

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 484**

4 (By Senators Palumbo, Laird, Tucker, Edgell, Wills, Wells,
5 Kessler (Mr. President), Klempa, Jenkins, Beach and Yost)

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7 [Originating in the Committee on Health and Human Resources;
8 reported February 8, 2012.]
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12 A BILL to repeal §49-5-21 of the Code of West Virginia, 1931, as
13 amended; to repeal §49-6-5a of said code; to amend and reenact
14 §49-1-3 of said code; to amend and reenact §49-2-17 of said
15 code; to amend and reenact §49-5-13 of said code; to amend and
16 reenact §49-5D-2, §49-5D-3 and §49-5D-3a of said code; to
17 amend said code by adding thereto two new sections, designated
18 §49-5D-3b and §49-5D-3c; to amend and reenact §49-6-2, §49-6-
19 3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code; to
20 amend and reenact §49-6A-5 of said code; to amend said code by
21 adding thereto a new section, designated §49-6A-12; to amend
22 and reenact §49-6D-3 of said code; to amend and reenact §49-7-
23 1 of said code; and to amend said code by adding thereto a new
24 section, designated §49-7-36, all relating generally to child

1 welfare; defining "court appointed special advocate program";
2 establishing a system of assistance from funds appropriated to
3 the Department of Health and Human Resources for facilitating
4 the adoption or legal guardianship of children who are
5 dependents of the department or of a child welfare agency
6 licenced to place children for adoption; providing when a
7 juvenile is ordered into out-of-state placement, the reasons
8 why the juvenile was not placed in state be included in the
9 court order; adding additional members to the
10 multidisciplinary team; providing a process for
11 multidisciplinary treatment planning in cases involving child
12 abuse and neglect; providing a process for multidisciplinary
13 treatment planning in cases involving status offense or
14 delinquency; increasing the continuing education hours
15 required for attorneys appointed in child abuse and neglect
16 cases; providing that reasonable efforts to preserve the
17 family are not required when a person is required by state or
18 federal law to register with a sex offender registry;
19 providing that the court may modify a dispositional order when
20 it finds a material change of circumstances has occurred and
21 such modification is in the child's best interests; clarifying
22 that the circuit court of origin has exclusive jurisdiction
23 over placement of a child in a child abuse and neglect case;
24 providing a process for permanency hearings and permanent

1 placement reviews; providing that any combination of
2 improvement periods cannot cause a child to be in foster care
3 more than fifteen months of the most recent twenty-two months
4 unless the court finds that it is in the child's best
5 interests; providing for adding, maintaining or removing
6 information from the statewide child abuse and neglect
7 statistical index or any other database maintained by the
8 Department of Health and Human Resources; providing for
9 modifications and requests for expunging of records; requiring
10 the secretary to promulgate legislative rules; providing
11 guidelines for unified child and family case plans;
12 confidentiality of records; and requiring a quarterly status
13 review hearing and yearly permanency hearings for
14 transitioning adults.

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

16 That §49-5-21 of the Code of West Virginia, 1931, as amended,
17 be repealed; that §49-6-5a of said code be repealed; that §49-1-3
18 of said code be amended and reenacted; that §49-2-17 of said code
19 be amended and reenacted; that §49-5-13 of said code be amended and
20 reenacted; that §49-5D-2, §49-5D-3 and §49-5D-3a of said code be
21 amended and reenacted; that said code be amended by adding thereto
22 two new sections, designated §49-5D-3b and §49-5D-3c; that §49-6-2,
23 §49-6-3, §49-6-5, §49-6-6, §49-6-8 and §49-6-12 of said code be
24 amended and reenacted; that §49-6A-5 of said code be amended and

1 reenacted; that said code be amended by adding thereto a new
2 section, designated §49-6A-12; that §49-6D-3 of said code be
3 amended and reenacted; that §49-7-1 of said code be amended and
4 reenacted; and that said code be amended by adding thereto a new
5 section, designated §49-7-36, all to read as follows:

6 **ARTICLE 1. PURPOSES AND DEFINITIONS.**

7 **§49-1-3. Definitions relating to abuse and neglect.**

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

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

14 (B) Sexual abuse or sexual exploitation;

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

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

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

23 (2) "Abusing parent" means a parent, guardian or other
24 custodian, regardless of his or her age, whose conduct, as alleged

1 in the petition charging child abuse or neglect, has been adjudged
2 by the court to constitute child abuse or neglect.

3 (3) "Battered parent" means a parent, guardian or other
4 custodian who has been judicially determined not to have condoned
5 the abuse or neglect and has not been able to stop the abuse or
6 neglect of the child or children due to being the victim of
7 domestic violence as defined by section two hundred two, article
8 twenty-seven, chapter forty-eight of this code, which domestic
9 violence was perpetrated by the person or persons determined to
10 have abused or neglected the child or children.

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

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

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

21 (B) Identifying, preventing and remedying conditions which
22 cause child abuse and neglect;

23 (C) Preventing the unnecessary removal of children from their
24 families by identifying family problems and assisting families in

1 resolving problems which could lead to a removal of children and a
2 breakup of the family;

3 (D) In cases where children have been removed from their
4 families, providing services to the children and the families so as
5 to reunify such children with their families or some portion
6 thereof;

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

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

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

16 (A) Child-appropriate/child-friendly facility: A child
17 advocacy center provides a comfortable, private, child-friendly
18 setting that is both physically and psychologically safe for
19 clients.

20 (B) Multidisciplinary team (MDT): A multidisciplinary team for
21 response to child abuse allegations includes representation from
22 the following: Law enforcement; child protective services;
23 prosecution; mental health; medical; victim advocacy; child
24 advocacy center.

1 (C) Organizational capacity: A designated legal entity
2 responsible for program and fiscal operations has been established
3 and implements basic sound administrative practices.

4 (D) Cultural competency and diversity: The CAC promotes
5 policies, practices and procedures that are culturally competent.
6 Cultural competency is defined as the capacity to function in more
7 than one culture, requiring the ability to appreciate, understand
8 and interact with members of diverse populations within the local
9 community.

10 (E) Forensic interviews: Forensic interviews are conducted in
11 a manner which is of a neutral, fact-finding nature and coordinated
12 to avoid duplicative interviewing.

13 (F) Medical evaluation: Specialized medical evaluation and
14 treatment are to be made available to CAC clients as part of the
15 team response, either at the CAC or through coordination and
16 referral with other specialized medical providers.

17 (G) Therapeutic intervention: Specialized mental health
18 services are to be made available as part of the team response,
19 either at the CAC or through coordination and referral with other
20 appropriate treatment providers.

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

1 (I) Case review: Team discussion and information sharing
2 regarding the investigation, case status and services needed by the
3 child and family are to occur on a routine basis.

4 (J) Case tracking: CACs must develop and implement a system
5 for monitoring case progress and tracking case outcomes for team
6 components: *Provided*, That a child advocacy center may establish
7 a safe exchange location for children and families who have a
8 parenting agreement or an order providing for visitation or custody
9 of the children that require a safe exchange location.

10 (7) "Court appointed special advocate program" means a
11 community organization that screens, trains and supervises CASA
12 volunteers to advocate for the best interests of children who are
13 involved in abuse and neglect proceedings. Court appointed special
14 advocate programs will be operated under the following guidelines:

15 (A) Standards: CASA programs shall be members in good standing
16 with the West Virginia Court Appointed Special Advocate
17 Association, Inc., and the National Court Appointed Special
18 Advocates Association and adhere to all standards set forth by
19 these entities.

20 (B) Organizational capacity: A designated legal entity
21 responsible for program and fiscal operations has been established
22 and implements basic sound administrative practice.

23 (C) Cultural competency and diversity: CASA programs promote
24 policies, practices and procedures that are culturally competent.
25 "Cultural competency" is defined as the capacity to function in
26 more than one culture, requiring the ability to appreciate,

1 understand and interact with members of diverse populations within
2 the local community.

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

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

7 (F) Training: Court appointed special advocates shall serve as
8 volunteers without compensation and shall receive training
9 consistent with state and nationally developed standards.

10 (G) Volunteer immunity: A court appointed special advocate
11 volunteer is immune from civil liability to the full extent
12 provided in the federal Volunteer Protection Act of 1997.

13 ~~(7)~~ (8) "Imminent danger to the physical well being of the
14 child" means an emergency situation in which the welfare or the
15 life of the child is threatened. Such emergency situation exists
16 when there is reasonable cause to believe that any child in the
17 home is or has been sexually abused or sexually exploited, or
18 reasonable cause to believe that the following conditions threaten
19 the health or life of any child in the home:

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

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

25 (C) Nutritional deprivation;

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

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

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

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

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

11 ~~(8)~~ (9) "Legal guardianship" means the permanent relationship
12 between a child and caretaker, established by order of the circuit
13 court having jurisdiction over the child, pursuant to the
14 provisions of this chapter and chapter forty-eight of this code.

15 ~~(9)~~ (10) "Multidisciplinary team" means a group of professionals
16 and paraprofessionals representing a variety of disciplines who
17 interact and coordinate their efforts to identify, diagnose and
18 treat specific cases of child abuse and neglect. Multidisciplinary
19 teams may include, but are not limited to, medical, educational,
20 child care and law-enforcement personnel, social workers,
21 psychologists and psychiatrists. Their goal is to pool their
22 respective skills in order to formulate accurate diagnoses and to
23 provide comprehensive coordinated treatment with continuity and
24 followup for both parents and children. "Community team" means a
25 multidisciplinary group which addresses the general problem of
26 child abuse and neglect in a given community and may consist of

1 several multidisciplinary teams with different functions.

2 ~~(10)~~ (11) (A) "Neglected child" means a child:

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

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

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

16 ~~(11)~~ (12) "Parent" means an individual defined has a parent by
17 law or on the basis of a biological relationship, marriage to a
18 person with a biological relationship, legal adoption or other
19 recognized grounds.

20 ~~(12)~~ (13) "Parental rights" means any and all rights and
21 duties regarding a parent to a minor child, including, but not
22 limited to, custodial rights and visitational rights and rights to
23 participate in the decisions affecting a minor child.

24 ~~(13)~~ (14) "Parenting skills" means a parent's competencies in
25 providing physical care, protection, supervision and psychological
26 support appropriate to a child's age and state of development.

1 ~~(14)~~ (15) "Sexual abuse" means:

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

9 (I) Sexual intercourse;

10 (ii) Sexual intrusion; or

11 (iii) Sexual contact;

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

19 (I) Sexual intercourse;

20 (ii) Sexual intrusion; or

21 (iii) Sexual contact;

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

1 for the purpose of affronting or alarming the child.

2 ~~(15)~~ (16) "Sexual contact" means sexual contact as that term
3 is defined in section one, article eight-b, chapter sixty-one of
4 this code.

5 ~~(16)~~ (17) "Sexual exploitation" means an act whereby:

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

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

16 ~~(17)~~ (18) "Sexual intercourse" means sexual intercourse as
17 that term is defined in section one, article eight-b, chapter
18 sixty-one of this code.

19 ~~(18)~~ (19) "Sexual intrusion" means sexual intrusion as that
20 term is defined in section one, article eight-b, chapter sixty-one
21 of this code.

22 ~~(19)~~ (20) "Placement" means any temporary or permanent
23 placement of a child who is in the custody of the state in any
24 foster home, group home or other facility or residence.

25 ~~(20)~~ (21) "Serious physical abuse" means bodily injury which
26 creates a substantial risk of death, which causes serious or

1 prolonged disfigurement, prolonged impairment of health or
2 prolonged loss or impairment of the function of any bodily organ.

3 ~~(21)~~ (22) "Siblings" means children who have at least one
4 biological parent in common or who have been legally adopted by the
5 same parents or parent.

6 ~~(22)~~ (23) "Time-limited reunification services" means
7 individual, group and family counseling, inpatient, residential or
8 outpatient substance abuse treatment services, mental health
9 services, assistance to address domestic violence, services
10 designed to provide temporary child care and therapeutic services
11 for families, including crisis nurseries and transportation to or
12 from any such services, provided during fifteen of the most recent
13 twenty-two months a child has been in foster care, as determined by
14 the earlier date of the first judicial finding that the child is
15 subjected to abuse or neglect, or the date which is sixty days
16 after the child is removed from home.

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

19 **§49-2-17. Subsidized adoption and legal guardianship.**

20 (a) From funds appropriated to the Department of Health and
21 Human Resources, the secretary shall establish a system of
22 assistance for facilitating the adoption or legal guardianship of
23 children. An adoption subsidy shall be available for children who
24 are legally free for adoption and who are dependents of the
25 department or a child welfare agency licensed to place children for
26 adoption. A legal guardianship subsidy shall not require the

1 surrender or termination of parental rights. For either subsidy,
2 the children must be in special circumstances ~~either~~ because they
3 one or more of the following conditions prevent adoption or legal
4 guardianship placement:

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

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

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

10 (2) They are emotionally disturbed;

11 (3) They are older children;

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

13 (5) They are a member of a racial or ethnic minority.; ~~or~~

14 ~~(6) They have any combination of these conditions.~~

15 (b) The department shall provide assistance in the form of
16 subsidies or other services to parents who are found and approved
17 for adoption or legal guardianship of a child certified as eligible
18 for subsidy by the department, but before the final decree of
19 adoption or order of legal guardianship is entered, there must be
20 a written agreement between the family entering into the subsidized
21 adoption or legal guardianship and the department. Adoption or
22 legal guardianship subsidies in individual cases may commence with
23 the adoption or legal guardianship placement, and will vary with
24 the needs of the child as well as the availability of other
25 resources to meet the child's needs. The subsidy may be for
26 special services only, or for money payments, and either for a

1 limited period, or for a long term, or for any combination of the
2 foregoing. The specific financial terms of the subsidy shall be
3 included in the agreement between the department and the adoptive
4 parents or legal guardians. The agreement may recognize and provide
5 for direct payment by the department of attorney's fees to an
6 attorney representing the adoptive parent. The amount of the time-
7 limited or long-term subsidy may in no case exceed that which would
8 be allowable from time to time for such child under foster family
9 care or, in the case of a special service, the reasonable fee for
10 the service rendered. In addition, the department shall provide
11 either Medicaid or other health insurance coverage for any special
12 needs child for whom there is an adoption or legal guardianship
13 assistance agreement between the department and the adoptive parent
14 or legal guardian and who the department determines cannot be
15 placed with an adoptive parent or legal guardian without medical
16 assistance because the child has special needs for medical, mental
17 health or rehabilitative care.

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

24 ~~In all other cases, (c)~~ After reasonable efforts have been
25 made without the use of subsidy and no appropriate adoptive family
26 or legal guardian has been found for the child, the department

1 shall certify the child as eligible for a subsidy in the event of
2 adoption or a legal guardianship: Provided, that reasonable
3 efforts to place a child without a subsidy shall not be required if
4 it is in the best interest of the child because of such factors as
5 the existence of significant emotional ties developed between the
6 child and the prospective parent or guardian while in care as a
7 foster child.

8 (d) If the child is the dependent of a voluntary licensed
9 child-placing agency, that agency shall present to the department
10 ~~evidence of significant emotional ties between the child and his~~
11 ~~foster parents or evidence of~~ the inability to place the child for
12 adoption or legal guardianship without the use of subsidy or
13 evidence that such efforts would not be in the best interests of
14 the child. In no event shall the value of the services and
15 assistance provided by the department under an agreement pursuant
16 to this section exceed the value of assistance available to foster
17 families in similar circumstances. All records regarding subsidized
18 adoptions or legal guardianships shall be held in confidence;
19 however, records regarding the payment of public funds for
20 subsidized adoptions or legal guardianships shall be available for
21 public inspection provided they do not directly or indirectly
22 identify any child or persons receiving funds for such child.

23 **ARTICLE 5. JUVENILE PROCEEDINGS.**

24 **§49-5-13. Disposition of juvenile delinquents; appeal.**

25 (a) In aid of disposition of juvenile delinquents, the
26 juvenile probation officer assigned to the court shall, upon

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

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

16 (1) Dismiss the petition;

17 (2) Refer the juvenile and the juvenile's parent or custodian
18 to a community agency for needed assistance and dismiss the
19 petition;

20 (3) Upon a finding that the juvenile is in need of extra-
21 parental supervision: (A) Place the juvenile under the supervision
22 of a probation officer of the court or of the court of the county
23 where the juvenile has his or her usual place of abode or other
24 person while leaving the juvenile in custody of his or her parent
25 or custodian; and (B) prescribe a program of treatment or therapy
26 or limit the juvenile's activities under terms which are reasonable

1 and within the child's ability to perform, including participation
2 in the litter control program established pursuant to section
3 three, article fifteen-a, chapter twenty-two of this code or other
4 appropriate programs of community service;

5 (4) Upon a finding that a parent or custodian is not willing
6 or able to take custody of the juvenile, that a juvenile is not
7 willing to reside in the custody of his or her parent or custodian
8 or that a parent or custodian cannot provide the necessary
9 supervision and care of the juvenile, the court may place the
10 juvenile in temporary foster care or temporarily commit the
11 juvenile to the department or a child welfare agency. The court
12 order shall state that continuation in the home is contrary to the
13 best interest of the juvenile and why; and whether or not the
14 department made a reasonable effort to prevent the placement or
15 that the emergency situation made such efforts unreasonable or
16 impossible. Whenever the court transfers custody of a youth to the
17 department, an appropriate order of financial support by the
18 parents or guardians shall be entered in accordance with section
19 five, article seven of this chapter and guidelines promulgated by
20 the Supreme Court of Appeals;

21 (5) Upon a finding that the best interests of the juvenile or
22 the welfare of the public require it, and upon an adjudication of
23 delinquency pursuant to subdivision (1), section four, article one
24 of this chapter, the court may commit the juvenile to the custody
25 of the Director of the Division of Juvenile Services for placement
26 in a juvenile services facility for the treatment, instruction and

1 rehabilitation of juveniles: *Provided*, That the court maintains
2 discretion to consider alternative sentencing arrangements.
3 Notwithstanding any provision of this code to the contrary, in the
4 event that the court determines that it is in the juvenile's best
5 interests or required by the public welfare to place the juvenile
6 in the custody of the Division of Juvenile Services, the court
7 shall provide the Division of Juvenile Services with access to all
8 relevant court orders and records involving the underlying offense
9 or offenses for which the juvenile was adjudicated delinquent,
10 including sentencing and presentencing reports and evaluations, and
11 provide the division with access to school records, psychological
12 reports and evaluations, medical reports and evaluations or any
13 other such records as may be in the court's possession as would
14 enable the Division of Juvenile Services to better assess and
15 determine the appropriate counseling, education and placement needs
16 for the juvenile offender. Commitments shall not exceed the maximum
17 term for which an adult could have been sentenced for the same
18 offense and any such maximum allowable sentence to be served in a
19 juvenile correctional facility may take into account any time
20 served by the juvenile in a detention center pending adjudication,
21 disposition or transfer. The order shall state that continuation in
22 the home is contrary to the best interests of the juvenile and why;
23 and whether or not the state department made a reasonable effort to
24 prevent the placement or that the emergency situation made such
25 efforts unreasonable or impossible; or

1 (6) After a hearing conducted under the procedures set out in
2 subsections (c) and (d), section four, article five, chapter
3 twenty-seven of this code, commit the juvenile to a mental health
4 facility in accordance with the juvenile's treatment plan; the
5 director of the mental health facility may release a juvenile and
6 return him or her to the court for further disposition. The order
7 shall state that continuation in the home is contrary to the best
8 interests of the juvenile and why; and whether or not the state
9 department made a reasonable effort to prevent the placement or
10 that the emergency situation made such efforts unreasonable or
11 impossible.

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

16 ~~(c)~~ (d) The disposition of the juvenile shall not be affected
17 by the fact that the juvenile demanded a trial by jury or made a
18 plea of denial. Any dispositional order is subject to appeal to the
19 Supreme Court of Appeals.

20 ~~(d)~~ (e) Following disposition, the court shall inquire whether
21 the juvenile wishes to appeal and the response shall be
22 transcribed; a negative response shall not be construed as a
23 waiver. The evidence shall be transcribed as soon as practicable
24 and made available to the juvenile or his or her counsel, if the
25 same is requested for purposes of further proceedings. A judge may
26 grant a stay of execution pending further proceedings.

1 ~~(e)~~ (f) Notwithstanding any other provision of this code to
2 the contrary, if a juvenile charged with delinquency under this
3 chapter is transferred to adult jurisdiction and there tried and
4 convicted, the court may make its disposition in accordance with
5 this section in lieu of sentencing such person as an adult.

6 **ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

7 **§49-5D-2. Multidisciplinary investigative teams; establishment;**
8 **procedures; coordination between agencies.**

9 (a) The prosecuting attorney shall establish a
10 multidisciplinary investigative team in each county. The
11 multidisciplinary team shall be headed and directed by the
12 prosecuting attorney or his or her designee and shall include as
13 permanent members the prosecuting attorney or his or her designee,
14 a local child protective services caseworker from the Department of
15 Health and Human Resources; a local law-enforcement officer
16 employed by a law-enforcement agency in the county; a child
17 advocacy center representative, where available; a health care
18 provider with pediatric and child abuse expertise, where available;
19 a mental health professional with pediatric and child abuse
20 expertise, where available; an educator and ~~where appropriate to~~
21 ~~the particular case under consideration and available~~ a
22 representative from ~~the~~ a licensed domestic violence program
23 serving the county. The Department of Health and Human Resources
24 and any local law-enforcement agency or agencies selected by the
25 prosecuting attorney shall appoint their representatives to the
26 team by submitting a written designation of the team to the

1 prosecuting attorney of each county within thirty days of the
2 prosecutor's request that the appointment be made. Within fifteen
3 days of the appointment, the prosecuting attorney shall notify the
4 chief judge of each circuit within which the county is situated of
5 the names of the representatives so appointed. Any other person or
6 any other appointee of an agency who may contribute to the team's
7 efforts to assist a minor child as may be determined by the
8 permanent members of the team may also be appointed as a member of
9 the team by the prosecutor with notification to the chief judge.

10 (b) Any permanent member of the multidisciplinary
11 investigative team shall refer all cases of accidental death of any
12 child reported to their agency and all cases when a child dies
13 while in the custody of the state for investigation and review by
14 the team. The multidisciplinary investigative team shall meet at
15 regular intervals at least once every calendar month.

16 (c) The investigative team shall be responsible for
17 coordinating or cooperating in the initial and ongoing
18 investigation of all civil and criminal allegations pertinent to
19 cases involving child sexual assault, child sexual abuse, child
20 abuse and neglect and shall make a recommendation to the county
21 prosecuting attorney as to the initiation or commencement of a
22 civil petition and/or criminal prosecution.

23 (d) State, county and local agencies shall provide the
24 multidisciplinary investigative team with any information requested
25 in writing by the team as allowable by law or upon receipt of a
26 certified copy of the circuit court's order directing said agencies

1 to release information in its possession relating to the child.
2 The team shall assure that all information received and developed
3 in connection with the provisions of this article remains
4 confidential. For purposes of this section, the term
5 "confidential" shall be construed in accordance with the provisions
6 of section one, article seven of this chapter.

7 **49-5D-3. Multidisciplinary treatment planning process.**

8 (a) (1) A multidisciplinary treatment planning process for
9 cases initiated pursuant to articles five and six of this chapter
10 shall be established within each county of the state, either
11 separately or in conjunction with a contiguous county, by the
12 secretary of the department with advice and assistance from the
13 prosecutor's advisory council as set forth in section four, article
14 four, chapter seven of this code. The Division of Juvenile Services
15 shall establish a similar treatment planning process for
16 delinquency cases in which the juvenile has been committed to ~~the~~
17 its custody of the director of the division custody, including
18 those cases in which the juvenile has been committed for
19 examination and diagnosis.

20 (2) The provisions of this section do not require a
21 multidisciplinary team meeting to be held prior to temporarily
22 placing a child or juvenile out-of-home under exigent circumstances
23 or upon a court order placing a juvenile in a facility operated by
24 the Division of Juvenile Services.

25 ~~(2)~~ (b) The case manager in the Department of Health and Human
26 Resources for the child, family or juvenile or the case manager in

1 the Division of Juvenile Services for a juvenile shall convene a
2 treatment team in each case when it is required pursuant to this
3 article. ~~Treatment teams shall assess, plan and implement a~~
4 ~~comprehensive, individualized service plan for children who are~~
5 ~~victims of abuse or neglect and their families when a judicial~~
6 ~~proceeding has been initiated involving the child or children for~~
7 ~~juveniles and their families involved in status offense or~~
8 ~~delinquency proceedings when, in a status offense proceeding, the~~
9 ~~court refers the juvenile for services pursuant to sections eleven~~
10 ~~and eleven-a, article five of this chapter and when, in a~~
11 ~~delinquency proceeding, the court is considering placing the~~
12 ~~juvenile in the department's custody or placing the juvenile out of~~
13 ~~home at the department's expense pursuant to the provisions of~~
14 ~~section thirteen of said article. In any such status offense or~~
15 ~~delinquency case, the juvenile probation officer shall notify the~~
16 ~~local office of the Department of Health and Human Resources and~~
17 ~~the Division of Juvenile Services at least five working days before~~
18 ~~the court proceeding in order to allow the multidisciplinary~~
19 ~~treatment team to convene and develop a comprehensive~~
20 ~~individualized service plan for the child: *Provided,* That such~~
21 ~~notice is not required in cases where the child is already in state~~
22 ~~custody or there exist exigent circumstances which justify taking~~
23 ~~the child immediately into custody without a judicial proceeding.~~
24 ~~In developing an individualized service plan for a child, the team~~
25 ~~shall utilize a uniform comprehensive assessment of the child. The~~

~~1 department shall adopt a standard uniform comprehensive assessment
2 instrument or protocol to be used by treatment teams.~~

3 ~~(3) Prior to disposition, in each case in which a treatment
4 planning team has been convened, the team shall advise the court as
5 to the types of services the team has determined are needed and the
6 type of placement, if any, which will best serve the needs of the
7 child. If the team determines that an out-of-home placement will
8 best serve the needs of the child, the team shall first consider
9 placement at facilities or programs located within the state. The
10 team may only recommend placement in an out-of-state facility if it
11 concludes, after considering the best interests and overall needs
12 of the child, that there are no available and suitable in-state
13 facilities which can satisfactorily meet the specific needs of the
14 child.~~

15 ~~(b) Each treatment team shall be convened by the child's or
16 family's case manager in the Department of Health and Human
17 Resources or the Division of Juvenile Services if the juvenile has
18 been ordered into its custody for examination and diagnosis
19 pursuant to section thirteen, article five of this chapter. The
20 treatment team shall consist of the child's custodial parent or
21 parents, guardian or guardians, other immediate family members, the
22 attorney or attorneys representing the child, the parent or parents
23 of the child, the child's attorney, the guardian ad litem, if any,
24 the prosecuting attorney or his or her designee, a member of a
25 child advocacy center when the child has been processed through the
26 child advocacy center program(s) and, where appropriate to the~~

1 ~~particular case under consideration and available, a court-~~
2 ~~appointed special advocate, a member of a child advocacy center, an~~
3 ~~appropriate school official and any other person or an agency~~
4 ~~representative who may assist in providing recommendations for the~~
5 ~~particular needs of the child and family. The child may participate~~
6 ~~in multidisciplinary treatment team meetings if such is deemed~~
7 ~~appropriate by the multidisciplinary treatment team. For purposes~~
8 ~~of delinquency proceedings, the juvenile probation officer shall be~~
9 ~~a member of the treatment team.~~ Any person authorized by the
10 provisions of this chapter to convene a multidisciplinary team
11 meeting may seek and receive an order of the circuit court setting
12 such meeting and directing attendance. Members of the
13 multidisciplinary team may participate in team meetings by
14 telephone or video conferencing: *Provided, That* ~~a member of a~~
15 ~~child advocacy center should participate in any case when~~
16 ~~appropriate to the particular case under consideration. That the~~
17 provisions of this subsection do not prevent the respective
18 agencies from designating a person other than the case manager as
19 a facilitator for treatment team meetings.

20 (c) The treatment team shall coordinate its activities and
21 membership with local family resource networks and coordinate with
22 other local and regional child and family service planning
23 committees to assure the efficient planning and delivery of child
24 and family services on a local and regional level.

25 (d) ~~State, county and local agencies shall provide the~~
26 ~~multidisciplinary treatment teams with any information requested in~~

1 ~~writing by the team as allowable by law or upon receipt of a~~
2 ~~certified copy of the circuit court's order directing said agencies~~
3 ~~to release information in its possession relating to the child. The~~
4 ~~team shall assure that all information received and developed in~~
5 ~~connection with the provisions of this article remain confidential.~~
6 ~~For purposes of this section, the term "confidential" shall be~~
7 ~~construed in accordance with the provisions of section one, article~~
8 ~~seven of this chapter. The multidisciplinary treatment team shall~~
9 ~~be afforded access to information in the possession of the~~
10 ~~Department of Health and Human Services, Division of Juvenile~~
11 ~~Services, law-enforcement agencies and other state, county and~~
12 ~~local agencies; and the agencies shall cooperate in the sharing of~~
13 ~~information, as may be provided in sections three(d) and six,~~
14 ~~article five-D and section one, article seven, all of chapter~~
15 ~~forty-nine, and any other relevant provision of law. Any~~
16 ~~multidisciplinary team member who acquires confidential information~~
17 ~~shall not disclose such information except as permitted by the~~
18 ~~provisions of this code or court rules.~~

19 ~~(e) Nothing in this section may be construed to require a~~
20 ~~multidisciplinary team meeting to be held prior to temporarily~~
21 ~~placing a child out of home under exigent circumstances or upon a~~
22 ~~court order placing the juvenile in a juvenile facility operated by~~
23 ~~the Division of Juvenile Services.~~

24 **§49-5D-3a. Recommendation of team to the court; hearing**
25 **requirement; required findings.**

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

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

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

1 indicated in the case plan. Upon receiving objections, the court
2 will conduct a hearing pursuant to paragraph (a) of this section.

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

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

14 (b) In a case initiated pursuant to article six of this
15 chapter, the treatment team shall consist of the child or family's
16 case manager in the Department of Health and Human Resources, the
17 adult respondent or respondents, the child's parent or parents,
18 guardians, any copetitioners, custodial relatives of the child,
19 foster or preadoptive parents, any attorney representing an adult
20 respondent or other member of the treatment team, the child's
21 counsel or the guardian ad litem, the prosecuting attorney or his
22 or her designee, a member of a child advocacy center when the child
23 has been processed through the child advocacy center program or
24 programs or it is otherwise appropriate that a member of the child
25 advocacy center participate, any court-appointed special advocate
26 assigned to a case, any other person entitled to notice and the

1 right to be heard, an appropriate school official and any other
2 person or agency representative who may assist in providing
3 recommendations for the particular needs of the child and family,
4 including domestic violence service providers. The child may
5 participate in multidisciplinary treatment team meetings if the
6 child's participation is deemed appropriate by the
7 multidisciplinary treatment team. Unless otherwise ordered by the
8 court, a party whose parental rights have been terminated and his
9 or her attorney shall not be given notice of a multidisciplinary
10 treatment team meeting and does not have the right to participate
11 in any treatment team meeting.

12 (c) Prior to disposition in each case which a treatment
13 planning team has been convened, the team shall advise the court as
14 to the types of services the team has determined are needed and the
15 type of placement, if any, which will best serve the needs of the
16 child. If the team determines that an out-of-home placement will
17 best serve the needs of the child, the team shall first consider
18 placement at facilities or programs located within the state. The
19 team may only recommend placement in an out-of-state facility if it
20 concludes, after considering the best interests and overall needs
21 of the child, that there are no available and suitable in-state
22 facilities which can satisfactorily meet the specific needs of the
23 child.

24 (d) The multidisciplinary treatment team shall submit written
25 reports to the court as required by the rules governing this type
26 of proceeding or by the court, and shall meet as often as deemed

1 necessary but at least every three months until the case is
2 dismissed from the docket of the court. The multidisciplinary
3 treatment team shall be available for status conferences and
4 hearings as required by the court.

5 (e) If a respondent or copetitioner admits the underlying
6 allegations of child abuse or neglect, or both abuse and neglect,
7 in the multidisciplinary treatment planning process, his or her
8 statements not be used in any subsequent criminal proceeding
9 against him or her, except for perjury or false swearing.

10 **§49-5D-3c. Multidisciplinary treatment process for status**
11 **offenders or delinquents.**

12 (a) (1) When a juvenile is adjudicated as a status offender
13 pursuant to section eleven-d, article five of this chapter, the
14 Department of Health and Human Resources shall promptly convene a
15 multidisciplinary treatment team and conduct an assessment,
16 utilizing a standard uniform comprehensive assessment instrument or
17 protocol, to determine the juvenile's mental and physical
18 condition, maturity and education level, home and family
19 environment, rehabilitative needs and recommended service plan.
20 Upon completion of the assessment, the treatment team shall prepare
21 and implement a comprehensive, individualized service plan for the
22 juvenile.

23 (2) When a juvenile is adjudicated as a delinquent or has been
24 granted an improvement period pursuant to section nine, article
25 five of this chapter, the court, either upon its own motion or
26 motion of a party, may require the Department of Health and Human

1 Resources to convene a multidisciplinary treatment team and conduct
2 an assessment, utilizing a standard uniform comprehensive
3 assessment instrument or protocol, to determine the juvenile's
4 mental and physical condition, maturity and education level, home
5 and family environment, rehabilitative needs and recommended
6 service plan. A referral to the Department of Health and Human
7 Resources to convene a multidisciplinary treatment team and to
8 conduct such an assessment shall be made when the court is
9 considering placing the juvenile in the department's custody or
10 placing the juvenile out-of-home at the department's expense
11 pursuant to section thirteen, article five of this chapter. In any
12 delinquency proceeding in which the court requires the Department
13 of Health and Human Resources to convene a multidisciplinary
14 treatment team, the probation officer shall notify the department
15 at least fifteen working days before the court proceeding in order
16 to allow the department sufficient time to convene and develop an
17 individualized service plan for the juvenile.

18 (3) When a juvenile has been adjudicated and committed to the
19 custody of the Director of the Division of Juvenile Services,
20 including those cases in which the juvenile has been committed for
21 examination and diagnosis, the Division of Juvenile Services shall
22 promptly convene a multidisciplinary treatment team and conduct an
23 assessment, utilizing a standard uniform comprehensive assessment
24 instrument or protocol, to determine the juvenile's mental and
25 physical condition, maturity and education level, home and family
26 environment, rehabilitative needs and recommended service plan.

1 Upon completion of the assessment, the treatment team shall prepare
2 and implement a comprehensive, individualized service plan for the
3 juvenile.

4 (4) (A) The rules of juvenile procedure shall govern the
5 procedure for obtaining an assessment of a juvenile, preparing an
6 individualized service plan and submitting the plan and assessment
7 to the court.

8 (B) In juvenile proceedings conducted pursuant to article five
9 of this chapter, the treatment team shall consist of the juvenile,
10 the juvenile's case manager in the Department of Health and Human
11 Resources or the Division of Juvenile Services, the juvenile's
12 parent or parents, guardian or guardians or custodial relatives,
13 the juvenile's attorney, any attorney representing a member of the
14 treatment team, the prosecuting attorney or his or her designee, an
15 appropriate school official and any other person or agency
16 representative who may assist in providing recommendations for the
17 particular needs of the juvenile and family, including domestic
18 violence service providers. In delinquency proceedings, the
19 probation officer shall be a member of a treatment team. When
20 appropriate, the juvenile case manager in the Department of Health
21 and Human Resources and the Division of Juvenile Services shall
22 cooperate in conducting multidisciplinary treatment team meetings
23 when it is in the juvenile's best interest.

24 (C) Prior to disposition, in each case in which a treatment
25 planning team has been convened, the team shall advise the court as
26 to the types of services the team has determined are needed and

1 type of placement, if any, which will best serve the needs of the
2 child. If the team determines that an out-of-home placement will
3 best serve the needs of the child, the team shall first consider
4 placement at facilities or programs located within the state. The
5 team may only recommend placement in an out-of-state facility if it
6 concludes, after considering the best interests and overall needs
7 of the child, that there are no available and suitable in-state
8 facilities which can satisfactorily meet the specific needs of the
9 child.

10 (D) The multidisciplinary treatment team shall submit written
11 reports to the court as required by applicable law or by the court,
12 shall meet with the court at least every three months, as long as
13 the juvenile remains in the legal or physical custody of the state,
14 and shall be available for status conferences and hearings as
15 required by the court.

16 (E) In any case in which a juvenile has been placed out of his
17 or her home except for a temporary placement in a shelter or
18 detention center, the multidisciplinary treatment team shall
19 cooperate with the state agency in whose custody the juvenile is
20 placed to develop an after-care plan. The rules of juvenile
21 procedure and section twenty, article five, chapter forty-nine of
22 the code shall govern the development of an after-care plan for a
23 juvenile, the submission of the plan to the court and any objection
24 to the after-care plan.

25 (F) If a juvenile respondent admits the underlying allegations
26 of the case initiated pursuant to article five, chapter forty-nine

1 of this code in the multidisciplinary treatment planning process,
2 his or her statements shall not be used in any juvenile or criminal
3 proceedings against the juvenile, except for perjury or false
4 swearing.

5 **§49-6-2. Petition to court when child believed neglected or abused**

6 **-- Right to counsel; improvement period; hearing;**
7 **priority of proceeding; transcript.**

8 (a) In any proceeding under the provisions of this article,
9 the child, his or her or parents and his or her legally established
10 custodian or other persons standing in loco parentis to him or her
11 shall have the right to be represented by counsel at every stage of
12 the proceedings and shall be informed by the court of their right
13 to be so represented and that if they cannot pay for the services
14 of counsel, that counsel will be appointed. Counsel of the child
15 shall be appointed in the initial order. If the order gives
16 physical custody of the child to the state, the initial order shall
17 appoint counsel for the parents or, if the parents are separated or
18 divorced, the parents or parent or other person or persons standing
19 in loco parentis who had physical custody of the child for the
20 majority of the time in the period immediately preceding the
21 petition: *Provided*, That such representation shall only continue
22 after the first appearance if the parent or other persons standing
23 in loco parentis cannot pay for the services of counsel. Counsel
24 for other parties shall only be appointed upon request for
25 appointment of counsel. If the requesting parties have not retained
26 counsel and cannot pay for the services of counsel, the court

1 shall, by order entered of record, appoint an attorney or attorneys
2 to represent the other party or parties and so inform the parties.
3 Under no circumstances may the same attorney represent both the
4 child and the other party or parties, nor shall the same attorney
5 represent both parents or custodians. However, one attorney may
6 represent both parents or custodians where both parents or
7 guardians consent to this representation after the attorney fully
8 discloses to the client the possible conflict and where the
9 attorney assures the court that she or he is able to represent each
10 client without impairing her or his professional judgment; however,
11 if more than one child from a family is involved in the proceeding,
12 one attorney may represent all the children. A parent who has been
13 judicially determined to be battered shall be entitled to his or
14 her own attorney. The court may allow to each attorney so appointed
15 a fee in the same amount which appointed counsel can receive in
16 felony cases. Effective July 1, 2012, any attorney appointed
17 pursuant to this section shall ~~by the first day of July, one~~
18 ~~thousand nine hundred ninety-three, and three hours per year each~~
19 ~~year thereafter,~~ receive a minimum of ~~three~~ eight hours of
20 continuing legal education training ~~on representation of children,~~
21 ~~child abuse and neglect~~ per reporting period on child abuse and
22 neglect procedure and practice. In addition to this requirement,
23 after July 1, 2013, any attorney appointed to represent a child
24 must first complete training on representation of children that is
25 approved by the administrative office of the Supreme Court of
26 Appeals. The Supreme Court of Appeals shall develop procedures for

1 approval and certification of training required under this section
2 by July 1, 2012: Provided, however, That where no attorney who has
3 completed this training is available for such appointment, the
4 court shall appoint a competent attorney with demonstrated
5 knowledge of child welfare law to represent the parent or child.
6 Any attorney appointed pursuant to this section shall perform all
7 duties required as an attorney licensed to practice law in the
8 State of West Virginia.

9 (b) In any proceeding brought pursuant to the provisions of
10 this article, the court may grant any respondent an improvement
11 period in accord with the provisions of this article. During such
12 period, the court may require temporary custody with a responsible
13 person which has been found to be a fit and proper person for the
14 temporary custody of the child or children or the state department
15 or other agency during the improvement period. An order granting
16 such improvement period shall require the department to prepare and
17 submit to the court a family case plan in accordance with the
18 provisions of section three, article six-d of this chapter.

19 (c) In any proceeding pursuant to the provisions of this
20 article, the party or parties having custodial or other parental
21 rights or responsibilities to the child shall be afforded a
22 meaningful opportunity to be heard, including the opportunity to
23 testify and to present and cross-examine witnesses. The petition
24 shall not be taken as confessed. A transcript or recording shall be
25 made of all proceedings unless waived by all parties to the
26 proceeding. The rules of evidence shall apply. Where relevant, the

1 court shall consider the efforts of the state department to remedy
2 the alleged circumstances. At the conclusion of the hearing, the
3 court shall make a determination based upon the evidence and shall
4 make findings of fact and conclusions of law as to whether such
5 child is abused or neglected and, if applicable, whether the
6 parent, guardian, or custodian is a battered parent, all of which
7 shall be incorporated into the order of the court. The findings
8 must be based upon conditions existing at the time of the filing of
9 the petition and proven by clear and convincing proof.

10 (d) Any petition filed and any proceeding held under the
11 provisions of this article shall, to the extent practicable, be
12 given priority over any other civil action before the court, except
13 proceedings under article two-a, chapter forty-eight of this code
14 and actions in which trial is in progress. Any petition filed under
15 the provisions of this article shall be docketed immediately upon
16 filing. Any hearing to be held at the end of an improvement period
17 and any other hearing to be held during any proceedings under the
18 provisions of this article shall be held as nearly as practicable
19 on successive days and, with respect to said hearing to be held at
20 the end of an improvement period, shall be held as close in time as
21 possible after the end of said improvement period and shall be held
22 within sixty days of the termination of such improvement period.

23 (e) Following the court's determination, it shall be inquired
24 of the parents or custodians whether or not appeal is desired and
25 the response transcribed. A negative response shall not be
26 construed as a waiver. The evidence shall be transcribed and made

1 available to the parties or their counsel as soon as practicable,
2 if the same is required for purposes of further proceedings. If an
3 indigent person intends to pursue further proceedings, the court
4 reporter shall furnish a transcript of the hearing without cost to
5 the indigent person if an affidavit is filed stating that he or she
6 cannot pay therefor.

7 **§49-6-3. Petition to court when child believed neglected or abused**

8 **-- Temporary custody.**

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

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

17 (2) There are no reasonably available alternatives to removal
18 of the child, including, but not limited to, the provision of
19 medical, psychiatric, psychological or homemaking services in the
20 child's present custody: *Provided*, That where the alleged abusing
21 person, if known, is a member of a household, the court shall not
22 allow placement pursuant to this section of the child or children
23 in said home unless the alleged abusing person is or has been
24 precluded from visiting or residing in said home by judicial order.
25 In a case where there is more than one child in the home, or in the
26 temporary care, custody or control of the alleged offending parent,

1 the petition shall so state, and notwithstanding the fact that the
2 allegations of abuse or neglect may pertain to less than all of
3 such children, each child in the home for whom relief is sought
4 shall be made a party to the proceeding. Even though the acts of
5 abuse or neglect alleged in the petition were not directed against
6 a specific child who is named in the petition, the court shall
7 order the removal of such child, pending final disposition, if it
8 finds that there exists imminent danger to the physical well being
9 of the child and a lack of reasonable available alternatives to
10 removal. The initial order directing such custody shall contain an
11 order appointing counsel and scheduling the preliminary hearing,
12 and upon its service shall require the immediate transfer of
13 custody of such child or children to the department or a
14 responsible relative which may include any parent, guardian, or
15 other custodian. The court order shall state:

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

18 (B) Whether or not the department made reasonable efforts to
19 preserve the family and prevent the placement or that the emergency
20 situation made such efforts unreasonable or impossible. The order
21 may also direct any party or the department to initiate or become
22 involved in services to facilitate reunification of the family.

23 (b) Whether or not the court orders immediate transfer of
24 custody as provided in subsection (a) of this section, if the facts
25 alleged in the petition demonstrate to the court that there exists
26 imminent danger to the child, the court may schedule a preliminary

1 hearing giving the respondents at least five days' actual notice.
2 If the court finds at the preliminary hearing that there are no
3 alternatives less drastic than removal of the child and that a
4 hearing on the petition cannot be scheduled in the interim period,
5 the court may order that the child be delivered into the temporary
6 custody of the department or a responsible person or agency found
7 by the court to be a fit and proper person for the temporary care
8 of the child for a period not exceeding sixty days: *Provided*, That
9 the court order shall state:

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

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

15 (3) Whether or not the department made reasonable efforts to
16 preserve the family and to prevent the placement or that the
17 emergency situation made such efforts unreasonable or impossible;
18 and

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

23 (c) If a child or children shall, in the presence of a child
24 protective service worker, be in an emergency situation which
25 constitutes an imminent danger to the physical well being of the
26 child or children, as that phrase is defined in section three,

1 article one of this chapter, and if such worker has probable cause
2 to believe that the child or children will suffer additional child
3 abuse or neglect or will be removed from the county before a
4 petition can be filed and temporary custody can be ordered, the
5 worker may, prior to the filing of a petition, take the child or
6 children into his or her custody without a court order: *Provided,*
7 That after taking custody of such child or children prior to the
8 filing of a petition, the worker shall forthwith appear before a
9 circuit judge or a juvenile referee of the county wherein custody
10 was taken, or if no such judge or referee be available, before a
11 circuit judge or a juvenile referee of an adjoining county, and
12 shall immediately apply for an order ratifying the emergency
13 custody of the child pending the filing of a petition. The circuit
14 court of every county in the state shall appoint at least one of
15 the magistrates of the county to act as a juvenile referee, who
16 shall serve at the will and pleasure of the appointing court, and
17 who shall perform the functions prescribed for such position by the
18 provisions of this subsection. The parents, guardians or custodians
19 of the child or children may be present at the time and place of
20 application for an order ratifying custody, and if at the time the
21 child or children are taken into custody by the worker, the worker
22 knows which judge or referee is to receive the application, the
23 worker shall so inform the parents, guardians or custodians. The
24 application for emergency custody may be on forms prescribed by the
25 Supreme Court of Appeals or prepared by the prosecuting attorney or
26 the applicant, and shall set forth facts from which it may be

1 determined that the probable cause described above in this
2 subsection exists. Upon such sworn testimony or other evidence as
3 the judge or referee deems sufficient, the judge or referee may
4 order the emergency taking by the worker to be ratified. If
5 appropriate under the circumstances, the order may include
6 authorization for an examination as provided for in subsection (b),
7 section four of this article. If a referee issues such an order,
8 the referee shall by telephonic communication have such order
9 orally confirmed by a circuit judge of the circuit or an adjoining
10 circuit who shall on the next judicial day enter an order of
11 confirmation. If the emergency taking is ratified by the judge or
12 referee, emergency custody of the child or children shall be vested
13 in the department until the expiration of the next two judicial
14 days, at which time any such child taken into emergency custody
15 shall be returned to the custody of his or her parent or guardian
16 or custodian unless a petition has been filed and custody of the
17 child has been transferred under the provisions of section three of
18 this article.

19 (d) For purposes of the court's consideration of temporary
20 custody pursuant to the provisions of subsection (a) or (b) of this
21 section, the department is not required to make reasonable efforts
22 to preserve the family if the court determines:

23 (1) The parent has subjected the child, another child of the
24 parent or any other child residing in the same household or under
25 the temporary or permanent custody of the parent to aggravated

1 circumstances which include, but are not limited to, abandonment,
2 torture, chronic abuse and sexual abuse;

3 (2) The parent has:

4 (A) Committed murder of the child's other parent, guardian or
5 custodian, another child of the parent or any other child residing
6 in the same household or under the temporary or permanent custody
7 of the parent;

8 (B) Committed voluntary manslaughter of the child's other
9 parent, guardian or custodian, another child of the parent or any
10 other child residing in the same household or under the temporary
11 or permanent custody of the parent;

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

15 (D) Committed unlawful or malicious wounding that results in
16 serious bodily injury to the child, the child's other parent,
17 guardian or custodian, to another child of the parent or any other
18 child residing in the same household or under the temporary or
19 permanent custody of the parent; ~~or~~

20 (E) Committed sexual assault or sexual abuse of the child, the
21 child's other parent, guardian or custodian, another child of the
22 parent or any other child residing in the same household or under
23 the temporary or permanent custody of the parent; or

24 (F) Has been required by state or federal law to register with
25 a sex offender registry.

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

3 **§49-6-5. Disposition of neglected or abused children.**

4 (a) Following a determination pursuant to section two of this
5 article wherein the court finds a child to be abused or neglected,
6 the department shall file with the court a copy of the child's case
7 plan, including the permanency plan for the child. The term case
8 plan means a written document that includes, where applicable, the
9 requirements of the family case plan as provided for in section
10 three, article six-d of this chapter and that also includes at
11 least the following: A description of the type of home or
12 institution in which the child is to be placed, including a
13 discussion of the appropriateness of the placement and how the
14 agency which is responsible for the child plans to assure that the
15 child receives proper care and that services are provided to the
16 parents, child and foster parents in order to improve the
17 conditions in the parent(s) home; facilitate return of the child to
18 his or her own home or the permanent placement of the child; and
19 address the needs of the child while in foster care, including a
20 discussion of the appropriateness of the services that have been
21 provided to the child. The term "permanency plan" refers to that
22 part of the case plan which is designed to achieve a permanent home
23 for the child in the least restrictive setting available. The plan
24 must document efforts to ensure that the child is returned home
25 within approximate time lines for reunification as set out in the
26 plan. Reasonable efforts to place a child for adoption or with a

1 legal guardian may be made at the same time reasonable efforts are
2 made to prevent removal or to make it possible for a child to
3 safely return home. If reunification is not the permanency plan for
4 the child, the plan must state why reunification is not appropriate
5 and detail the alternative placement for the child to include
6 approximate time lines for when such placement is expected to
7 become a permanent placement. This case plan shall serve as the
8 family case plan for parents of abused or neglected children.
9 Copies of the child's case plan shall be sent to the child's
10 attorney and parent, guardian or custodian or their counsel at
11 least five days prior to the dispositional hearing. The court shall
12 forthwith proceed to disposition giving both the petitioner and
13 respondents an opportunity to be heard. The court shall give
14 precedence to dispositions in the following sequence:

15 (1) Dismiss the petition;

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

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

21 (4) Order terms of supervision calculated to assist the child
22 and any abusing parent or battered parent or parents or custodian
23 which prescribe the manner of supervision and care of the child and
24 which are within the ability of any parent or parents or custodian
25 to perform;

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

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

9 (B) Whether or not the department has made reasonable efforts,
10 with the child's health and safety being the paramount concern, to
11 preserve the family, or some portion thereof, and to prevent or
12 eliminate the need for removing the child from the child's home and
13 to make it possible for the child to safely return home;

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

16 (D) The specific circumstances of the situation which made
17 such efforts unreasonable if services were not offered by the
18 department. The court order shall also determine under what
19 circumstances the child's commitment to the department shall
20 continue. Considerations pertinent to the determination include
21 whether the child should:

22 (I) Be continued in foster care for a specified period;

23 (ii) Be considered for adoption;

24 (iii) Be considered for legal guardianship;

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

1 (v) Be placed in another planned permanent living arrangement,
2 but only in cases where the department has documented to the
3 circuit court a compelling reason for determining that it would not
4 be in the best interests of the child to follow one of the options
5 set forth in subparagraphs (I), (ii), (iii) or (iv) of this
6 paragraph. The court may order services to meet the special needs
7 of the child. Whenever the court transfers custody of a youth to
8 the department, an appropriate order of financial support by the
9 parents or guardians shall be entered in accordance with section
10 five, article seven of this chapter; or

11 (6) Upon a finding that there is no reasonable likelihood that
12 the conditions of neglect or abuse can be substantially corrected
13 in the near future and, when necessary for the welfare of the
14 child, terminate the parental, custodial and guardianship rights
15 and responsibilities of the abusing parent and commit the child to
16 the permanent sole custody of the nonabusing parent, if there be
17 one, or, if not, to either the permanent guardianship of the
18 department or a licensed child welfare agency. The court may award
19 sole custody of the child to a nonabusing battered parent. If the
20 court shall so find, then in fixing its dispositional order the
21 court shall consider the following factors:

22 (A) The child's need for continuity of care and caretakers;

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

25 (C) Other factors as the court considers necessary and proper.

26 Notwithstanding any other provision of this article, the court

1 shall give consideration to the wishes of a child fourteen years of
2 age or older or otherwise of an age of discretion as determined by
3 the court regarding the permanent termination of parental rights.
4 No adoption of a child shall take place until all proceedings for
5 termination of parental rights under this article and appeals
6 thereof are final. In determining whether or not parental rights
7 should be terminated, the court shall consider the efforts made by
8 the department to provide remedial and reunification services to
9 the parent. The court order shall state:

10 (I) That continuation in the home is not in the best interest
11 of the child and why;

12 (ii) Why reunification is not in the best interests of the
13 child;

14 (iii) Whether or not the department made reasonable efforts,
15 with the child's health and safety being the paramount concern, to
16 preserve the family, or some portion thereof, and to prevent the
17 placement or to eliminate the need for removing the child from the
18 child's home and to make it possible for the child to safely return
19 home, or that the emergency situation made such efforts
20 unreasonable or impossible; and

21 (iv) Whether or not the department made reasonable efforts to
22 preserve and reunify the family, or some portion thereof, including
23 a description of what efforts were made or that such efforts were
24 unreasonable due to specific circumstances.

25 (7) For purposes of the court's consideration of the
26 disposition custody of a child pursuant to the provisions of this

1 subsection, the department is not required to make reasonable
2 efforts to preserve the family if the court determines:

3 (A) The parent has subjected the child, another child of the
4 parent or any other child residing in the same household or under
5 the temporary or permanent custody of the parent to aggravated
6 circumstances which include, but are not limited to, abandonment,
7 torture, chronic abuse and sexual abuse;

8 (B) The parent has:

9 (I) Committed murder of the child's other parent, guardian or
10 custodian, another child of the parent or any other child residing
11 in the same household or under the temporary or permanent custody
12 of the parent;

13 (ii) Committed voluntary manslaughter of the child's other
14 parent, guardian or custodian, another child of the parent or any
15 other child residing in the same household or under the temporary
16 or permanent custody of the parent;

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

20 (iv) Committed a felonious assault that results in serious
21 bodily injury to the child, the child's other parent, guardian or
22 custodian, to another child of the parent or any other child
23 residing in the same household or under the temporary or permanent
24 custody of the parent; ~~or~~

25 (v) Committed sexual assault or sexual abuse of the child, the
26 child's other parent, guardian or custodian, another child of the

1 parent or any other child residing in the same household or under
2 the temporary or permanent custody of the parent; or

3 (vi) Has been required by state or federal law to register
4 with a sex offender registry.

5 (C) The parental rights of the parent to another child have
6 been terminated involuntarily.

7 (b) As used in this section, "no reasonable likelihood that
8 conditions of neglect or abuse can be substantially corrected"
9 shall mean that, based upon the evidence before the court, the
10 abusing adult or adults have demonstrated an inadequate capacity to
11 solve the problems of abuse or neglect on their own or with help.
12 Such conditions shall be considered to exist in the following
13 circumstances, which shall not be exclusive:

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

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

24 (3) The abusing parent or parents have not responded to or
25 followed through with a reasonable family case plan or other
26 rehabilitative efforts of social, medical, mental health or other

1 rehabilitative agencies designed to reduce or prevent the abuse or
2 neglect of the child, as evidenced by the continuation or
3 insubstantial diminution of conditions which threatened the health,
4 welfare or life of the child;

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

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

13 (6) The abusing parent or parents have incurred emotional
14 illness, mental illness or mental deficiency of such duration or
15 nature as to render such parent or parents incapable of exercising
16 proper parenting skills or sufficiently improving the adequacy of
17 such skills; or

18 (7) The battered parent's parenting skills have been seriously
19 impaired and said person has willfully refused or is presently
20 unwilling or unable to cooperate in the development of a reasonable
21 treatment plan or has not adequately responded to or followed
22 through with the recommended and appropriate treatment plan.

23 (c) The court may, as an alternative disposition, allow the
24 parents or custodians an improvement period not to exceed six
25 months. During this period the court shall require the parent to
26 rectify the conditions upon which the determination was based. The

1 court may order the child to be placed with the parents, or any
2 person found to be a fit and proper person, for the temporary care
3 of the child during the period. At the end of the period, the court
4 shall hold a hearing to determine whether the conditions have been
5 adequately improved and at the conclusion of the hearing shall make
6 a further dispositional order in accordance with this section.

7 **§49-6-6. Modification of dispositional orders.**

8 (a) Upon motion of a child, a child's parent or custodian or
9 the ~~state~~ department alleging a change of circumstances requiring
10 a different disposition, the court shall conduct a hearing pursuant
11 to section two of this article and may modify a dispositional order
12 if the court finds by clear and convincing evidence a material
13 change of circumstances and that such modification is in the
14 child's best interests: *Provided,* That a dispositional order
15 pursuant to subdivision (6), subsection (a) of section five shall
16 not be modified after the child has been adopted, except as
17 provided in subsections (b) and (c) of this section. Adequate and
18 timely notice of any motion for modification shall be given to the
19 child's counsel, counsel for the child's parent or custodian, ~~and~~
20 ~~to the state~~ department and any person entitled to notice and the
21 right to be heard. The circuit court of origin has exclusive
22 jurisdiction over placement of the child, and such placement shall
23 not be disrupted or delayed by any administrative process of the
24 department.

25 (b) If the child is removed or relinquished from an adoptive
26 home or other permanent placement after the case has been

1 dismissed, any party with notice thereof and the receiving agency
2 shall promptly report the matter to the circuit court of origin,
3 the department and the child's counsel, and the court shall
4 schedule a permanency hearing within sixty days of the report to
5 the circuit court, with notice given to any appropriate parties and
6 persons entitled to notice and the right to be heard. The
7 department shall convene a multidisciplinary treatment team meeting
8 within thirty days of the receipt of notice of permanent placement
9 disruption.

10 (c) If a child has not been adopted, the child or department
11 may move the court to place the child with a parent or custodian
12 whose rights have been terminated and/or restore such parent's or
13 guardian's rights. Under these circumstances, the court may order
14 such placement and/or restoration of a parent's or guardian's
15 rights if it finds by clear and convincing evidence a material
16 change of circumstances and that such placement and/or restoration
17 is in the child's best interests.

18 **§49-6-8. Permanency hearing and permanent placement review.**

19 (a) If the court finds, pursuant to any provision of this
20 article, that the department is not required to make reasonable
21 efforts to preserve the family, then, notwithstanding any other
22 provision, a permanency hearing must be held within thirty days
23 following the entry of the court order so finding, and a permanent
24 placement review hearing must be conducted at least once every
25 three calendar months thereafter until a permanent placement is
26 achieved.

1 ~~(a)~~ (b) If, twelve months after receipt by the department or
2 its authorized agent of physical custody of a child either by a
3 court ordered placement or by a voluntary agreement, the department
4 has not placed a child in an adoptive home or placed the child with
5 a natural parent or placed the child in legal guardianship or
6 permanently placed the child with a fit and willing relative, the
7 ~~department shall file with the court a petition for review of the~~
8 ~~case~~ court shall hold a permanency hearing. The department shall
9 ~~also file a report with the court~~ with the court a report detailing
10 the efforts that have been made to place the child in a permanent
11 home and copies of the child's case plan, including the permanency
12 plan as defined in section five, article six of this chapter. Copies
13 of the report shall be sent to the ~~child's attorney and be made~~
14 ~~available to the child's parent(s) or guardian~~ parties and all
15 persons entitled to notice and the right to be heard. The court
16 shall schedule a hearing ~~in chambers~~, giving notice and the right
17 to be present to: The child's attorney; the child, if twelve years
18 of age or older; the child's parents; the child's guardians; the
19 child's foster parents; any preadoptive parent or any relative
20 providing care for the child; any person entitled to notice and the
21 right to be heard; and such other persons as the court may, in its
22 discretion, direct. The child's presence may be waived by the
23 child's attorney at the request of the child or if the child would
24 suffer emotional harm. The purpose of the hearing is to review the
25 child's case, to determine whether and under what conditions the
26 child's commitment to the department shall continue and to determine

1 what efforts are necessary to provide the child with a permanent
2 home. In the case of a child who will not be returned to his or her
3 parent, the court shall consider in-state and out-of-state placement
4 options, and, if the court considers an out-of-state placement, the
5 court shall determine whether such placement is in the best
6 interests of the child; in the case of a child who has attained
7 sixteen years of age, the court shall determine the services needed
8 to assist the child to make the transition from foster care to
9 independent living. In any case in which the court decides to order
10 the child placed in an out-of-state facility or program it shall set
11 forth in the order directing the placement the reasons why the child
12 was not placed in an in-state facility or program. At the conclusion
13 of the hearing the court shall, in accordance with the best
14 interests of the child, enter an ~~appropriate order of disposition~~
15 containing all such appropriate findings. The court order shall
16 state: (1) Whether or not the department made reasonable efforts to
17 preserve the family and to prevent out-of-home placement or that the
18 specific situation made such effort unreasonable; (2) whether or not
19 the department made reasonable efforts to finalize the permanency
20 plan for the child; and (3) identify services required to meet the
21 child's needs. ~~Provided, That the department is not required to~~
22 ~~make reasonable efforts to preserve the family if the court~~
23 ~~determines any of the conditions set forth in subdivision (7),~~
24 ~~subsection (a), section five of this article exist.~~ The court shall
25 ~~possess continuing jurisdiction over cases reviewed under this~~
26 ~~section for so long as a child remains in temporary foster care or,~~

1 ~~when a child is returned to his or her natural parents subject to~~
2 ~~conditions imposed by the court, for so long as the conditions are~~
3 ~~effective.~~

4 ~~(b)~~ (c) The ~~state department court shall file a supplementary~~
5 ~~petition for review with the court~~ shall conduct another permanency
6 hearing within ~~twelve months and every~~ twelve months thereafter for
7 ~~every~~ each child ~~that~~ who remains in the physical or legal custody
8 of the department until the child is placed in an adoptive home or
9 returned to his or her parents or placed in legal guardianship or
10 permanently placed with a fit and willing relative.

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

14 ~~(d)~~ (e) The state department shall file a report with the court
15 in any case where any child in the temporary or permanent custody
16 of the state receives more than three placements in one year no
17 later than thirty days after the third placement. This report shall
18 be provided to all parties ~~and their counsel.~~ and persons entitled
19 to notice and the right to be heard. Upon motion by any party, the
20 court shall review these placements and determine what efforts are
21 necessary to provide the child with a ~~stable foster or temporary~~
22 permanent home: *Provided,* That no report shall be provided to any
23 parent or parent's attorney whose parental rights have been
24 terminated pursuant to this article.

25 ~~(e)~~ (f) The state department shall notify, in writing, the
26 court, the child, if over the age of twelve, the child's attorney,

1 the parents and the parents' attorney forty-eight hours prior to the
2 move if this is a planned move, or within forty-eight hours of the
3 next business day after the move if this is an emergency move,
4 except where such notification would endanger the child or the
5 foster family. This notice shall not be required in any case where
6 the child is in imminent danger in the child's current placement.
7 The location of the child need not be disclosed, but the purpose of
8 the move should be. This requirement is not waived by placement of
9 the child in a home or other residence maintained by a private
10 provider. No notice shall be provided pursuant to this provision to
11 any parent or parent's attorney whose parental rights have been
12 terminated pursuant to this article.

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

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

21 **§49-6-12. Improvement period in cases of child neglect or abuse.**

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

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

3 (2) The respondent demonstrates, by clear and convincing
4 evidence, that the respondent is likely to fully participate in the
5 improvement period and the court further makes a finding, on the
6 record, of the terms of the improvement period;

7 (3) In the order granting the improvement period, the court (A)
8 orders that a hearing be held to review the matter within sixty days
9 of the granting of the improvement period; or (B) orders that a
10 hearing be held to review the matter within ninety days of the
11 granting of the improvement period and that the department submit
12 a report as to the respondents progress in the improvement period
13 within sixty days of the order granting the improvement period; and

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

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

22 (1) The respondent files a written motion requesting the
23 improvement period;

24 (2) The respondent demonstrates, by clear and convincing
25 evidence, that the respondent is likely to fully participate in the

1 improvement period and the court further makes a finding, on the
2 record, of the terms of the improvement period;

3 (3) In the order granting the improvement period, the court (A)
4 orders that a hearing be held to review the matter within sixty days
5 of the granting of the improvement period; or (B) orders that a
6 hearing be held to review the matter within ninety days of the
7 granting of the improvement period and that the department submit
8 a report as to the respondent's progress in the improvement period
9 within sixty days of the order granting the improvement period;

10 (4) Since the initiation of the proceeding, the respondent has
11 not previously been granted any improvement period or the respondent
12 demonstrates that since the initial improvement period, the
13 respondent has experienced a substantial change in circumstances.
14 Further, the respondent shall demonstrate that due to that change
15 in circumstances the respondent is likely to fully participate in
16 a further improvement period; and

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

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

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

25 (2) The respondent demonstrates, by clear and convincing
26 evidence, that the respondent is likely to fully participate in the

1 improvement period and the court further makes a finding, on the
2 record, of the terms of the improvement period;

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

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

6 (B) Orders that a hearing be held to review the matter within
7 ninety days of the granting of the improvement period and that the
8 department submit a report as to the respondent's progress in the
9 improvement period within sixty days of the order granting the
10 improvement period;

11 (4) Since the initiation of the proceeding, the respondent has
12 not previously been granted any improvement period or the respondent
13 demonstrates that since the initial improvement period, the
14 respondent has experienced a substantial change in circumstances.
15 Further, the respondent shall demonstrate that due to that change in
16 circumstances, the respondent is likely to fully participate in the
17 improvement period; and

18 (5) The order granting the improvement period shall require the
19 department to prepare and submit to the court an individualized
20 family case plan in accordance with the provisions of section three,
21 article six-d of this chapter.

22 (d) When any improvement period is granted to a respondent
23 pursuant to the provisions of this section, the respondent shall be
24 responsible for the initiation and completion of all terms of the
25 improvement period. The court may order the state department to pay
26 expenses associated with the services provided during the

1 improvement period when the respondent has demonstrated that he or
2 she is unable to bear such expenses.

3 (e) When any improvement period is granted to a respondent
4 pursuant to the provisions of this section, the respondent shall
5 execute a release of all medical information regarding that
6 respondent, including, but not limited to, information provided by
7 mental health and substance abuse professionals and facilities. Such
8 release shall be accepted by any such professional or facility
9 regardless of whether the release conforms to any standard required
10 by that facility.

11 (f) When any respondent is granted an improvement period
12 pursuant to the provisions of this article, the department shall
13 monitor the progress of such person in the improvement period. When
14 the respondent fails to participate in any service mandated by the
15 improvement period, the state department shall initiate action to
16 inform the court of that failure. When the department demonstrates
17 that the respondent has failed to participate in any provision of
18 the improvement period, the court shall forthwith terminate the
19 improvement period.

20 (g) A court may extend any improvement period granted pursuant
21 to subsections (b) or (c) of this section for a period not to exceed
22 three months when the court finds that the respondent has
23 substantially complied with the terms of the improvement period;
24 that the continuation of the improvement period will not
25 substantially impair the ability of the department to permanently

1 place the child; and that such extension is otherwise consistent
2 with the best interest of the child.

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

7 (I) This section may not be construed to prohibit a court from
8 ordering a respondent to participate in services designed to reunify
9 a family or to relieve the department of any duty to make reasonable
10 efforts to reunify a family required by state or federal law.

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

16 (k) Any hearing to be held at the end of an improvement period
17 shall be held as nearly as practicable on successive days and shall
18 be held as close in time as possible after the end of said
19 improvement period and shall be held no later than sixty days of the
20 termination of such improvement period.

21 (l) Notwithstanding any other provision of this section, no
22 combination of any improvement periods or extensions thereto may
23 cause a child to be in foster care more than fifteen months of the
24 most recent twenty-two months, unless the court finds compelling
25 circumstances by clear and convincing evidence that it is in the

1 child's best interests to extend the time limits contained in this
2 paragraph.

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

5 **§49-6A-5. Reporting procedures.**

6 (a) Reports of child abuse and neglect pursuant to this article
7 shall be made immediately by telephone to the local state department
8 child protective service agency and shall be followed by a written
9 report within forty-eight hours if so requested by the receiving
10 agency. The state department shall establish and maintain a twenty-
11 four hour, seven-day-a-week telephone number to receive such calls
12 reporting suspected or known child abuse or neglect.

13 (b) A copy of any report of serious physical abuse, sexual
14 abuse or assault shall be forwarded by the department to the
15 appropriate law-enforcement agency, the prosecuting attorney or the
16 coroner or medical examiner's office. All reports under this
17 article shall be confidential. ~~and unless there are pending~~
18 ~~proceedings with regard thereto shall be destroyed thirty years~~
19 ~~following their preparation.~~ Reports of known or suspected
20 institutional child abuse or neglect shall be made and received as
21 all other reports made pursuant to this article.

22 **§49-6A-12. Inclusion or removal of information on databases.**

23 (a) When the Department of Health and Human Resources
24 determines that the name of an individual or any other record of
25 child abuse or neglect should be included on the statewide child
26 abuse and neglect statistical index or any other database maintained

1 by the department, the department shall notify the person named of
2 the intent to include the information on the index or database and
3 the consequences to that person once such action is taken.

4 (1) The secretary shall prescribe by rule the form of the
5 notice and the information that must be included in the notice.

6 (2) The department shall send the notice to the person named at
7 the last known address by certified mail, return receipt requested,
8 within ten days of the decision to place the information on the
9 index or database.

10 (3) Service pursuant to subdivision (a) (2) of this section
11 shall not be the basis for the entry of any name or information on
12 the index or database by default unless the record contains a return
13 receipt showing acceptance by the individual to whom notice was
14 addressed, or someone on their behalf, or documentation that the
15 refusal process required by subdivision two of this section has been
16 completed.

17 (4) If delivery of the notice required by subdivision (a) (2) of
18 this section is refused, the department, promptly upon receipt of
19 the notice of refusal, shall mail to the person named, by first
20 class mail, postage prepaid, a copy of the notice and an additional
21 notice that, despite the refusal of the person to accept the
22 certified mail notice, the matter will proceed and that the name or
23 information will be posted on the index or other database unless the
24 person requests a hearing as required by this section. The
25 department shall maintain documentation of all attempts at
26 delivering notice as required by this section.

1 (5) The placement of a name or information on the index or
2 other database as a result of any person failing to respond to a
3 notice sent by the department may be reversed if the person involved
4 demonstrates to the secretary that the return receipt was signed by
5 or delivery was refused by an unauthorized person.

6 (b) Any person notified by the department of the intent to add
7 a name or record to an index or database may, within thirty days
8 from the date of receipt of the notice, request a hearing to protest
9 the intended action. If a protest and request for hearing is filed,
10 the secretary shall conduct a hearing in accordance with section
11 one, article five, chapter twenty-nine-a of this code and the
12 applicable department rules to determine whether the information
13 should be so published.

14 (c) If any person who has been properly notified of the
15 department's intent to include names or information on the index or
16 database fails to request a hearing within thirty days of receipt of
17 the notice, the department shall include the name, report,
18 investigation records and any other applicable documents on the
19 statistical index or other such database and shall permanently
20 maintain custody of such records.

21 (d) If any person believes that a name or information included
22 on the statistical index or any other such database maintained by
23 the department prior to the first day of July, 2012, should be
24 removed from the index or database, that person may petition the
25 secretary in writing and request that the records be expunged. The
26 secretary shall conduct a review of the request according to

1 procedures established by rule and shall respond with a written
2 decision within ninety days of the date the request was received.
3 Any person who desires to protest the decision may request a hearing
4 on the matter in accordance with section one, article five, chapter
5 twenty-nine-a of this code and applicable department rules.

6 (e) In the event the secretary determines that a request to
7 expunge should be granted, the department shall remove the names and
8 records so designated from the statistical index and any other such
9 database maintained by the department. Notwithstanding the removal
10 of any names or records from the index or database, the department
11 shall perpetually keep and maintain all child abuse or neglect
12 reports, records and investigations as required by the provisions of
13 section twenty-three, article seven of this chapter.

14 (f) The secretary shall propose rules for legislative approval
15 in accordance with the provisions of article three, chapter twenty-
16 nine of this code to establish the procedures for notifying persons
17 of the intent to place names or information on an index or database;
18 for protesting the notice and requesting a hearing; for reviewing
19 requests to expunge child abuse or neglect records from public
20 indices or databases; and for implementing the intent of this
21 section.

22 **§49-6D-3. Unified child and family case plans.**

23 (a) The Department of Health and Human Resources shall develop
24 a unified child and family case plan for every family wherein a
25 person has been referred to the department after being allowed an
26 improvement period ~~under the provisions of section twelve, article~~

1 ~~six of this chapter~~ or where the child is placed in foster care The
2 case plan must be filed within sixty days of the child coming into
3 foster care or within thirty days of the inception of the
4 improvement period, whichever occurs first. The department may also
5 prepare a family case plan for any person who voluntarily seeks
6 child abuse and neglect services from the department, or who is
7 referred to the department by another public agency or private
8 organization. ~~The family case plan is to clearly set forth an~~
9 ~~organized, realistic method of identifying family problems and the~~
10 ~~logical steps to be used in resolving or lessening those problems.~~
11 The case plan provisions shall comply with federal law and the rules
12 of procedure for child abuse and neglect proceedings. ~~Every family~~
13 ~~case plan prepared by the department shall contain the following:~~

14 ~~(1) A listing of specific, measurable, realistic goals to be~~
15 ~~achieved;~~

16 ~~(2) An arrangement of goals into an order of priority;~~

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

19 ~~(4) A specific description of how the assigned caseworker or~~
20 ~~caseworkers and the abusing parent, guardian or custodian will~~
21 ~~achieve each goal;~~

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

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

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

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

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

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

10 ~~(b) In cases where the family has been referred to the~~
11 ~~department by a court under the provisions of this chapter, and~~
12 ~~further action before the court is pending, the family case plan~~
13 ~~described in subsection (a) of this section shall be furnished to~~
14 ~~the court within thirty days after the entry of the order referring~~
15 ~~the case to the department, and shall be available to counsel for~~
16 ~~the parent, guardian or custodian and counsel for the child or~~
17 ~~children. The department shall encourage participation in convene a~~
18 multidisciplinary treatment team, which shall develop the
19 development the family case plan by the parent, guardian or
20 custodian. Parents, guardians or custodians shall participate fully
21 in the development of the case plan, and the child shall also fully
22 participate if sufficiently mature and if the child is above the age
23 of twelve years and the child's participation is otherwise
24 appropriate. by the child. It shall be the duty of counsel for the
25 participants to participate in the development of the family case
26 plan. The family case plan may be modified from time to time by the

1 ~~department~~ to allow for flexibility in goal development, and in each
2 such case the modifications shall be submitted to the court in
3 writing. Reasonable efforts to place a child for adoption or with a
4 legal guardian may be made at the same time as reasonable efforts
5 are being made to prevent removal or to make it possible for a child
6 to return safely home. The court shall examine the proposed ~~family~~
7 case plan or any modification thereof, and upon a finding by the
8 court that the plan or modified plan can be easily communicated,
9 explained and discussed so as to make the participants accountable
10 and able to understand the reasons for any success or failure under
11 the plan, the court shall inform the participants of the probable
12 action of the court if goals are met or not met.

13 ~~(c) (1) In addition to the family case plan provided for under~~
14 ~~the provisions of subsection (b) of this section, the department~~
15 ~~shall prepare, as an appendix to the family case plan, an expanded~~
16 ~~"worker's case plan". As utilized by the department under the~~
17 ~~provisions of this section, the worker's case plan shall consist of~~
18 ~~the following:~~

19 ~~(A) All of the information contained in the family case plan~~
20 ~~described in subsection © of this section;~~

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

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

1 ~~(D) A description of when and how the department will decide~~
2 ~~when and how well each goal has been attained;~~

3 ~~(E) If possible, a listing of alternative methods and specific~~
4 ~~services which the caseworker or caseworkers may consider using if~~
5 ~~the original plan does not work; and~~

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

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

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

22 (1) For the development and establishment of training programs
23 for professional and paraprofessional personnel in the fields of
24 medicine, law, education, social work and other relevant fields who
25 are engaged in, or intend to work in, the field of the prevention,
26 identification and treatment of child abuse and neglect; and

1 training programs for children, and for persons responsible for the
2 welfare of children, in methods of protecting children from child
3 abuse and neglect;

4 (2) For the establishment and maintenance of centers, serving
5 defined geographic areas, staffed by multidisciplinary teams and
6 community teams of personnel trained in the prevention,
7 identification and treatment of child abuse and neglect cases, to
8 provide a broad range of services related to child abuse and
9 neglect, including direct support ~~and supervision of satellite~~
10 ~~centers and attention homes,~~ as well as providing advice and
11 consultation to individuals, agencies and organizations which
12 request such services;

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

17 (4) For other innovative programs and projects that show
18 promise of successfully identifying, preventing or remedying the
19 causes of child abuse and neglect, including, but not limited to,
20 programs and services designed to improve and maintain parenting
21 skills, programs and projects for parent self help, and for
22 prevention and treatment of drug-related child abuse and neglect;
23 and

24 (5) Assisting public agencies or nonprofit private
25 organizations or combinations thereof in making applications for
26 grants from, or in entering into contracts with, the Secretary of

1 the federal Department of Health and Human Services for
2 demonstration programs and projects designed to identify, prevent
3 and treat child abuse and neglect.

4 ~~(e)~~ (d) Agencies, organizations and programs funded to carry
5 out the purposes of this section shall be structured so as to comply
6 with any applicable federal law, any regulation of the federal
7 Department of Health and Human Services or the secretary thereof,
8 and any final comprehensive plan of the federal advisory board on
9 child abuse and neglect. In funding organizations, the department
10 shall, to the extent feasible, ensure that parental organizations
11 combating child abuse and neglect receive preferential treatment.

12 **ARTICLE 7. GENERAL PROVISIONS.**

13 **§49-7-1. Confidentiality of records.**

14 (a) Except as otherwise provided in this chapter or by order of
15 the court, all records and information concerning a child or
16 juvenile which are maintained by the Division of Juvenile Services,
17 the Department of Health and Human Resources, a child agency or
18 facility, court or law-enforcement agency shall be kept confidential
19 and shall not be released or disclosed to anyone, including any
20 federal or state agency.

21 (b) Notwithstanding the provisions of subsection (a) of this
22 section or any other provision of this code to the contrary, records
23 concerning a child or juvenile, except adoption records ~~juvenile~~
24 ~~court records~~ and records disclosing the identity of a person making
25 a complaint of child abuse or neglect shall be made available:

26 (1) Where otherwise authorized by this chapter;

1 (2) To:

2 (A) The child;

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

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

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

7 (4) Pursuant to an order of a court of record: *Provided*, That
8 the court shall review such record or records for relevancy and
9 materiality to the issues in the proceeding and safety, and may
10 issue an order to limit the examination and use of the records or
11 any part thereof.

12 (c) In addition to those persons or entities to whom
13 information may be disclosed under subsection (b) of this section,
14 information related to child abuse or neglect proceedings, except
15 information relating to the identity of the person reporting or
16 making a complaint of child abuse or neglect, shall be made
17 available, upon request, to:

18 (1) Federal, state or local government entities, or any agent
19 of such entities, including law-enforcement agencies and prosecuting
20 attorneys, having a need for such information in order to carry out
21 its responsibilities under law to protect children from abuse and
22 neglect;

23 (2) The child fatality review team;

24 (3) Child abuse citizen review panels;

25 (4) Multidisciplinary investigative and treatment teams; or

1 (5) A grand jury, circuit court or family ~~law master~~ court,
2 upon a finding that information in the records is necessary for the
3 determination of an issue before the grand jury, circuit court or
4 family ~~law master~~ court.

5 (d) In the event of a child fatality or near fatality due to
6 child abuse and neglect, information relating to such fatality or
7 near fatality shall be made public by the Department of Health and
8 Human Resources and to the entities described in subsection (c) of
9 this section, all under the circumstances described in that
10 subsection: *Provided*, That information released by the Department of
11 Health and Human Resources pursuant to this subsection shall not
12 include the identity of a person reporting or making a complaint of
13 child abuse or neglect. For purposes of this subsection, "near
14 fatality" means any medical condition of the child which is
15 certified by the attending physician to be life threatening.

16 (e) Except in juvenile proceedings which are transferred to
17 criminal proceedings, law-enforcement records and files concerning
18 a child or juvenile shall be kept separate from the records and
19 files of adults and not included within the court files. Law-
20 enforcement records and files concerning a child or juvenile shall
21 only be open to inspection pursuant to the provisions of sections
22 seventeen and eighteen, article five of this chapter.

23 (f) Any person who willfully violates the provisions of this
24 section is guilty of a misdemeanor and, upon conviction thereof,
25 shall be fined not more than \$1,000, or confined in the county or
26 regional jail for not more than six months, or be both fined and

1 confined. A person convicted of violating the provisions of this
2 section shall also be liable for damages in the amount of \$300 or
3 actual damages, whichever is greater.

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

8 **§49-7-36. Quarterly status review and yearly permanency hearings.**

9 (a) For each child who remains in foster care as a result of a
10 juvenile proceeding or as a result of a child abuse and neglect
11 proceeding, the circuit court with the assistance of the
12 multidisciplinary treatment team shall conduct quarterly status
13 reviews in order to determine the safety of the child, the
14 continuing necessity for and appropriateness of the placement, the
15 extent of compliance with the case plan, and the extent of progress
16 which has been made toward alleviating or mitigating the causes
17 necessitating placement in foster care, and to project a likely date
18 by which the child may be returned to and safety maintained in the
19 home or placed for adoption or legal guardianship. Quarterly status
20 reviews shall commence three months after the entry of the placement
21 order. The permanency hearing provided for in subsection (c) of this
22 section may be considered a quarterly status review.

23 (b) For each transitioning adult as that term is defined in
24 §49-2B-2(x) who remains in foster care, the circuit court shall
25 conduct status review hearings as described in subsection (a) of
26 this section once every three months until permanency is achieved.

1 (c) For each child or transitioning adult who continues to
2 remain in foster care, the circuit court shall conduct a permanency
3 hearing no later than twelve months after the date the child or
4 transitioning adult is considered to have entered foster care, and
5 at least once every twelve months thereafter until permanency is
6 achieved. For purposes of permanency planning for transitioning
7 adults, the circuit court shall make factual findings and
8 conclusions of law as to whether the department made reasonable
9 efforts to finalize a permanency plan to prepare a transitioning
10 adult for emancipation or independence or another approved
11 permanency option such as, but not limited to, adoption or legal
12 guardianship pursuant to the West Virginia Guardianship and
13 Conservatorship Act.

14 (d) Nothing in this section shall be construed to abrogate the
15 responsibilities of the circuit court from conducting required
16 hearings as provided in other provisions of this code, procedural
17 court rules, or setting required hearings at the same time.

(NOTE: This bill is requested by the Supreme Court of Appeal's Court Improvement Program Oversight Board. The purpose of this legislation is to promote the safety, well-being and timely permanency of children in child abuse and neglect, family court and/or juvenile cases. This bill also makes necessary amendments to the West Virginia code for compliance with federal law or consistency with the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings or the Rules of Juvenile Procedure. This bill defines "court appointed special advocate program" and outlines the standards for the program. The bill also requires judges to provide in the court order the reasons why a child is being placed out-of-state as opposed to in-state. The bill clarifies the multidisciplinary treatment planning process for

everyone and establishes a process specific to child abuse and neglect cases as well as status offenders and delinquents. The bill also requires attorneys appointed in child abuse and neglect cases to have eight hours of training annually. This bill provides that reasonable efforts to preserve the family is not required when the person is required by law to register as a sex offender. It also provides when a dispositional order may be modified. The bill clarifies that the circuit court has exclusive jurisdiction over child abuse and neglect matters. The bill provides a process for permanency hearings and permanent placement reviews. The bill authorizes family court to order a child be taken into emergency custody under certain circumstances. The bill also provides guidelines for unified child and family case plans and requires quarterly status review hearings and yearly permanency hearings for transitioning adults.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§49-5d-3b, §49-5D-3c, §49-6-9a and §49-7-36 are new; therefore, strike-throughs and underscoring have been omitted.)