support, spousal support
56 or such other temporary relief as the circumstances of

57 the parties may require.

§48A-4-21. County commissions required to furnish offices for the family law master.

1 Each county commission of this state has a duty to
2 provide premises for the family law master which are
3 adequate for the conduct of the duties required of such
4 master under the provisions of this chapter and which
5 conform to standards established by rules promulgated
6 by the supreme court of appeals. The administrative
7 office of the supreme court of appeals shall pay to the
8 county commission a reasonable amount as rent for
9 the premises furnished by the county commission to
10 the family law master and his or her staff pursuant to
11 the provisions of this section.

§48A-4-22. Budget of the family law master system.

1 The budget for the payment of the salaries and
2 benefits of the family law masters and clerical and
3 secretarial assistants shall be included in the appropri-
4 ation for the supreme court of appeals. The family law
5 master administration fund is hereby created and shall
6 be a special account in the state treasury. The fund
7 shall operate as a special fund administered by the
8 state auditor which shall be appropriated by line item
9 by the Legislature for payment of administrative
10 expenses of the family law master system. All agencies
11 or entities receiving federal matching funds for the
12 services of family law masters and their staff, includ-
13 ing, but not limited to, the administrator of the child
14 advocate office and the secretary of the department of
15 health and human resources, shall enter into an
16 agreement with the administrative office of the
17 supreme court of appeals whereby all federal match-
18 ing funds paid to and received by said agencies or
19 entities for the activities by family law masters and
20 staff of the program shall be paid into the family law
21 master administration fund. Said agreement shall
22 provide for advance payments into the fund by such
23 agencies, from available federal funds pursuant to
24 Title IV-D of the Social Security Act and in accor-
25 dance with federal regulations.

§48A-4-23. Family law masters fund.

1 The office and the clerks of the circuit courts shall,
 2 on or before the tenth day of each month, transmit all
 3 fees and costs received for the services of the office or
 4 the family law master under this chapter to the state
 5 treasurer for deposit in the state treasury to the credit
 6 of a special revenue fund to be known as the "family
 7 law masters fund", which is hereby created. All
 8 moneys collected and received under this chapter and
 9 paid into the state treasury and credited to the "family
 10 law masters fund" shall be used by the administrative
 11 office of the supreme court of appeals solely for paying
 12 the costs associated with the duties imposed upon the
 13 family law masters under the provisions of this
 14 chapter which require activities by the masters which
 15 are not subject to being matched with federal funds or
 16 subject to reimbursement by the federal government.
 17 Such moneys shall not be treated by the auditor and
 18 treasurer as part of the general revenue of the state.

§48A-4-24. Continuation of family law masters system.

1 After having conducted a performance and fiscal
 2 audit through its joint committee on government
 3 operations, pursuant to section nine, article ten,
 4 chapter four of this code, the Legislature hereby finds
 5 and declares the family law masters system should be
 6 continued and reestablished. Accordingly, notwith-
 7 standing the provisions of section four of said article,
 8 the family law masters system shall continue to exist
 9 until the first day of July, one thousand nine hundred
 10 ninety-four, so that the joint committee on govern-
 11 ment operations may monitor compliance by the
 12 family law masters system with the recommendations
 13 of the performance audit.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.**§48A-5-7. Visitation enforcement; contempt; penalties.**

1 (a) Except as provided in subsection (b) of this
 2 section, the family law master may do either of the
 3 following in a dispute concerning visitation of a minor

4 child:

5 (1) Apply a visitation adjustment policy established
6 in accordance with the provisions of subsection (c) of
7 this section, or

8 (2) Recommend to the circuit court that the matter
9 be treated as a contempt proceeding under the provi-
10 sions of this section.

11 (b) The family law master shall not invoke either
12 option under subsection (a) of this section if the parties
13 resolve their dispute through an informal joint meet-
14 ing with a mediator designated in accordance with the
15 provisions of section seven-a of this article.

16 (c) Each family law master may formulate a visita-
17 tion adjustment policy which may be implemented by
18 the family law master after it is approved by the chief
19 judge of the circuit. Such policy shall be applied to the
20 following visitation violations:

21 (1) Where a noncustodial parent has been wrongfully
22 denied visitation; or

23 (2) Where a custodial parent has had his or her right
24 to custody infringed upon by the actions of a noncus-
25 todial parent who has abused or exceeded his or her
26 right of visitation.

27 (d) A visitation adjustment policy formulated and
28 approved under the provisions of this section shall
29 include all of the following:

30 (1) An adjustment of visitation shall be applied of
31 the same type and duration as the visitation that was
32 denied by the custodial parent or exceeded by the
33 noncustodial parent, including, but not limited to,
34 weekend visitation for weekend visitation, holiday
35 visitation for holiday visitation, weekday visitation for
36 weekday visitation and summer visitation for summer
37 visitation.

38 (2) An adjustment of visitation shall be scheduled to
39 occur within thirteen months after the visitation
40 violation occurred.

41 (3) The time of the visitation adjustment shall be
42 chosen by the parent whose right of visitation or
43 custody was violated.

44 (e) If a visitation adjustment policy is formulated
45 and approved under this section, the family law
46 master shall direct his or her secretary-clerk to
47 thereafter keep an accurate record of alleged visitation
48 violations reported to the office of the family law
49 master. A parent who is subject to a visitation adjust-
50 ment policy and who thereafter makes a claim of a
51 visitation violation shall give to the family law master
52 a written claim of such alleged visitation violation
53 within seven days after the actions complained of are
54 alleged to have occurred.

55 (f) If a visitation violation is alleged in a county in
56 which a visitation adjustment policy has been formu-
57 lated and approved under this section and if the
58 alleged violation appears to support a pattern of
59 violations or a single alleged violation appears to
60 constitute a substantial violation, the following shall
61 apply:

62 (1) Within five days after receipt of the claim of a
63 visitation violation, the office of the family law master
64 shall mail to the parent who is alleged to have
65 committed the violation, a notice by first class mail,
66 directed to such person's last known address. The
67 notice shall inform the parent of the following:

68 (A) When the visitation violation is alleged to have
69 occurred;

70 (B) That it is proposed that a visitation adjustment
71 be granted to the complaining parent;

72 (C) That if the parent alleged to have committed the
73 visitation violation wishes to agree to a visitation
74 adjustment he or she must notify the family law
75 master, in writing, within fourteen days from the date
76 of the notice; and

77 (D) That if he or she desires to contest the applica-
78 tion of the visitation adjustment policy on the grounds
79 that the claim of a visitation violation is incorrect or

80 that a visitation adjustment is not proper because of
81 mistakes of fact, he or she must, within fourteen days
82 of the date of the notice, inform the family law master
83 in writing of the reasons why the proposed adjustment
84 is contested and must request a hearing with the
85 family law master.

86 (2) After a final determination as to whether visita-
87 tion was wrongfully denied by the custodial parent or
88 the right of visitation was exceeded or abused by the
89 noncustodial parent, the office of the family law
90 master shall adjust the records of visitation violations
91 accordingly.

92 (3) The parent found to be entitled to a visitation
93 adjustment shall give to the office of the family law
94 master and the other parent a written notice of the
95 time the visitation adjustment will occur. Such notice
96 shall be given at least ten days before a makeup
97 weekday or weekend visitation or at least thirty days
98 before a makeup holiday or makeup summer visitation.

99 (g) (1) Except as provided in subsection (b) of this
100 section, the office of the family law master may refer
101 the written complaint of a visitation violation to the
102 circuit court, to be treated as a civil or criminal
103 contempt proceeding in accordance with the provisions
104 of section twenty-two, article two, chapter forty-eight
105 of this code to resolve the dispute concerning visitation
106 of a minor child. In the discretion of the court, the
107 court may remand the matter to the master for a
108 consideration of visitation adjustment, or may treat
109 the written complaint as a petition for an order to
110 show cause why the parent alleged to have committed
111 the visitation violation should not be held in contempt,
112 and direct such order to show cause to be served upon
113 the alleged violator.

114 (2) If the court finds that the parent committed the
115 visitation violation, the court shall find the parent in
116 contempt and may do one or more of the following:

117 (A) Require additional terms and conditions consis-
118 tent with the court's visitation order.

119 (B) After notice to both parties and a hearing, if
120 requested by a party, on any proposed modification of
121 visitation, modify the visitation order to meet the best
122 interests of the child. A modification sought by a
123 parent charged with a visitation violation, if otherwise
124 justified, shall not be denied solely because the parent
125 is found to be in contempt.

126 (C) Order that a visitation adjustment be made.

127 (D) If appropriate under the provisions of section
128 twenty-two, article two, chapter forty-eight of this
129 code:

130 (i) Commit the contemnor to the county jail; or

131 (ii) Commit the contemnor to the county jail with
132 the privilege of leaving the jail, during such hours as
133 the court determines and under such supervision as
134 the court considers necessary, for the purpose of
135 allowing the contemnor to go to and return from his
136 or her place of employment.

137 (3) A commitment under paragraph (D), subdivision
138 (2) of this subsection shall not exceed forty-five days
139 for the first adjudication of contempt or ninety days
140 for any subsequent adjudication of contempt.

141 (4) A parent committed under paragraph (D), subdi-
142 vision (2) of this subsection shall be released if the
143 court has reasonable cause to believe that the parent
144 will comply with the visitation order.

145 (5) If a parent is committed to jail under the
146 provisions of subparagraph (ii), paragraph (D), subdi-
147 vision (2) of this subsection and violates the conditions
148 of the court, the court may commit the person to the
149 county jail without the privilege provided under said
150 subparagraph for the balance of the period of commit-
151 ment imposed by the court.

152 (6) If a person is committed to jail under the
153 provisions of subparagraph (ii), paragraph (D), subdi-
154 vision (2) of this subsection and willfully fails to return
155 to the place of confinement within the time pre-
156 scribed, such person shall be considered to have

157 escaped from custody and shall be guilty of a misde-
158 meanor, punishable by imprisonment for not more
159 than one year.

§48A-5-7a. Pilot custody and visitation mediation project.

1 (a) The administrative office of the supreme court of
2 appeals may, within current funds available to the
3 court, establish a pilot custody and visitation mediation
4 project in designated regions comprised of one or more
5 counties of the state.

6 (b) Mediation will be provided in the designated
7 county or counties or regions only, in all cases in
8 which the issues of custody and/or visitation are
9 contested, when a hearing before a family law master
10 or judge is required to resolve the contested issue,
11 pursuant to guidelines established by the administra-
12 tive office of the supreme court. All parties to such
13 contested cases must attend at least one mediation
14 session and attempt to resolve the issues of custody
15 and/or visitation through this process. No final hearing
16 on the issues of custody or visitation can be held
17 before a family law master or judge unless the parties
18 have attempted mediation.

19 (c) This pilot mediation project is established to
20 encourage parties to resolve disputes over custody and
21 visitation through a voluntary process in which an
22 impartial mediator actively assists parties in identify-
23 ing and clarifying issues regarding custody and visita-
24 tion and in designing and agreeing to solutions for
25 those issues. All of the information that is provided by
26 the parties during mediation shall remain confidential
27 and mediators cannot be called as witnesses to provide
28 testimony in unresolved cases that proceed to contest-
29 ed hearings.

30 (d) The parties in each case shall be entitled to
31 participate in six hours of mediation per year free of
32 cost. Any additional time spent in mediation during
33 the year, over and above the first six hours, shall be
34 assessed by the court at the conclusion of the case at
35 a rate of thirty-five dollars per hour. These fees shall
36 be paid into the state treasury and credited to a fund

37 to be used by the administrative office solely to pay for
38 the costs of the pilot mediation project.

39 (e) The administrative office of the supreme court
40 shall hire one qualified mediator for each of the
41 regions designated in subsection (a), or may establish
42 and train panels of volunteer mediators, from which
43 panels individual mediators may then be assigned to
44 specific cases by a circuit court or a family law master.

45 (f) The administrative office of the supreme court of
46 appeals shall carefully monitor the case statistics and
47 case results and no later than eighteen months after
48 the initiation of the project shall submit a report to the
49 Legislature which evaluates the efficacy of using
50 mediation as a method of resolving custody and
51 visitation disputes. The Legislature shall review this
52 report and determine whether the project should be
53 continued or expanded to other counties in the state.

**§48A-5-9. Misrepresentation of delinquent support pay-
ments; penalty.**

1 If any person knowingly and willfully makes any
2 false, fictitious or fraudulent statement or representa-
3 tion, or makes or uses any false writing or document
4 knowing the same to contain any false, fictitious or
5 fraudulent statement or entry, thus misrepresenting
6 the amount of child support actually due and owing,
7 and if such statement, representation, writing or
8 document causes a children's advocate in reliance
9 thereon to institute an action or proceeding or other-
10 wise commence to enforce a support obligation under
11 this article or under section twenty-two, article two,
12 chapter forty-eight of this code, such person shall be
13 guilty of false swearing, and, upon conviction thereof,
14 shall be punished as provided by law for such offense.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child
2 and to obtain an order of support for the child may be
3 instituted, by verified complaint, in the circuit court of
4 the county where the child resides: *Provided*, That if

5 such venue creates a hardship for the parties, or either
6 of them, or if judicial economy requires, the court
7 may transfer the action to the county where either of
8 the parties resides.

9 (b) A "paternity proceeding" is a summary proceed-
10 ing, equitable in nature and within the domestic
11 relations jurisdiction of the courts, wherein a circuit
12 court upon the petition of the state or another proper
13 party may intervene to determine and protect the
14 respective personal rights of a child for whom pater-
15 nity has not been lawfully established, of the mother
16 of such child and of the putative father of such child.

17 (c) The sufficiency of the statement of the material
18 allegations in the complaint set forth as grounds for
19 relief and the grant or denial of the relief prayed for
20 in a particular case shall rest in the sound discretion
21 of the court, to be exercised by the court according to
22 the circumstances and exigencies of the case, having
23 due regard for precedent and the provisions of the
24 statutory law of this state.

25 (d) A decree or order made and entered by a court
26 in a paternity proceeding shall include a determina-
27 tion of the filial relationship, if any, which exists
28 between a child and his or her putative father, and, if
29 such relationship is established, shall resolve depen-
30 dent claims arising from family rights and obligations
31 attendant to such filial relationship.

32 (e) A paternity proceeding may be brought by any of
33 the following persons:

34 (1) An unmarried woman with physical or legal
35 custody of a child to whom she gave birth;

36 (2) A married woman with physical or legal custody
37 of a child to whom she gave birth, if the complaint
38 alleges that:

39 (A) Such married woman lived separate and apart
40 from her husband preceding the birth of the child;

41 (B) Such married woman did not cohabit with her

42 husband at any time during such separation and that
43 such separation has continued without interruption;
44 and

45 (C) The defendant, rather than her husband, is the
46 father of the child;

47 (3) The state of West Virginia or the department of
48 health and human resources, or the child advocate
49 office on its behalf, when such proceeding is deemed
50 necessary to prevent such child from being or becom-
51 ing a public charge;

52 (4) Any person who is not the mother of the child,
53 but who has physical or legal custody of such child;

54 (5) The guardian or committee of such child;

55 (6) The next friend of such child when the child is
56 a minor;

57 (7) By such child in his own right at any time after
58 the child's eighteenth birthday but prior to the child's
59 twenty-first birthday; or

60 (8) A man purporting to be the father of a child born
61 out of wedlock, when there has been no prior judicial
62 determination of paternity.

63 (f) Blood or tissue samples taken pursuant to the
64 provisions of this article may be ordered to be taken
65 in such locations as may be convenient for the parties
66 so long as the integrity of the chain of custody of such
67 samples can be preserved.

68 (g) A person who has sexual intercourse in this state
69 submits to the jurisdiction of the courts of this state
70 for a proceeding brought under this article with
71 respect to a child who was conceived by that act of
72 intercourse. Service of process may be perfected
73 according to the rules of civil procedure.

74 (h) If the person against whom the proceeding is
75 brought has failed to plead or otherwise defend the
76 action after proper service has been obtained, judg-
77 ment by default may be issued by the court as
78 provided by the rules of civil procedure.

§48A-6-2. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

1 (a) Except for a proceeding brought by a child in his
2 or her own right under the provisions of subdivision
3 (7), subsection (e), section one of this article, a pro-
4 ceeding for the establishment of the paternity of a
5 child shall be brought prior to such child's eighteenth
6 birthday.

7 (b) A proceeding to establish paternity under the
8 provisions of this article may be brought by or on
9 behalf of a child notwithstanding the fact that, prior to
10 the effective date of this section, an action to establish
11 paternity may have been barred by a prior statute of
12 limitations set forth in this code or otherwise provided
13 for by law.

14 (c) A proceeding to establish paternity under the
15 provisions of this article may be brought for any child
16 who was not yet eighteen years of age on the sixteenth
17 day of August, one thousand nine hundred eighty-
18 four, regardless of the current age.

19 (d) A proceeding to establish paternity under the
20 provisions of this article may be brought for any child
21 who was not yet eighteen years of age on the sixteenth
22 day of August, one thousand nine hundred eighty-
23 four, and for whom a paternity action was brought but
24 dismissed because a statute of limitations of less than
25 eighteen years was then in effect.

26 (e) Any other provision of law to the contrary
27 notwithstanding, when a husband and wife or former
28 husband and wife, in an action for divorce or an action
29 to obtain a support order, have litigated the issue of
30 the paternity of a child conceived during their mar-
31 riage to the end that the husband has been adjudged
32 not to be the father of such child, such prior adjudi-
33 cation of the issue of paternity between the husband
34 and the wife shall not preclude the mother of such
35 child from bringing a proceeding against another
36 person to establish paternity under the provisions of

37 this article.

§48A-6-4. Establishment of paternity and duty of support.

1 If the defendant, by verified responsive pleading,
2 shall admit that the man is the father of the child and
3 owes a duty of support, or if after a trial on the merits,
4 the court shall find, by clear and convincing evidence
5 that the man is the father of the child, the court shall
6 order support in accordance with the provisions of this
7 chapter.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
2 proceeding under this section is brought shall repre-
3 sent the state of West Virginia and shall litigate the
4 action in the best interests of the child although the
5 action is commenced in the name of a plaintiff listed
6 in section one of this article.

7 (b) The defendant shall be advised of his right to
8 counsel. In the event he files an affidavit that he is a
9 poor person within the meaning of section one, article
10 two, chapter fifty-nine of this code, counsel shall be
11 appointed to represent him. The service and expenses
12 of counsel shall be paid in accordance with the
13 provisions of article twenty-one, chapter twenty-nine
14 of this code: *Provided*, That the court shall make a
15 finding of eligibility for appointed counsel in accor-
16 dance with the requirements of said article and, if the
17 person qualifies, any blood or tissue tests ordered to be
18 taken shall be paid as part of the costs of the proceed-
19 ing. If paternity is established, appointed counsel shall
20 also represent the defendant with regard to dependent
21 claims arising from family rights and obligations
22 attendant to the filial relationship, including the
23 establishment and enforcement of a child support
24 order and the determination of custody and visitation.

25 (c) The children's advocate shall litigate the issue of
26 paternity and, if paternity is established, shall also
27 litigate all dependent claims arising from family rights
28 and obligations attendant to the filial relationship,
29 including the establishment and enforcement of a

30 child support order and the determination of custody
31 and visitation.

32 (d) If the proceeding is brought by a married woman
33 pursuant to the provisions of subdivision two, subsec-
34 tion (e) of this section, the court shall appoint a
35 competent attorney to act as guardian ad litem on
36 behalf of the child. This attorney shall be appointed
37 without motion and prior to the entry of any order
38 requiring blood testing.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-15. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

1 (a) Each circuit court, subject to the approval of the
2 supreme court of appeals and in accordance with the
3 rules of the supreme court of appeals, shall appoint
4 one or more juvenile probation officers and clerical
5 assistants for the circuit. A probation officer or clerical
6 assistant shall not be related by consanguinity or
7 affinity to any judge of the appointing court.

8 The salary for juvenile probation officers and
9 clerical assistants shall be determined and fixed by the
10 supreme court of appeals. All expenses and costs
11 incurred by the juvenile probation officers and their
12 staff shall be paid by the supreme court of appeals in
13 accordance with its rules. The county commission of
14 each county shall provide adequate office facilities for
15 juvenile probation officers and their staff. All equip-
16 ment and supplies required by juvenile probation
17 officers and their staff shall be provided by the
18 supreme court of appeals.

19 A juvenile probation officer shall not be considered
20 a law-enforcement official under any provision of this
21 chapter.

22 (b) The clerk of a court shall notify, if practicable,
23 the chief probation officer of the county, or his or her
24 designee, when a child is brought before the court or
25 judge. When notified, or if the probation officer

26 otherwise obtains knowledge of such fact, he or one of
27 his or her assistants shall:

28 (1) Make investigation of the case;

29 (2) Furnish such information and assistance as the
30 court or judge may require; and

31 (3) Take charge of the child before and after the
32 trial, as may be directed by the court or judge.

**§49-5-16b. Juvenile facilities review panel; compensation;
expenses.**

1 The supreme court of appeals shall appoint and
2 maintain a five-member panel, consisting of five
3 persons who are willing to serve in such capacity, to
4 visit, inspect and interview residents of all juvenile
5 institutions, detention facilities and places in or out of
6 the state wherein West Virginia juveniles may be held
7 involuntarily, to make public reports of such reviews:
8 *Provided*, That the panel shall not visit, inspect or
9 interview adult inmates of county jails, regional jails
10 or facilities under the direction of the commissioner of
11 corrections used for the incarceration of adult offend-
12 ers or detainees: *Provided, however*, That the panel
13 shall have no authority to enforce jail and prison
14 standards for county jails and regional jails as they
15 pertain to adults confined therein. In visiting and
16 inspecting any facility pursuant to the provisions of
17 this section, the panel shall have prompt and direct
18 access to the head of the facility for any purpose
19 pertaining to the performance of functions and respon-
20 sibilities under this section. The members so appointed
21 shall serve without compensation for their time,
22 however, each member may be reimbursed for rea-
23 sonable and necessary expenses in the performance of
24 their duties under this article.

25 Copies of the panel's report shall be submitted
26 annually to the president of the Senate and the
27 speaker of the House of Delegates.

28 Pursuant to the provisions of article ten, chapter
29 four of this code, the juvenile facilities review panel
30 shall continue to exist until the first day of July, one

31 thousand nine hundred ninety-four, to allow for the
32 completion of a performance audit by the joint com-
33 mittee on government operations.

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITA-
TION ACT.**

**§49-5B-4. Responsibilities of the department of health and
human resources.**

1 (a) The department of health and human resources
2 is empowered to establish, and shall establish, subject
3 to the limits of funds available or otherwise approp-
4 riated therefor, programs and services designed to
5 prevent juvenile delinquency, to divert juveniles from
6 the juvenile justice system, to provide community-
7 based alternatives to juvenile detention and correc-
8 tional facilities and to encourage a diversity of alterna-
9 tives within the juvenile justice system. The develop-
10 ment, maintenance and expansion of programs and
11 services may include, but not be limited to, the
12 following:

13 (1) Community-based programs and services for the
14 prevention and treatment of juvenile delinquency
15 through the development of foster-care and shelter-
16 care homes, group homes, halfway houses, homemak-
17 er and home health services, twenty-four hour intake
18 screening, volunteer and crisis home programs, day
19 treatment and any other designated community-based
20 diagnostic, treatment or rehabilitative service;

21 (2) Community-based programs and services to work
22 with parents and other family members to maintain
23 and strengthen the family unit so that the juvenile
24 may be retained in his home;

25 (3) Youth service bureaus and other community-
26 based programs to divert youth from the juvenile
27 court or to support, counsel, or provide work and
28 recreational opportunities for delinquents and other
29 youth to help prevent delinquency;

30 (4) Projects designed to develop and implement
31 programs stressing advocacy activities aimed at
32 improving services for and protecting rights of youth

33 impacted by the juvenile justice system;

34 (5) Educational programs or supportive services
35 designed to keep delinquents, and to encourage other
36 youth to remain, in elementary and secondary schools
37 or in alternative learning situations;

38 (6) Expanded use of professional and paraprofession-
39 al personnel and volunteers to work effectively with
40 youth;

41 (7) Youth initiated programs and outreach programs
42 designed to assist youth who otherwise would not be
43 reached by traditional youth assistance programs;

44 (8) A statewide program designed to reduce the
45 number of commitments of juveniles to any form of
46 juvenile facility as a percentage of the state juvenile
47 population, to increase the use of nonsecure communi-
48 ty-based facilities as a percentage of total commit-
49 ments to juvenile facilities and to discourage the use
50 of secure incarceration and detention.

51 (b) The department of health and human resources
52 shall establish, within the funds available, an individ-
53 ualized program of rehabilitation for each accused
54 juvenile offender referred to the department after
55 being allowed an improvement period by the juvenile
56 court, and for each adjudicated juvenile offender who,
57 after adjudication, is referred to the department for
58 investigation or treatment or whose custody is vested
59 in the department. Such individualized program of
60 rehabilitation shall take into account the programs and
61 services to be provided by other public or private
62 agencies or personnel which are available in the
63 community to deal with the circumstances of the
64 particular child. Such individualized program of
65 rehabilitation shall be furnished to the juvenile court
66 and shall be available to counsel for the child; it may
67 be modified from time to time at the direction of the
68 department or by order of the juvenile court. The
69 department may develop an individualized program of
70 rehabilitation for any child referred for noncustodial
71 counseling under section five, article three of this
72 chapter, for any child receiving counsel and advice

73 under section three-a, article five of this chapter, or
74 for any other child upon the request of a public or
75 private agency.

76 (c) The department of health and human resources
77 is authorized to enter into cooperative arrangements
78 and agreements with private agencies or with agencies
79 of the state and its political subdivisions to effectuate
80 the purpose of this article.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-3. Criminal jurisdiction; limitations on bail.

1 In addition to jurisdiction granted elsewhere to
2 magistrate courts, magistrate courts shall have juris-
3 diction of all misdemeanor offenses committed in the
4 county and to conduct preliminary examinations on
5 warrants charging felonies committed within the
6 county and, upon order of referral from the circuit
7 courts, to conduct preliminary examinations on proba-
8 tion violations, which examinations shall be conducted
9 without delay and in all events not later than thirty
10 days from the date any probation violation petition or
11 motion has been filed in circuit court. A magistrate
12 shall have the authority to issue arrest warrants in all
13 criminal matters, to issue warrants for search and
14 seizure and, except in cases involving capital offenses,
15 to set and admit to bail: *Provided*, That in cases
16 punishable only by the fine such bail or recognizance
17 shall not exceed the maximum amount of the fine and
18 applicable court costs permitted or authorized by
19 statute to be imposed in the event of conviction.

§50-2-3a. Sentencing; probation.

1 (a) In addition to sentencing authority granted
2 elsewhere to magistrate courts, magistrate courts have
3 authority to suspend sentences and impose periods of
4 unsupervised probation for a period not to exceed two
5 years, except for offenses for which the penalty
6 includes mandatory incarceration and offenses defined
7 in sections eight and nine, article eight-b, chapter
8 sixty-one of this code and subdivision (5), subsection

9 (c), article eight-d of said chapter.

10 (b) Release on probation shall be upon the following
11 conditions:

12 (1) That the probationer shall not, during the term
13 of his probation, violate any criminal law of this state,
14 any other state of the United States or the United
15 States;

16 (2) That he or she shall not, during the term of his
17 or her probation, leave the state without the consent
18 of the court which placed him or her on probation;

19 (3) That he or she shall comply with the rules or
20 terms prescribed by the court;

21 (4) That he or she shall make reasonable restitution
22 if financially able to do so, in whole or in any part,
23 immediately or within the period of probation; and

24 (5) That he or she shall pay any fine and the costs
25 assessed as the court may direct.

26 (c) On motion by the prosecuting attorney, and upon
27 a hearing and a finding that reasonable cause exists to
28 believe that a violation of any condition of probation
29 has occurred, the magistrate may revoke probation
30 and order execution of the sentence originally imposed.

ARTICLE 3. COSTS, FINES AND RECORDS.

**§50-3-2a. Payment of fines by credit card or payment plan;
suspension of licenses for failure to pay fines
or appear or respond.**

1 (a) A magistrate court may accept credit cards in
2 payment of all costs, fines, forfeitures or penalties. The
3 supreme court of appeals shall adopt rules regarding
4 the use of credit cards to pay fines and the rules shall
5 state that any charges made by the credit company
6 shall be paid by the person responsible for paying the
7 fine. A magistrate court may collect a portion of any
8 costs, fines, forfeitures or penalties at the time the
9 amount is imposed by the court so long as the court
10 requires the balance to be paid in accordance with a
11 payment plan which specifies: (1) The number of

12 payments to be made; (2) the dates on which such
13 payments and amounts shall be made; and (3) amounts
14 due on such dates.

15 (b) If any costs, fines, forfeitures, restitution or
16 penalties imposed or ordered by the magistrate court
17 for hunting or fishing violations as described in
18 chapter twenty of this code, are not paid in full as
19 directed by the magistrate court, the magistrate court
20 clerk or, upon a judgment rendered on appeal, the
21 circuit clerk shall notify the director of the division of
22 natural resources, of such failure to pay. If any costs,
23 fines, forfeitures, restitution or penalties imposed by
24 the magistrate court in a criminal case are not paid as
25 directed by the magistrate court, the magistrate court
26 clerk or, upon judgment rendered on appeal, the
27 circuit clerk, shall notify the director of the division of
28 motor vehicles of the failure to pay. Upon such notice,
29 the division of motor vehicles shall suspend the
30 operator's or commercial driver's license and the
31 director of the division of natural resources shall
32 suspend the hunting or fishing license of the person
33 defaulting on payment until such time that the costs,
34 fines, forfeitures, restitution or penalties are paid.

35 (c) If a person charged with any criminal violation
36 of this code, fails to appear or otherwise respond in
37 court, the magistrate court shall notify the director of
38 the division of motor vehicles thereof within fifteen
39 days of the scheduled date to appear, unless the person
40 sooner appears or otherwise responds in court to the
41 satisfaction of the magistrate. Upon such notice, the
42 division of motor vehicles shall suspend the operator's
43 or commercial driver's license of the person failing to
44 appear or otherwise respond in accordance with the
45 provisions of section six, article three, chapter seven-
46 teen-b of this code.

47 (d) In every criminal case which involves a misde-
48 meanor violation, a magistrate may order restitution
49 where appropriate when rendering judgment.

50 (e) If all costs, fines, forfeitures, restitution or
51 penalties imposed by a magistrate court and ordered to

52 be paid are not paid as ordered by the judgment of the
53 magistrate court, the clerk of the magistrate court
54 shall notify the prosecuting attorney of the county of
55 such nonpayment and provide the prosecuting attor-
56 ney with an abstract of judgment. The prosecuting
57 attorney shall file the abstract of judgment in the
58 office of the clerk of the county commission in the
59 county where the defendant was convicted and in any
60 county wherein the defendant resides or owns proper-
61 ty. The clerk of the county commission shall record
62 and index the abstracts of judgment without charge or
63 fee to the prosecuting attorney, and when so recorded,
64 the amount stated to be owing in the abstract shall
65 constitute a lien against all property of the defendant.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-6a. Deposits in interest-bearing accounts; payment of interest to general revenue fund of state treasury.

1 Magistrate court clerks or circuit clerks acting in
2 that capacity, subject to the rules and regulations of
3 the supreme court of appeals, may establish and
4 maintain interest-bearing checking accounts in secure
5 and properly insured financial institutions for the
6 deposit and disbursement of all moneys collected by
7 the magistrate court. In addition to making other
8 remittances as required by law, the clerk of each
9 magistrate court shall, on a monthly basis, remit all
10 interest earned on such accounts to the state treasurer
11 for deposit in the state general revenue fund.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-13. Appeals in criminal cases.

1 Any person convicted of an offense in a magistrate
2 court may appeal such conviction to circuit court as a
3 matter of right by requesting such appeal within
4 twenty days of the sentencing for such conviction. The
5 magistrate may require the posting of bond with good
6 security conditioned upon the appearance of the
7 defendant as required in circuit court, but such bond
8 may not exceed the maximum amount of any fine

9 which could be imposed for the offense. Such bond
10 may be upon the defendant's own recognizance. If no
11 appeal is perfected within such twenty-day period, the
12 circuit court of the county may, not later than ninety
13 days after the sentencing, grant an appeal upon a
14 showing of good cause why such appeal was not filed
15 within such twenty-day period. The filing or granting
16 of an appeal shall automatically stay the sentence of
17 the magistrate. Trial in circuit court shall be de novo:
18 *Provided*, That any person charged with a traffic
19 offense which does not subject a person to a period of
20 incarceration who wishes a jury trial shall elect prior
21 to trial to receive said trial by jury in either the
22 magistrate court or circuit court. Any person charged
23 with such a traffic offense who elects to receive a trial
24 by jury in the magistrate court shall receive a trial to
25 the court or appeal. Notwithstanding any other provi-
26 sion of this code to the contrary, there shall be no
27 appeal from a plea of guilty where the defendant was
28 represented by counsel at the time the plea was
29 entered: *Provided, however*, That the defendant shall
30 have an appeal from a plea of guilty where an extraor-
31 dinary remedy would lie or where the magistrate
32 court lacked jurisdiction.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-4. Jury selection.

1 Potential petit jurors shall be selected by the clerk
2 of the circuit court pursuant to the provisions of this
3 article and under the supervision of the circuit court,
4 or in circuits with more than one circuit judge, the
5 chief judge of the circuit.

§52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.

1 (a) In each county, the clerk shall compile and
2 maintain a master list of residents of the county from
3 which prospective jurors are to be chosen. The master
4 list shall be a list of individuals compiled from not less
5 than two of the following source lists:

6 (1) Persons who have filed a state personal income
7 tax return for the preceding tax year;

8 (2) Persons who are registered to vote in the county;

9 (3) Persons who hold a valid motor vehicle opera-
10 tor's or chauffeur's license as determined from the
11 drivers' license lists provided by the division of motor
12 vehicles.

13 The clerk shall compile the master list by combining
14 all the names from each source used and eliminating
15 all duplicates or by selecting a sample of names from
16 each source used by means of a random key number
17 system. If a sample of names is selected from each
18 source list, the same percentage of names must be
19 selected from each list. One source list shall be
20 designated a primary source. Names selected from the
21 second source shall be compared with the entire list of
22 names on the primary source. Duplicate names shall
23 be removed from the second source sample and the
24 remaining names shall be combined with the sample
25 of names selected from the primary source to form the
26 master list. If more than two source lists are used, this
27 process shall be repeated, using the previously com-
28 bined list for comparison with the third source list,
29 and so on.

30 (b) The master list so compiled shall be used for a
31 period of two years or such other period as designated
32 by the chief judge.

33 (c) In addition to the master list required to be
34 compiled under the provisions of subsection (a) of this
35 section, the clerk shall compile a list of persons who
36 pay real property taxes to compile and maintain a list
37 of freeholders to be used as jurors in condemnation
38 cases.

39 (d) Any public officer of an agency, department or
40 political subdivision of this state having custody,
41 possession or control of any of the source lists desig-
42 nated to be used in compiling the master list, shall
43 make the source list available to the clerk for inspec-
44 tion, reproduction and copying at all reasonable times:

45 *Provided*, That the tax commissioner shall be exempt
46 from this requirement. The master list and the
47 freeholder list shall be open to the public for
48 examination.

**§52-1-5a. Jury qualification form; contents; procedure for
use; penalties.**

1 (a) Not less than twenty days before the date for
2 which persons are to report for jury duty, the clerk
3 may, if directed by the court, serve by first class mail,
4 upon each person listed on the master list, a juror
5 qualification form accompanied by instructions neces-
6 sary for its completion: *Provided*, That the clerk may,
7 if directed by the court, mail the juror qualification
8 form to only those prospective jurors drawn for jury
9 service under the provisions of section seven of this
10 article. Each prospective juror shall be directed to
11 complete the form and return it by mail to the clerk
12 within ten days after its receipt. The juror qualifica-
13 tion form is subject to approval by the circuit court as
14 to matters of form and shall elicit the following
15 information concerning the prospective juror:

16 (1) The juror's name, sex, race, age and marital
17 status;

18 (2) The juror's level of educational attainment,
19 occupation and place of employment;

20 (3) If married, the name of the juror's spouse and
21 the occupation and place of employment of the spouse;

22 (4) The juror's residence address and the juror's
23 mailing address if different from the residence address;

24 (5) The number of children which the juror has and
25 their ages;

26 (6) Whether the juror is a citizen of the United
27 States and a resident of the county;

28 (7) Whether the juror is able to read, speak and
29 understand the English language;

30 (8) Whether the juror has any physical or mental
31 disability substantially impairing the capacity to

32 render satisfactory jury service: *Provided*, That a
33 juror with a physical disability, who can with reason-
34 able accommodation render competent service, is
35 eligible for service;

36 (9) Whether the juror has, within the preceding two
37 years, been summoned to serve as a petit juror, grand
38 juror or magistrate court juror, and has actually
39 attended sessions of the magistrate or circuit court and
40 been reimbursed for his or her expenses as a juror;

41 (10) Whether the juror has lost the right to vote
42 because of a criminal conviction; and

43 (11) Whether the juror has been convicted of perju-
44 ry, false swearing or other infamous offense.

45 The juror qualification form may also request
46 information concerning the prospective juror's reli-
47 gious preferences and organizational affiliations,
48 except that the form and the accompanying instruc-
49 tions shall clearly inform the juror that this informa-
50 tion need not be provided if the juror declines to
51 answer such inquiries.

52 (b) The juror qualification form shall contain the
53 prospective juror's declaration that the responses are
54 true to the best of the prospective juror's knowledge
55 and an acknowledgment that a willful misrepresenta-
56 tion of a material fact may be punished by a fine of
57 not more than five hundred dollars or imprisonment
58 for not more than thirty days, or both fine and
59 imprisonment. Notarization of the juror qualification
60 form shall not be required. If the prospective juror is
61 unable to fill out the form, another person may assist
62 the prospective juror in the preparation of the form
63 and indicate that such person has done so and the
64 reason therefor. If an omission, ambiguity or error
65 appear in a returned form, the clerk shall again send
66 the form with instructions to the prospective juror to
67 make the necessary addition, clarification or correction
68 and to return the form to the clerk within ten days
69 after its second receipt.

70 (c) Any prospective juror who fails to return a

71 completed juror qualification form as instructed shall
72 be directed by the clerk to appear forthwith before the
73 clerk to fill out the juror qualification form. At the
74 time of the prospective juror's appearance for jury
75 service, or at the time of any interview before the
76 court or clerk, any prospective juror may be required
77 to fill out another juror qualification form in the
78 presence of the court or clerk. At that time the
79 prospective juror may be questioned, with regard to
80 the responses to questions contained on the form and
81 the grounds for the prospective juror's excuse or
82 disqualification. Any information thus acquired by the
83 court or clerk shall be noted on the juror qualification
84 form.

85 (d) Any person who willfully misrepresents a mate-
86 rial fact on a juror qualification form or during any
87 interview described in subsection (c) of this section,
88 for the purpose of avoiding or securing service as a
89 juror, is guilty of a misdemeanor, and, upon convic-
90 tion, shall be fined not more than five hundred dollars
91 or imprisoned not more than thirty days, or both fined
92 and imprisoned.

**§52-1-6. Jury wheel or jury box; random selection of names
from master list for jury wheel or jury box.**

1 (a) At the direction of the circuit court, the clerk for
2 each county shall maintain a jury wheel or jury box,
3 into which shall be placed the names or identifying
4 numbers of prospective jurors taken from the master
5 list. The choice of employing a jury wheel or jury box
6 shall be at the discretion of the circuit court or the
7 chief judge thereof.

8 (b) In counties having a population of less than
9 fifteen thousand persons according to the last available
10 census, the jury wheel or jury box shall include at
11 least two hundred names; in counties having a popu-
12 lation of at least fifteen thousand but less than fifty
13 thousand, at least four hundred names; a population of
14 at least fifty thousand but less than ninety thousand,
15 at least eight hundred names; and a population of
16 ninety thousand or more, at least one thousand six

17 hundred names. From time to time a larger or addi-
18 tional number may be ordered by the circuit court to
19 be placed in the jury wheel or jury box. The clerk
20 shall take measures to ensure that a sufficient number
21 of additional jurors are drawn from time to time so
22 that the jury wheel or jury box is refilled and addi-
23 tional jurors may be drawn therefrom. In October of
24 each even-numbered year, or at such other time as the
25 court may direct, the clerk shall remove from the jury
26 box or jury wheel the names of all persons who have,
27 within the preceding two years, been summoned to
28 serve as petit jurors, grand jurors or magistrate court
29 jurors, and who have actually attended sessions of the
30 magistrate or circuit court and been reimbursed for
31 their expenses as jurors pursuant to the provisions of
32 section twenty-one of this article, section thirteen,
33 article two of this chapter, or under any applicable
34 rule or regulation of the supreme court of appeals
35 promulgated pursuant to the provisions of section
36 eight, article five, chapter fifty of this code.

37 (c) The names or identifying numbers of prospective
38 jurors to be placed in the jury wheel or jury box shall
39 be selected by the clerk at random from the master
40 list in the following manner: The total number of
41 names on the master list shall be divided by the
42 number of names to be placed in or added to the jury
43 wheel or jury box and the whole number next greater
44 than the quotient shall be the "key number", except
45 that the key number shall never be less than two. A
46 "starting number" for making the selection shall then
47 be determined by a random method from the numbers
48 from one to the key number, both inclusive. The
49 required number of names shall then be selected from
50 the master list by taking in order the first name on the
51 master list corresponding to the starting number and
52 then successively the names appearing in the master
53 list at intervals equal to the key number, recommenc-
54 ing if necessary at the start of the list until the
55 required number of names has been selected. Upon
56 recommencing at the start of the list, or if additional
57 names are subsequently to be selected for the jury
58 wheel or jury box, names previously selected from the

59 master list shall be disregarded in selecting the
60 additional names. The clerk is not required to, but
61 may, use an electronic or mechanical system or device
62 in carrying out its duties. (For example, assume a
63 county with a master list of eight thousand nine
64 hundred eighty names, a population of less than
65 fifteen thousand and a desired jury box or wheel
66 containing two hundred names. Eight thousand nine
67 hundred eighty names divided by two hundred is
68 forty-four and nine-tenths percent. The next whole
69 number is forty-five. The clerk would take every
70 forty-fifth name on the list, using a random starting
71 number between one and forty-five.)

**§52-1-7. Drawings from the jury wheel or jury box; notice
of jury duty; penalties.**

1 (a) The chief judge of the circuit, or the judge in a
2 single judge circuit, shall provide by order rules
3 relating to the random drawing by the clerk of panels
4 from the jury wheel or jury box for juries in the
5 circuit and magistrate courts. The rules may allow for
6 the drawing of panels at any time. Upon receipt of the
7 direction and in the manner prescribed by the court,
8 the clerk shall publicly draw at random from the jury
9 wheel or jury box the number of jurors specified.

10 (b) If a jury is ordered to be drawn, the clerk
11 thereafter shall cause each person drawn for jury
12 service to be notified not less than twenty days before
13 the date for which the persons are to report for jury
14 duty with a summons and juror qualification form, if
15 such form has not already been completed, by personal
16 service or first class mail addressed to the person at
17 his or her usual residence, business or post-office
18 address, requiring him or her to report for jury
19 service at a specified time and place.

20 (c) A prospective juror who fails to appear as
21 directed by the summons issued pursuant to subsection
22 (b) of this section shall be ordered by the court to
23 appear and show cause for failure to appear as directed.
24 If the prospective juror fails to appear pursuant to
25 the court's order or fails to show good cause for failure

26 to appear as directed by the summons, he or she is
27 guilty of civil contempt and shall be fined not more
28 than one thousand dollars.

**§52-1-7a. Alternate procedure for selection of jury by
electronic data processing methods.**

1 Notwithstanding any provision of this article to the
2 contrary, the court may, after conferring with the
3 clerk and documenting in writing the methods to be
4 used, with such documentation to be approved by the
5 chief judge, direct the use of electronic data processing
6 methods, or a combination of manual and machine
7 methods, for any combination of the following tasks:

8 (a) Recording in machine readable form names that
9 are initially selected manually from source lists
10 authorized by this article.

11 (b) Copying of names from source lists authorized by
12 this article, from any counties or other sources that
13 maintain those lists in machine readable form such as
14 punched cards, magnetic tapes or magnetic discs.

15 (c) Selecting names from source lists for inclusion in
16 the jury list.

17 (d) Selecting names from the jury list for the list of
18 jurors summoned to attend at any term of court.

19 (e) Sorting or alphabetizing lists of names, deleting
20 duplicate selections of names and deleting names of
21 persons exempt, disqualified or excused from jury
22 service.

23 (f) Selecting and copying names for the creation of
24 any papers, records or correspondence necessary to
25 recruit, select and pay jurors and for other clerical
26 tasks.

27 If the court elects to use electronic machine methods
28 for any tasks described above, the selection system
29 shall be planned and programmed in order to ensure
30 that any group of names chosen will represent all
31 segments of source files from which drawn and that
32 the mathematical odds of any single name being
33 picked are substantially equal.

34 When machine methods for jury selection are
35 employed, both the jury list and the jury list as
36 recorded in machine readable form shall be safely
37 kept in a secure location with the office of the clerk of
38 the circuit court.

§52-1-8. Disqualification from jury service.

1 (a) The court, upon request of a prospective juror or
2 on its own initiative, shall determine on the basis of
3 information provided on the juror qualification form
4 or interview with the prospective juror or other
5 competent evidence whether the prospective juror is
6 disqualified for jury service. The clerk shall enter this
7 determination in the space provided on the juror
8 qualification form and on the alphabetical lists of
9 names drawn from the jury wheel or jury box.

10 (b) A prospective juror is disqualified to serve on a
11 jury if the prospective juror:

12 (1) Is not a citizen of the United States, at least
13 eighteen years old and a resident of the county;

14 (2) Is unable to read, speak and understand the
15 English language. For the purposes of this section, the
16 requirement of speaking and understanding the
17 English language is met by the ability to communicate
18 in American sign language or signed English;

19 (3) Is incapable, by reason of substantial physical or
20 mental disability, of rendering satisfactory jury ser-
21 vice; but a person claiming this disqualification may be
22 required to submit a physician's certificate as to the
23 disability and the certifying physician is subject to
24 inquiry by the court at its discretion;

25 (4) Has, within the preceding two years, been
26 summoned to serve as a petit juror, grand juror or
27 magistrate court juror, and has actually attended
28 sessions of the magistrate or circuit court and been
29 reimbursed for his or her expenses as a juror pursuant
30 to the provisions of section twenty-one of this article,
31 section thirteen, article two of this chapter, or pursu-
32 ant to an applicable rule or regulation of the supreme
33 court of appeals promulgated pursuant to the provi-

34 sions of section eight, article five, chapter fifty of this
35 code;

36 (5) Has lost the right to vote because of a criminal
37 conviction; or

38 (6) Has been convicted of perjury, false swearing or
39 other infamous offense.

40 (c) A prospective juror sixty-five years of age or
41 older is not disqualified from serving, but shall be
42 excused from service by the court upon the juror's
43 request.

44 (d) A prospective grand juror is disqualified to serve
45 on a grand jury if the prospective grand juror is an
46 officeholder under the laws of the United States or of
47 this state except that the term "officeholder" does not
48 include notaries public.

49 (e) A person who is physically disabled and can
50 render competent service with reasonable accommo-
51 dation shall not be ineligible to act as juror or be
52 dismissed from a jury panel on the basis of disability
53 alone: *Provided*, That the circuit judge shall, upon
54 motion by either party or upon his or her own motion,
55 disqualify a disabled juror if the circuit judge finds
56 that the nature of potential evidence in the case
57 including, but not limited to, the type or volume of
58 exhibits or the disabled juror's ability to evaluate a
59 witness or witnesses, unduly inhibits the disabled
60 juror's ability to evaluate the potential evidence. For
61 purposes of this section:

62 (1) Reasonable accommodation includes, but is not
63 limited to, certified interpreters for the hearing
64 impaired, spokespersons for the speech impaired and
65 readers for the visually impaired.

66 (2) The court shall administer an oath or affirmation
67 to any person present to facilitate communication for
68 a disabled juror. The substance of such oath or
69 affirmation shall be that any person present as an
70 accommodation to a disabled juror will not deliberate
71 on his or her own behalf, although present throughout
72 the proceedings, but act only to accurately communi-

73 cate for and to the disabled juror.

74 (f) Nothing in this article shall be construed so as to
75 limit in any way a party's right to peremptory strikes
76 in civil or criminal actions.

§52-1-15. Challenging compliance with selection procedures.

1 (a) Within seven days after the moving party discov-
2 ers, or by the exercise of due diligence could have
3 discovered, the grounds therefor, and in any event
4 before the petit jury is sworn to try the case, a party
5 may move to stay the proceedings, quash the indict-
6 ment or move for other relief as may be appropriate
7 under the circumstances or the nature of the case. The
8 motion shall set forth the facts which support the
9 party's contention that there has been a substantial
10 failure to comply with this article in selecting the jury.

11 (b) Upon motion filed under subsection (a) of this
12 section containing a sworn statement of facts which, if
13 true, would constitute a substantial failure to comply
14 with this article, the moving party is entitled to
15 present, in support of the motion, the testimony of the
16 clerk, any relevant records and papers not public or
17 otherwise available used by the clerk, and any other
18 relevant evidence. The clerk may identify the lists
19 utilized in compiling the master list, but may not be
20 required to divulge the contents of such lists. If the
21 court determines that in selecting a jury there has
22 been a substantial failure to comply with this article,
23 the court shall stay the proceedings pending the
24 selection of the jury in conformity with this article,
25 quash an indictment or grant such other relief as the
26 court may deem appropriate.

27 (c) In the absence of fraud, the procedures pres-
28 cribed by this section are the exclusive means by
29 which a person accused of a crime, the state or a party
30 in a civil case, may challenge a jury on the ground
31 that the jury was not selected in conformity with this
32 article.

§52-1-16. Preservation of records.

1 All records and papers compiled and maintained by

2 the clerk in connection with selection and service of
3 jurors from the master list, the jury box or the jury
4 wheel shall be preserved by the clerk for at least four
5 years after such jurors were selected, or for any
6 longer period ordered by the court.

7 The clerk shall make an annual report no later than
8 the first day of March of each year to the supreme
9 court of appeals setting forth the following informa-
10 tion: Whether the clerk employed a jury box or jury
11 wheel for the year reported, and the age, race and
12 gender of each person for whom a juror qualification
13 form has been received. The supreme court of appeals
14 shall provide this information to the president of the
15 Senate and the speaker of the House on an annual
16 basis, no later than the first day of April of each year.

§52-1-17. Reimbursement of jurors.

1 (a) A juror shall be paid mileage, at the rate set by
2 the commissioner of finance and administration for
3 state employees, for travel expenses from the juror's
4 residence to the place of holding court and return and
5 shall be reimbursed for other expenses incurred as a
6 result of required attendance at sessions of the court
7 at a rate of between fifteen and forty dollars, set at the
8 discretion of the circuit court or the chief judge
9 thereof, for each day of required attendance. Such
10 reimbursement shall be based on vouchers submitted
11 to the sheriff. Such mileage and reimbursement shall
12 be paid out of the state treasury.

13 (b) When a jury in any case is placed in the custody
14 of the sheriff, he or she shall provide for and furnish
15 the jury necessary meals and lodging while they are in
16 the sheriff's custody at a reasonable cost to be deter-
17 mined by an order of the court; and the meals and
18 lodging shall be paid for out of the state treasury.

19 (c) Anytime a panel of prospective jurors has been
20 required to report to court for the selection of a petit
21 jury in any scheduled matter, the court shall, by
22 specific provision in a court order, assess a jury cost.
23 In circuit court cases the jury cost shall be the actual
24 cost of the jurors' service, and in magistrate court

25 cases, the jury cost assessed shall be two hundred
26 dollars. Such costs shall be assessed against the parties
27 as follows:

28 (1) In every criminal case, against the defendant
29 upon conviction, whether by plea, by bench trial or by
30 jury verdict;

31 (2) In every civil case, against either party or
32 prorated against both parties, at the court's discretion,
33 if the parties settle the case or trial is to the bench;
34 and

35 (3) In the discretion of the court, and only when
36 fairness and justice so require, a circuit court or
37 magistrate court may forego assessment of the jury
38 fee, but shall set out the reasons therefor in a written
39 order: *Provided*, That a waiver of the assessment of a
40 jury fee in a case tried before a jury in magistrate
41 court may only be permitted after the circuit court, or
42 the chief judge thereof, has reviewed the reasons set
43 forth in the order by the magistrate and has approved
44 such waiver.

45 (d) The circuit or magistrate court clerk shall by the
46 tenth day of the month following the month of
47 collection remit to the sheriff all jury costs collected,
48 and the clerk and the clerk's surety are liable there-
49 fore on the clerk's official bond as for other money
50 coming into the clerk's hands by virtue of the clerk's
51 office.

52 (e) The sheriff shall pay into the state treasury all
53 jury costs received from the court clerks, and the
54 sheriff shall be held to account in the sheriff's annual
55 settlement for all such moneys.

§52-1-18. When juror not entitled to reimbursement.

1 No juror who departs without leave of the court or
2 who, being summoned as a witness for the state,
3 charges for attendance as such, may be entitled to
4 receive any reimbursement for services as a juror.

§52-1-20. Payment of reimbursement.

1 The method of payment of jurors shall be deter-

2 mined by the chief judge and approved by the state
3 tax commissioner. It is the duty of the clerk, as soon
4 as practicable after the adjournment of the court or
5 before the adjournment of the court at such time as
6 the chief judge may direct, to deliver to the sheriff of
7 the county a certified accounting of the amount to
8 which each juror is entitled. If any sheriff fails to pay
9 any allowance as required by law, the sheriff may be
10 proceeded against as for a contempt of court.

11 Any allowance paid by the sheriff under the provi-
12 sions of this section shall be repaid to the sheriff out
13 of the state treasury upon the production of satisfacto-
14 ry proof that the same has actually been paid by the
15 sheriff. Proof of payment shall be in the form of a
16 complete itemized statement indicating the total
17 amount eligible for reimbursement.

ARTICLE 2. GRAND JURIES.

§52-2-3. Selection and summoning of jurors.

1 The clerk of any circuit court requiring a grand jury
2 shall, at least thirty days before the term of court,
3 draw and assign persons for the grand jury, but the
4 court, or judge thereof, may require the clerk at any
5 specified time to draw and assign grand jurors for
6 either a regular, special or adjourned term of court.
7 When required by the circuit court or the chief judge
8 thereof, the clerk shall draw the names of sixteen
9 persons from the jury wheel or jury box, and the
10 persons so drawn shall constitute the grand jury. At
11 the same time, the clerk shall draw the names of such
12 additional numbers of persons from the jury wheel or
13 jury box as the chief judge of the circuit, or the judge
14 in a single judge circuit shall by prior order direct, and
15 the persons so drawn shall constitute alternate jurors
16 for the grand jury. The judge may replace any absent
17 members of the grand jury from among the alternate
18 grand jurors, in the order in which the alternate
19 jurors were drawn. The clerk shall enter the names of
20 all persons so drawn in a book kept for that purpose
21 and shall issue summonses to the persons so drawn in
22 the same manner as that provided for petit jurors in

23 subsection (b), section seven, article one of this
24 chapter.

§52-2-13. Compensation and mileage of grand jurors.

1 A grand juror shall be paid mileage, at the rate set
2 by the commissioner of finance and administration for
3 state employees, for travel expenses incurred in
4 traveling from the grand juror's residence to the place
5 of the holding of the grand jury and return, and shall
6 be reimbursed for other expenses incurred as a result
7 of required attendance at sessions of the grand jury at
8 a rate of between fifteen and forty dollars, set at the
9 discretion of the circuit court or the chief judge
10 thereof, for each day of required attendance.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-12. Payment of fines by credit card or payment plan.

1 A circuit court may accept credit cards in payment
2 of all fines, costs, forfeitures, restitution or penalties.
3 The supreme court of appeals shall adopt rules regard-
4 ing the use of credit cards to pay fines, and the rules
5 shall state that any charges made by the credit
6 company shall be paid by the person responsible for
7 paying the fine, cost, forfeiture, restitution or penalty.

ARTICLE 2. COSTS GENERALLY.

§59-2-1. Suits by persons financially unable to pay.

1 (a) A natural person who is financially unable to pay
2 the fees or costs attendant to the commencement,
3 prosecution or defense of any civil action or proceed-
4 ing, or an appeal therein, is permitted to proceed
5 without prepayment in any court of this state, after
6 filing with the court an affidavit that he or she is
7 financially unable to pay the fees or costs or give
8 security therefor.

9 (1) The clerk of the court and all other officers of the
10 court shall issue and serve all process and perform all
11 duties in such cases.

12 (2) Judgment may be rendered for costs at the
13 conclusion of the action, where otherwise authorized
14 by law, and be taxable against a losing party who has
15 not been determined to be financially unable to pay.

16 (3) Upon the filing of an affidavit in accordance with
17 this subsection, seeking an appeal in a civil case from
18 a circuit court to the supreme court of appeals, the
19 supreme court of appeals may direct payment by the
20 administrative office of the supreme court of appeals
21 of the expenses of duplicating the record on appeal
22 after it is transmitted by the clerk of the circuit court.
23 The transcript of proceedings before the circuit court,
24 if the petition for appeal is to be filed with the
25 transcript, shall be provided by the court reporter
26 without cost: *Provided*, That actual expenses of the
27 court reporter for supplies used in preparing the
28 transcript may be paid when authorized by the
29 director of the administrative office of the supreme
30 court of appeals.

31 (b) The supreme court of appeals or the chief justice
32 thereof shall establish and periodically review and
33 update financial guidelines for determining the eligi-
34 bility of civil litigants to proceed in forma pauperis.

35 (c) The supreme court of appeals shall adopt a
36 financial affidavit form for use by persons seeking a
37 waiver of fees, costs or security pursuant to the
38 provisions of this section. Copies of the form shall be
39 available to the public in the offices of the clerk of any
40 court of this state. The affidavit shall state the nature
41 of the action, defense or appeal and the affiant's belief
42 that he or she is entitled to redress. The form shall
43 elicit information from the affiant which will enable
44 the court in which it is filed to consider the following
45 factors in determining whether the affiant is financial-
46 ly unable to pay fees, costs or security:

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

49 (2) Liquid assets, assets which may provide collateral
50 to obtain funds and other assets which may be liqui-
51 dated to provide funds to pay fees, costs or security;

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

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

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

58 (6) Whether the person has paid or will pay counsel
59 fees, or whether counsel will be provided by a private
60 attorney on a contingent fee basis, an attorney pro
61 bono, a legal services attorney, a children's advocate or
62 some other attorney at no cost or a reduced cost to the
63 affiant; and

64 (7) The consequences for the individual if a waiver
65 of fees, costs or security is denied.

66 (d) If the information set forth in the affidavit or the
67 evidence submitted in the action reveals that the
68 person filing the affidavit is financially able to pay the
69 fees and costs, the court or the family law master may
70 order the person to pay the fees and costs in the
71 action.

72 (e) No other party in any proceeding may initiate an
73 inquiry by motion or other pleading or participate in
74 any proceeding relevant to the issues raised pursuant
75 to this section.

76 (f) The making of an affidavit subject to inquiry
77 under this section does not in any event give rise to
78 criminal remedies against the affiant nor occasion any
79 civil action against the affiant except for the recovery
80 of costs as in any other case where costs may be
81 recovered and the recovery of the value of services, if
82 any, provided pursuant to this section. A person who
83 has made an affidavit knowing the contents thereof to
84 be false may be prosecuted for false swearing as
85 provided by law.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-17. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

1 (a) If costs, fines, forfeitures, penalties or restitution
2 imposed by the circuit court upon conviction of a
3 person for any criminal offense under this code are
4 not paid in full when ordered to do so by the court, the
5 circuit clerk shall notify the division of motor vehicles
6 of such failure to pay: *Provided*, That at the time the
7 judgment is imposed, the court shall provide the
8 person with written notice that failure to pay the same
9 when ordered to do so shall result in the suspension of
10 such person's license or privilege to operate a motor
11 vehicle in this state and that such suspension could
12 result in the cancellation of, the failure to renew or
13 the failure to issue an automobile insurance policy
14 providing coverage for such person or such person's
15 family: *Provided, however*, That the failure of the
16 court to provide such notice shall not affect the
17 validity of any suspension of such person's license or
18 privilege to operate a motor vehicle in this state. For
19 purposes of this section, such period of time within
20 which the person is required to pay shall be stayed
21 during any period an appeal from the conviction
22 which resulted in the imposition of such costs, fines,
23 forfeitures or penalties is pending.

24 Upon such notice, the division of motor vehicles
25 shall suspend the person's driver's license or privilege
26 to operate a motor vehicle in this state until such time
27 that the costs, fines, forfeitures or penalties are paid.

28 (b) Notwithstanding the provisions of this section to
29 the contrary, the notice of the failure to pay such
30 costs, fines, forfeitures, or penalties shall not be given
31 where the circuit court, upon application of the person
32 upon whom the same were imposed filed prior to the
33 expiration of the period within which the same are
34 required to be paid, enters an order finding that such
35 person is financially unable to pay all or a portion of
36 the same: *Provided*, That where the circuit court,
37 upon finding that the person is financially unable to
38 pay the full amount thereof, requires the person to
39 pay the remaining portion thereof, the circuit clerk
40 shall notify the division of motor vehicles of such

41 person's failure to pay the same if the same is not paid
42 within the period of time ordered by such court.

43 (c) If a person charged with a criminal offense fails
44 to appear or otherwise respond in court after having
45 received notice to do so, the court shall notify the
46 division of motor vehicles thereof within fifteen days
47 of the scheduled date to appear unless such person
48 sooner appears or otherwise responds in court to the
49 satisfaction of the court. Upon such notice, the division
50 of motor vehicles shall suspend the person's driver's
51 license or privilege to operate a motor vehicle in this
52 state until such time that the person appears as
53 required.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

1 (a) Each circuit court, subject to the approval of the
2 supreme court of appeals and in accordance with its
3 rules, is authorized to appoint one or more probation
4 officers and clerical assistants.

5 (b) The appointment of probation officers and
6 clerical assistants shall be in writing and entered on
7 the order book of the court by the judge making such
8 appointment and a copy of said order of appointment
9 shall be delivered to the administrative director of the
10 supreme court of appeals. The order of appointment
11 shall state the monthly salary fixed by the judge and
12 approved by the supreme court of appeals, to be paid
13 the probation officer or clerical assistants so appointed.

14 (c) The salary of probation officers and clerical
15 assistants shall be paid monthly or semimonthly, as
16 the supreme court of appeals by rule may direct and
17 they shall be reimbursed for all reasonable and
18 necessary expenses actually incurred in the line of
19 duty in the field. The salary and expenses shall be paid
20 by the state from the judicial accounts thereof. The
21 county commission shall provide adequate office space
22 for the probation officer and his or her assistants to be
23 approved by the appointing court. The equipment and
24 supplies as may be needed by the probation officer and

25 his or her assistants shall be provided by the state and
26 the cost thereof shall be charged against the judicial
27 accounts of the state.

28 (d) No judge may appoint any probation officer,
29 assistant probation officer or clerical assistant who is
30 related to him or her either by consanguinity or
31 affinity.

32 (e) Subject to the approval of the supreme court of
33 appeals and in accordance with its rules, a judge of a
34 circuit court whose circuit comprises more than one
35 county may appoint a probation officer and a clerical
36 assistant in each county of the circuit or may appoint
37 the same persons to serve in these respective positions
38 in two or more counties in the circuit.

39 (f) Nothing contained in this section alters, modifies,
40 affects or supersedes the appointment or tenure of any
41 probation officer, medical assistant or psychiatric
42 assistant appointed by any court under any special act
43 of the Legislature heretofore enacted, and the salary
44 or compensation of those persons shall remain as
45 specified in the most recent amendment of any special
46 act until changed by the court, with approval of the
47 supreme court of appeals, by order entered of record,
48 and any such salary or compensation shall be paid out
49 of the state treasury.

§62-12-9. Conditions of release on probation.

1 (a) Release on probation shall be upon the following
2 conditions:

3 (1) That the probationer shall not, during the term
4 of his probation, violate any criminal law of this or
5 any other state or of the United States.

6 (2) That he shall not, during the term of his proba-
7 tion, leave the state without the consent of the court
8 which placed him on probation.

9 (3) That he shall comply with the rules and regula-
10 tions prescribed by the court or by the board of
11 probation and parole, as the case may be, for his
12 supervision by the probation officer.

13 (4) That in every case wherein the probationer has
14 been convicted of an offense defined in section thir-
15 teen, article eight, chapter sixty-one of this code and,
16 articles eight-b and eight-d of said chapter, against a
17 child, the probationer shall not live in the same
18 residence as any minor child, nor exercise visitation
19 with any minor child, and shall have no contact with
20 the victim of the offense: *Provided*, That the proba-
21 tioner may petition the court of the circuit wherein he
22 was so convicted for a modification of this term and
23 condition of his probation and the burden shall rest
24 upon the probationer to demonstrate that a modifica-
25 tion is in the best interest of the child.

26 (5) That the probationer be required to pay a fee,
27 based upon his or her ability to pay, not to exceed
28 twenty dollars per month to defray costs of supervi-
29 sion. All moneys collected as fees from probationers
30 shall be deposited with the circuit clerk who shall, on
31 a monthly basis, remit said moneys collected to the
32 state treasurer for deposit in the state general revenue
33 fund.

34 (b) In addition to the terms of probation set forth in
35 subsection (a) of this section, the court may impose,
36 subject to modification at any time, any other condi-
37 tions which it may deem advisable, including, but not
38 limited to, any of the following:

39 (1) That he shall make restitution or reparation, in
40 whole or in part, immediately or within the period of
41 probation, to any party injured by the crime for which
42 he has been convicted.

43 (2) That he shall pay any fine assessed and the costs
44 of the proceeding in such installments as the court
45 may direct.

46 (3) That he shall make contribution from his earn-
47 ings, in such sums as the court may direct, for the
48 support of his dependents.

49 (4) That he shall, in the discretion of the court, be
50 required to serve a period of confinement in the
51 county jail of the county in which he was convicted

52 for a period not to exceed one third of the minimum
53 sentence established by law or one third of the least
54 possible period of confinement in an indeterminate
55 sentence, but in no case shall such period of confine-
56 ment exceed six consecutive months. The court shall
57 have authority to sentence the defendant within such
58 six-month period to intermittent periods of confine-
59 ment including, but not limited to, weekends or
60 holidays and may grant unto the defendant intermit-
61 tent periods of release in order that he may work at
62 his employment or for such other reasons or purposes
63 as the court may deem appropriate: *Provided*, That the
64 provisions of article eleven-a of this chapter shall not
65 apply to such intermittent periods of confinement and
66 release except to the extent that the court may direct.
67 If a period of confinement is required as a condition of
68 probation, the court shall make special findings that
69 other conditions of probation are inadequate and that
70 a period of confinement is necessary.

§62-12-15. Powers and duties of state parole officers.

1 Each state parole officer shall investigate all cases
2 referred to him or her for investigation by the com-
3 missioner of corrections and shall report in writing
4 thereon. He or she shall furnish to each person
5 released on parole under his or her supervision a
6 written statement of the conditions of his or her parole
7 together with a copy of the rules prescribed by the
8 board, as the case may be, for the supervision of
9 parolees. He or she shall keep informed concerning
10 the conduct and condition of each person under his or
11 her supervision and shall report thereon in writing as
12 often as the commissioner of corrections may require.
13 He or she shall use all practicable and suitable
14 methods to aid and encourage persons on parole and to
15 bring about improvement in their conduct and condi-
16 tion. He or she shall keep detailed records of his or her
17 work, shall keep accurate and complete accounts of
18 and give receipts for all money collected from persons
19 under his or her supervision and shall pay over the
20 money to those persons a circuit court or the commis-
21 sioner of corrections may designate. He or she shall

22 give bond with good security, to be approved by the
23 commissioner of corrections, in a penalty of not less
24 than one thousand dollars nor more than three thou-
25 sand dollars, as the commissioner of corrections may
26 determine, and also perform any other duties the
27 commissioner may require. He or she has authority,
28 with or without an order or warrant, to arrest any
29 parolee. He or she has all the powers of a notary
30 public, with authority to act anywhere within the
31 state.

ARTICLE 13. CORRECTIONS MANAGEMENT.

§62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

1 (a) The supreme court of appeals shall take charge
2 of and cause to be supervised all persons placed on
3 probation and shall prescribe rules for the supervision
4 of probationers under their supervision and control.

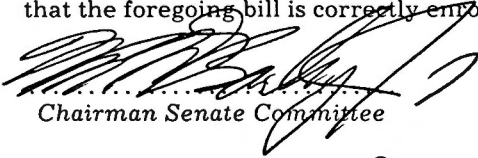
5 (b) The commissioner of corrections shall supervise
6 all persons released on parole and placed in the charge
7 of a state parole officer and all persons released on
8 parole under any law of this state. He or she shall also
9 supervise all probationers and parolees whose supervi-
10 sion may have been undertaken by this state by
11 reason of any interstate compact entered into pursuant
12 to the uniform act for out-of-state probation and
13 parolee supervision. The commissioner shall prescribe
14 rules for the supervision of probationers and parolees
15 under his or her supervision and control and shall
16 succeed to all administrative and supervisory powers
17 of the board of probation and parole and the authority
18 of the board of probation and parole in those matters
19 only.

20 The commissioner of corrections shall administer all
21 other laws affecting the custody, control, treatment
22 and employment of persons sentenced or committed to
23 institutions under the supervision of the department
24 or affecting the operation and administration of
25 institutions or functions of the department.

26 The final determination regarding the release of
27 inmates from penal institutions and the final determi-
28 nation regarding revocation of parolees from those
29 institutions pursuant to the provisions of article twelve
30 of this chapter shall remain within the exclusive
31 jurisdiction of the board of probation and parole.

[Faint, illegible handwritten text]

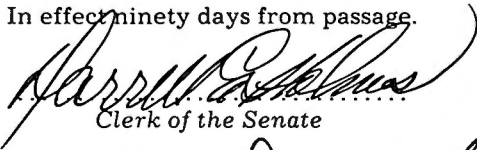
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

..... Ernest C. Moore
Chairman House Committee

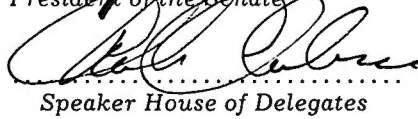
Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate

..... Donald L. Kopp
Clerk of the House of Delegates

..... Fred Bourdette
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 6th day of May, 1993.

.....

Governor

PRESENTED TO THE

GOVERNOR

Date 9/29/93

Time 11:00 am