

1 **H. B. 4389**

2
3 (By Delegates Miley, Frazier, Manchin, Longstreth,
4 Barill and Jones)

5 [By Request of the Supreme Court of Appeals]

6 [Introduced February 1, 2012; referred to the
7 Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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9
10 A Bill to repeal §49-5-21 of the Code of West Virginia, 1931, as
11 amended; to repeal §49-6-5a of said code; to amend and reenact
12 §49-1-3 of said code; to amend and reenact §49-5-13, of said
13 code; to amend and reenact §49-5D-3 and §49-5D-3a of said
14 code; to amend and reenact §49-6-2, §49-6-3, §49-6-5, §49-6-6,
15 §49-6-8 and §49-6-12 of said code; to amend and reenact §49-
16 6D-3 of said code; to amend and reenact §49-7-1 of said code;
17 to amend said code by adding thereto two new sections,
18 designated §49-5D-3b and §49-5D-3c; to amend said code by
19 adding thereto a new section, designated §49-6-9a; and to
20 amend said code by adding thereto a new section, designated
21 §49-7-36, all relating to child welfare; defining "court
22 appointed special advocate program"; providing when a juvenile
23 is ordered into out-of-state placement, the reasons why the
24 juvenile was not placed in-state be included in the court

1 order; providing a process for multidisciplinary treatment
2 planning in cases involving child abuse and neglect; providing
3 a process for multidisciplinary treatment planning in cases
4 involving status offense or delinquency; increasing the
5 continuing education hours required for attorneys appointed in
6 child abuse and neglect cases; providing that reasonable
7 efforts to preserve the family are not required when a person
8 is required by state or federal law to register with a sex
9 offender registry; providing that the court may modify a
10 dispositional order when it finds a material change of
11 circumstances has occurred and such modification is in the
12 child's best interests; clarifying that the circuit court of
13 origin has exclusive jurisdiction over placement of a child in
14 a child abuse and neglect case; providing a process for
15 permanency hearings and permanent placement reviews;
16 authorizing family court to order a child be taken into
17 emergency custody under certain circumstances and providing a
18 process for such; providing that any combination of
19 improvement periods cannot cause a child to be in foster care
20 more than fifteen months of the most recent twenty-two months
21 unless the court finds that it is in the child's best
22 interests; providing guidelines for unified child and family
23 case plans; confidentiality of records; and requiring a
24 quarterly status review hearing and yearly permanency hearings

1 for transitioning adults.

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

3 That §49-5-21 of the Code of West Virginia, 1931, as amended,
4 be repealed; that §49-6-5a of said code be repealed; that §49-1-3
5 of said code be amended and reenacted; that §49-5-13 of said code
6 be amended and reenacted; that §49-5D-3, §49-5D-3a of said code be
7 amended and enacted; that §49-6-2, §49-6-3, §49-6-5, §49-6-6, §49-
8 6-8 and §49-6-12 of said code be amended and reenacted; that §49-
9 6D-3 of said code be amended and reenacted; that §49-7-1 of said
10 code be amended and reenacted; that said code be amended by adding
11 thereto two new sections, designated §49-5D-3b and §49-5D-3c; that
12 said code be amended by adding thereto a new section, designated
13 §49-6-9a; and that said code be amended by adding thereto a new
14 section, designated §49-7-36, all to read as follows:

15 **ARTICLE 1. PURPOSES AND DEFINITIONS.**

16 **§49-1-3. Definitions relating to abuse and neglect.**

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

19 (A) A parent, guardian or custodian who knowingly or
20 intentionally inflicts, attempts to inflict or knowingly allows
21 another person to inflict, physical injury or mental or emotional
22 injury, upon the child or another child in the home; or

23 (B) Sexual abuse or sexual exploitation; or

24 (C) The sale or attempted sale of a child by a parent,

1 guardian or custodian in violation of section sixteen, article
2 four, chapter forty-eight of this code; or

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

5 In addition to its broader meaning, physical injury may
6 include an injury to the child as a result of excessive corporal
7 punishment.

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

12 (3) "Battered parent" means a parent, guardian or other
13 custodian who has been judicially determined not to have condoned
14 the abuse or neglect and has not been able to stop the abuse or
15 neglect of the child or children due to being the victim of
16 domestic violence as defined by section two hundred two, article
17 twenty-seven, chapter forty-eight of this code, which domestic
18 violence was perpetrated by the person or persons determined to
19 have abused or neglected the child or children.

20 (4) "Child abuse and neglect" or "child abuse or neglect"
21 means physical injury, mental or emotional injury, sexual abuse,
22 sexual exploitation, sale or attempted sale or negligent treatment
23 or maltreatment of a child by a parent, guardian or custodian who
24 is responsible for the child's welfare, under circumstances which

1 harm or threaten the health and welfare of the child.

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

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

6 (B) Identifying, preventing and remedying conditions which
7 cause child abuse and neglect;

8 (C) Preventing the unnecessary removal of children from their
9 families by identifying family problems and assisting families in
10 resolving problems which could lead to a removal of children and a
11 breakup of the family;

12 (D) In cases where children have been removed from their
13 families, providing services to the children and the families so as
14 to reunify such children with their families or some portion
15 thereof;

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

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

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

1 (A) Child-appropriate/child-friendly facility: A child
2 advocacy center provides a comfortable, private, child-friendly
3 setting that is both physically and psychologically safe for
4 clients.

5 (B) Multidisciplinary team (MDT): A multidisciplinary team for
6 response to child abuse allegations includes representation from
7 the following: Law enforcement; child protective services;
8 prosecution; mental health; medical; victim advocacy; child
9 advocacy center.

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

13 (D) Cultural competency and diversity: The CAC promotes
14 policies, practices and procedures that are culturally competent.
15 Cultural competency is defined as the capacity to function in more
16 than one culture, requiring the ability to appreciate, understand
17 and interact with members of diverse populations within the local
18 community.

19 (E) Forensic interviews: Forensic interviews are conducted in
20 a manner which is of a neutral, fact finding nature and coordinated
21 to avoid duplicative interviewing.

22 (F) Medical evaluation: Specialized medical evaluation and
23 treatment are to be made available to CAC clients as part of the
24 team response, either at the CAC or through coordination and

1 referral with other specialized medical providers.

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

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

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

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

19 (7) "Court Appointed Special Advocate Program" means a
20 community organization that screens, trains and supervises CASA
21 volunteers to advocate for the best interests of children who are
22 involved in abuse and neglect proceedings. Court Appointed Special
23 Advocate Programs will be operated under the following guidelines:

24 (A) Standards: CASA Programs shall be members in good standing

1 with the West Virginia Court Appointed Special Advocate
2 Association, Inc., and the National Court Appointed Special
3 Advocates Association and adhere to all standards set forth by
4 these entities.

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

8 (C) Cultural competency and diversity: CASA programs promote
9 policies, practices and procedures that are culturally competent.
10 Cultural competency is defined as the capacity to function in more
11 than one culture, requiring the ability to appreciate, understand
12 and interact with members of diverse populations within the local
13 community.

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

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

18 (F) Training: Court Appointed Special Advocates shall serve as
19 volunteers without compensation and shall receive training
20 consistent with state and nationally developed standards.

21 (G) Volunteer Immunity: A court appointed special advocate
22 volunteer is immune from civil liability to the full extent
23 provided in the federal Volunteer Protection Act of 1997.

24 ~~(7)~~ (8) "Imminent danger to the physical well-being of the

1 child" means an emergency situation in which the welfare or the
2 life of the child is threatened. Such emergency situation exists
3 when there is reasonable cause to believe that any child in the
4 home is or has been sexually abused or sexually exploited, or
5 reasonable cause to believe that the following conditions threaten
6 the health or life of any child in the home:

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

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

12 (C) Nutritional deprivation;

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

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

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

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

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

24 ~~(8)~~(9) "Legal guardianship" means the permanent relationship

1 between a child and caretaker, established by order of the circuit
2 court having jurisdiction over the child, pursuant to the
3 provisions of this chapter and chapter forty-eight of this code.

4 ~~(9)~~(10) "Multidisciplinary team" means a group of professionals
5 and paraprofessionals representing a variety of disciplines who
6 interact and coordinate their efforts to identify, diagnose and
7 treat specific cases of child abuse and neglect. Multidisciplinary
8 teams may include, but are not limited to, medical, educational,
9 child care and law-enforcement personnel, social workers,
10 psychologists and psychiatrists. Their goal is to pool their
11 respective skills in order to formulate accurate diagnoses and to
12 provide comprehensive coordinated treatment with continuity and
13 follow-up for both parents and children. "Community team" means a
14 multidisciplinary group which addresses the general problem of
15 child abuse and neglect in a given community and may consist of
16 several multidisciplinary teams with different functions.

17 ~~(10)~~(11) (A) "Neglected child" means a child:

18 (i) Whose physical or mental health is harmed or threatened by
19 a present refusal, failure or inability of the child's parent,
20 guardian or custodian to supply the child with necessary food,
21 clothing, shelter, supervision, medical care or education, when
22 such refusal, failure or inability is not due primarily to a lack
23 of financial means on the part of the parent, guardian or
24 custodian; or

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

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

7 ~~(11)~~(12) "Parent" means an individual defined as a parent by
8 law or on the basis of a biological relationship, marriage to a
9 person with a biological relationship, legal adoption or other
10 recognized grounds.

11 ~~(12)~~(13) "Parental rights" means any and all rights and duties
12 regarding a parent to a minor child, including, but not limited to,
13 custodial rights and visitational rights and rights to participate
14 in the decisions affecting a minor child.

15 ~~(13)~~(14) "Parenting skills" means a parent's competencies in
16 providing physical care, protection, supervision and psychological
17 support appropriate to a child's age and state of development.

18 ~~(14)~~ (15) "Sexual abuse" means:

19 (A) As to a child who is less than sixteen years of age, any
20 of the following acts which a parent, guardian or custodian shall
21 engage in, attempt to engage in, or knowingly procure another
22 person to engage in, with such child, notwithstanding the fact that
23 the child may have willingly participated in such conduct or the
24 fact that the child may have suffered no apparent physical injury

1 or mental or emotional injury as a result of such conduct:

2 (i) Sexual intercourse;

3 (ii) Sexual intrusion; or

4 (iii) Sexual contact;

5 (B) As to a child who is sixteen years of age or older, any of
6 the following acts which a parent, guardian or custodian shall
7 engage in, attempt to engage in, or knowingly procure another
8 person to engage in, with such child, notwithstanding the fact that
9 the child may have consented to such conduct or the fact that the
10 child may have suffered no apparent physical injury or mental or
11 emotional injury as a result of such conduct:

12 (i) Sexual intercourse;

13 (ii) Sexual intrusion; or

14 (iii) Sexual contact;

15 (C) Any conduct whereby a parent, guardian or custodian
16 displays his or her sex organs to a child, or procures another
17 person to display his or her sex organs to a child, for the purpose
18 of gratifying the sexual desire of the parent, guardian or
19 custodian, of the person making such display, or of the child, or
20 for the purpose of affronting or alarming the child.

21 ~~(15)~~ (16) "Sexual contact" means sexual contact as that term
22 is defined in section one, article eight-b, chapter sixty-one of
23 this code.

24 ~~(16)~~ (17) "Sexual exploitation" means an act whereby:

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

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

11 ~~(17)~~ (18) "Sexual intercourse" means sexual intercourse as
12 that term is defined in section one, article eight-b, chapter
13 sixty-one of this code.

14 ~~(18)~~ (19) "Sexual intrusion" means sexual intrusion as that
15 term is defined in section one, article eight-b, chapter sixty-one
16 of this code.

17 ~~(19)~~ (20) "Placement" means any temporary or permanent
18 placement of a child who is in the custody fo the state in any
19 foster home, group home or other facility or residence.

20 ~~(20)~~ (21) "Serious physical abuse" means bodily injury which
21 creates a substantial risk of death, which causes serious or
22 prolonged disfigurement, prolonged impairment of health or
23 prolonged loss or impairment of the function of any bodily organ.

24 ~~(21)~~ (22) "Siblings" means children who have at least one

1 biological parent in common or who have been legally adopted by the
2 same parents or parent.

3 ~~(22)~~ (23) "Time-limited reunification services" means
4 individual, group and family counseling, inpatient, residential or
5 outpatient substance abuse treatment services, mental health
6 services, assistance to address domestic violence, services
7 designed to provide temporary child care and therapeutic services
8 for families, including crisis nurseries and transportation to or
9 from any such services, provided during fifteen of the most recent
10 twenty-two months a child has been in foster care, as determined by
11 the earlier date of the first judicial finding that the child is
12 subjected to abuse or neglect, or the date which is sixty days
13 after the child is removed from home.

14 **ARTICLE 5. JUVENILE PROCEEDINGS.**

15 **§49-5-13. Disposition of juvenile delinquents; appeal.**

16 (a) In aid of disposition of juvenile delinquents, the
17 juvenile probation officer assigned to the court shall, upon
18 request of the court, make an investigation of the environment of
19 the juvenile and the alternative dispositions possible. The court,
20 upon its own motion, or upon request of counsel, may order a
21 psychological examination of the juvenile. The report of such
22 examination and other investigative and social reports shall not be
23 made available to the court until after the adjudicatory hearing.
24 Unless waived, copies of the report shall be provided to counsel

1 for the petitioner and counsel for the juvenile no later than
2 seventy-two hours prior to the dispositional hearing.

3 (b) Following the adjudication, the court shall conduct the
4 dispositional proceeding, giving all parties an opportunity to be
5 heard. In disposition the court shall not be limited to the relief
6 sought in the petition and shall, in electing from the following
7 alternatives, consider the best interests of the juvenile and the
8 welfare of the public:

9 (1) Dismiss the petition;

10 (2) Refer the juvenile and the juvenile's parent or custodian
11 to a community agency for needed assistance and dismiss the
12 petition;

13 (3) Upon a finding that the juvenile is in need of extra-
14 parental supervision: (A) Place the juvenile under the supervision
15 of a probation officer of the court or of the court of the county
16 where the juvenile has his or her usual place of abode or other
17 person while leaving the juvenile in custody of his or her parent
18 or custodian; and (B) prescribe a program of treatment or therapy
19 or limit the juvenile's activities under terms which are reasonable
20 and within the child's ability to perform, including participation
21 in the litter control program established pursuant to section
22 three, article fifteen-a, chapter twenty-two of this code or other
23 appropriate programs of community service;

24 (4) Upon a finding that a parent or custodian is not willing

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

16 (5) Upon a finding that the best interests of the juvenile or
17 the welfare of the public require it, and upon an adjudication of
18 delinquency pursuant to subdivision (1), section four, article one
19 of this chapter, the court may commit the juvenile to the custody
20 of the Director of the Division of Juvenile Services for placement
21 in a juvenile services facility for the treatment, instruction and
22 rehabilitation of juveniles: *Provided*, That the court maintains
23 discretion to consider alternative sentencing arrangements.
24 Notwithstanding any provision of this code to the contrary, in the

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

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

1 twenty-seven of this code, commit the juvenile to a mental health
2 facility in accordance with the juvenile's treatment plan; the
3 Director of the mental health facility may release a juvenile and
4 return him or her to the court for further disposition. The order
5 shall state that continuation in the home is contrary to the best
6 interests of the juvenile and why; and whether or not the state
7 department made a reasonable effort to prevent the placement or
8 that the emergency situation made such efforts unreasonable or
9 impossible.

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

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

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

1 ~~(2) (b) The case manager in the Department of Health and Human~~
2 ~~Resources for the child, family or juvenile or the case manager in~~
3 ~~the Division of Juvenile Services for a juvenile shall convene a~~
4 ~~treatment team in each case when it is required pursuant to this~~
5 ~~article. Treatment teams shall assess, plan and implement a~~
6 ~~comprehensive, individualized service plan for children who are~~
7 ~~victims of abuse or neglect and their families when a judicial~~
8 ~~proceeding has been initiated involving the child or children for~~
9 ~~juveniles and their families involved in status offense or~~
10 ~~delinquency proceedings when, in a status offense proceeding, the~~
11 ~~court refers the juvenile for services pursuant to sections eleven~~
12 ~~and eleven-a, article five of this chapter and when, in a~~
13 ~~delinquency proceeding, the court is considering placing the~~
14 ~~juvenile in the department's custody or placing the juvenile out of~~
15 ~~home at the department's expense pursuant to the provisions of~~
16 ~~section thirteen of said article. In any such status offense or~~
17 ~~delinquency case, the juvenile probation officer shall notify the~~
18 ~~local office of the Department of Health and Human Resources and~~
19 ~~the Division of Juvenile Services at least five working days before~~
20 ~~the court proceeding in order to allow the multidisciplinary~~
21 ~~treatment team to convene and develop a comprehensive~~
22 ~~individualized service plan for the child: Provided, That such~~
23 ~~notice is not required in cases where the child is already in state~~
24 ~~custody or there exist exigent circumstances which justify taking~~

~~1 the child immediately into custody without a judicial proceeding.
2 In developing an individualized service plan for a child, the team
3 shall utilize a uniform comprehensive assessment of the child. The
4 department shall adopt a standard uniform comprehensive assessment
5 instrument or protocol to be used by treatment teams.~~

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

18 ~~(b)~~ Each treatment team shall be convened by the child's or
19 family's case manager in the Department of Health and Human
20 Resources or the Division of Juvenile Services if the juvenile has
21 been ordered into its custody for examination and diagnosis
22 pursuant to section thirteen, article five of this chapter. The
23 treatment team shall consist of the child's custodial parent or
24 parents, guardian or guardians, other immediate family members, the

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

1 (c) The treatment team shall coordinate its activities and
2 membership with local family resource networks and coordinate with
3 other local and regional child and family service planning
4 committees to assure the efficient planning and delivery of child
5 and family services on a local and regional level.

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

1 provisions of this code or court rules.

2 ~~(e) Nothing in this section may be construed to require a~~
3 ~~multidisciplinary team meeting to be held prior to temporarily~~
4 ~~placing a child out-of-home under exigent circumstances or upon a~~
5 ~~court order placing the juvenile in a juvenile facility operated by~~
6 ~~the Division of Juvenile Services.~~

7 **§49-5D-3a. Recommendation of team to the court; hearing**
8 **requirement; required findings.**

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

24 (b) In any case in which the court decides to order the child

1 placed in an out-of-state facility or program it shall set forth in
2 the order directing the placement the reasons why the child was not
3 placed in an in-state facility or program.

4 (c) Any member of the multidisciplinary treatment team who
5 disagrees with recommendations of the team may inform the court of
6 his or her own recommendations and objections to the team's
7 recommendations. The recommendations and objections of the
8 dissenting team member may be made in a hearing on the record, made
9 in writing and served upon each team member and filed with the
10 court, and indicated in the case plan, or both made in writing and
11 indicated in the case plan. Upon receiving objections, the court
12 will conduct a hearing pursuant to paragraph (a) of this section.

13 **§49-5D-3b. Multidisciplinary treatment planning process involving**
14 **child abuse and neglect.**

15 (a) Within thirty days of the initiation of a judicial
16 proceeding pursuant to article six of this chapter, the Department
17 of Health and Human Services shall convene a multidisciplinary
18 treatment team to assess, plan and implement a comprehensive,
19 individualized service plan for children who are victims of abuse
20 or neglect and their families. The multidisciplinary team shall
21 obtain and utilize any assessments for the children or the adult
22 respondents that it deems necessary to assist in the development of
23 such a plan.

24 (b) In a case initiated pursuant to article six of this

1 chapter, the treatment team shall consist of the child or family's
2 case manager in the Department of Health and Human Resources, the
3 adult respondent or respondents, the child's parent or parents,
4 guardians, any copetitioners, custodial relatives of the child,
5 foster or preadoptive parents, any attorney representing an adult
6 respondent or other member of the treatment team, the child's
7 counsel or the guardian ad litem, the prosecuting attorney or his
8 or her designee, a member of a child advocacy center when the child
9 has been processed through the child advocacy center program or
10 programs or it is otherwise appropriate that a member of the child
11 advocacy center participate, any court-appointed special advocate
12 assigned to a case, any other person entitled to notice and the
13 right to be heard, an appropriate school official, and any other
14 person or agency representative who may assist in providing
15 recommendations for the particular needs of the child and family,
16 including domestic violence service providers. The child may
17 participate in multidisciplinary treatment team meetings if the
18 child's participation is deemed appropriate by the
19 multidisciplinary treatment team. Unless otherwise ordered by the
20 court, a party whose parental rights have been terminated and his
21 or her attorney shall not be given notice of a multidisciplinary
22 treatment team meeting and does not have the right to participate
23 in any treatment team meeting.

24 (c) Prior to disposition in each case which a treatment

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

12 (d) The multidisciplinary treatment team shall submit written
13 reports to the court as required by the rules governing this type
14 of proceeding or by the court, and shall meet as often as deemed
15 necessary but at least every three months until the case is
16 dismissed from the docket of the court. The multidisciplinary
17 treatment team shall be available for status conferences and
18 hearings as required by the court.

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

24 **§49-5D-3c. Multidisciplinary treatment process for status**

1 offenders or delinquents.

2 (a) (1) When a juvenile is adjudicated as a status offender
3 pursuant to section eleven-d, article five of this chapter, the
4 Department of Health and Human Resources shall promptly convene a
5 multidisciplinary treatment team and conduct an assessment,
6 utilizing a standard uniform comprehensive assessment instrument or
7 protocol, to determine the juvenile's mental and physical
8 condition, maturity and education level, home and family
9 environment, rehabilitative needs and recommended service plan.
10 Upon completion of the assessment, the treatment team shall prepare
11 and implement a comprehensive, individualized service plan for the
12 juvenile.

13 (2) When a juvenile is adjudicated as a delinquent or has been
14 granted an improvement period pursuant to section nine, article
15 five of this chapter, the court, either upon its own motion or
16 motion of a party, may require the Department of Health and Human
17 Resources to convene a multidisciplinary treatment team and conduct
18 an assessment, utilizing a standard uniform comprehensive
19 assessment instrument or protocol, to determine the juvenile's
20 mental and physical condition, maturity and education level, home
21 and family environment, rehabilitative needs and recommended
22 service plan. A referral to the Department of Health and Human
23 Resources to convene a multidisciplinary treatment team and to
24 conduct such an assessment shall be made when the court is

1 considering placing the juvenile in the department's custody or
2 placing the juvenile out-of-home at the department's expense
3 pursuant to section thirteen, article five of this chapter. In any
4 delinquency proceeding in which the court requires the Department
5 of Health and Human Resources to convene a multidisciplinary
6 treatment team, the probation officer shall notify the department
7 at least fifteen working days before the court proceeding in order
8 to allow the department sufficient time to convene and develop an
9 individualized service plan for the juvenile.

10 (3) When a juvenile has been adjudicated and committed to the
11 custody of the director of the Division of Juvenile Services,
12 including those cases in which the juvenile has been committed for
13 examination and diagnosis, the Division of Juvenile Services shall,
14 promptly convene a multidisciplinary treatment team and conduct an
15 assessment, utilizing a standard uniform comprehensive assessment
16 instrument or protocol, to determine the juvenile's mental and
17 physical condition, maturity and education level, home and family
18 environment, rehabilitative needs and recommended service plan.
19 Upon completion of the assessment, the treatment team shall prepare
20 and implement a comprehensive, individualized service plan for the
21 juvenile.

22 (4) (a) The rules of juvenile procedure shall govern the
23 procedure for obtaining an assessment of a juvenile, preparing an
24 individualized service plan and submitting the plan and assessment

1 to the court.

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

18 (c) Prior to disposition, in each case in which a treatment
19 planning team has been convened, the team shall advise the court as
20 to the types of services the team has determined are needed and
21 type of placement, if any, which will best serve the needs of the
22 child. If the team determines that an out-of-home placement will
23 best serve the needs of the child, the team shall first consider
24 placement at facilities or programs located within the state. The

1 team may only recommend placement in an out-of-state facility if it
2 concludes, after considering the best interests and overall needs
3 of the child, that there are no available and suitable in-state
4 facilities which can satisfactorily meet the specific needs of the
5 child.

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

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

21 (f) If a juvenile respondent admits the underlying allegations
22 of the case initiated pursuant to article five, chapter forty-nine
23 of this code in the multidisciplinary treatment planning process,
24 his or her statements shall not be used in any juvenile or criminal

1 proceedings against the juvenile, except for perjury or false
2 swearing.

3 **§49-6-2. Petition to court when child believed neglected or abused**

4 **-- Right to counsel; improvement period; hearing;**
5 **priority of proceeding; transcript;**

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

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

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

21 (c) In any proceeding pursuant to the provisions of this
22 article, the party or parties having custodial or other parental
23 rights or responsibilities to the child shall be afforded a
24 meaningful opportunity to be heard, including the opportunity to

1 testify and to present and cross-examine witnesses. The petition
2 shall not be taken as confessed. A transcript or recording shall be
3 made of all proceedings unless waived by all parties to the
4 proceeding. The rules of evidence shall apply. Where relevant, the
5 court shall consider the efforts of the state department to remedy
6 the alleged circumstances. At the conclusion of the hearing, the
7 court shall make a determination based upon the evidence and shall
8 make findings of fact and conclusions of law as to whether such
9 child is abused or neglected and, if applicable, whether the
10 parent, guardian, or custodian is a battered parent, all of which
11 shall be incorporated into the order of the court. The findings
12 must be based upon conditions existing at the time of the filing of
13 the petition and proven by clear and convincing proof.

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

1 possible after the end of said improvement period and shall be held
2 within sixty days of the termination of such improvement period.

3 (e) Following the court's determination, it shall be inquired
4 of the parents or custodians whether or not appeal is desired and
5 the response transcribed. A negative response shall not be
6 construed as a waiver. The evidence shall be transcribed and made
7 available to the parties or their counsel as soon as practicable,
8 if the same is required for purposes of further proceedings. If an
9 indigent person intends to pursue further proceedings, the court
10 reporter shall furnish a transcript of the hearing without cost to
11 the indigent person if an affidavit is filed stating that he or she
12 cannot pay therefor.

13 **§49-6-3. Petition to court when child believed neglected or abused**

14 **-- Temporary custody;**

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

21 (1) There exists imminent danger to the physical well-being of
22 the child; and

23 (2) There are no reasonably available alternatives to removal
24 of the child, including, but not limited to, the provision of

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

24 (A) That continuation in the home is contrary to the best

1 interests of the child and why; and

2 (B) Whether or not the department made reasonable efforts to
3 preserve the family and prevent the placement or that the emergency
4 situation made such efforts unreasonable or impossible. The order
5 may also direct any party or the department to initiate or become
6 involved in services to facilitate reunification of the family.

7 (b) Whether or not the court orders immediate transfer of
8 custody as provided in subsection (a) of this section, if the facts
9 alleged in the petition demonstrate to the court that there exists
10 imminent danger to the child, the court may schedule a preliminary
11 hearing giving the respondents at least five days' actual notice.
12 If the court finds at the preliminary hearing that there are no
13 alternatives less drastic than removal of the child and that a
14 hearing on the petition cannot be scheduled in the interim period,
15 the court may order that the child be delivered into the temporary
16 custody of the department or a responsible person or agency found
17 by the court to be a fit and proper person for the temporary care
18 of the child for a period not exceeding sixty days: *Provided*, That
19 the court order shall state:

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

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

1 (3) Whether or not the department made reasonable efforts to
2 preserve the family and to prevent the placement or that the
3 emergency situation made such efforts unreasonable or impossible;
4 and

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

9 (c) If a child or children shall, in the presence of a child
10 protective service worker, be in an emergency situation which
11 constitutes an imminent danger to the physical well-being of the
12 child or children, as that phrase is defined in section three,
13 article one of this chapter, and if such worker has probable cause
14 to believe that the child or children will suffer additional child
15 abuse or neglect or will be removed from the county before a
16 petition can be filed and temporary custody can be ordered, the
17 worker may, prior to the filing of a petition, take the child or
18 children into his or her custody without a court order: *Provided,*
19 That after taking custody of such child or children prior to the
20 filing of a petition, the worker shall forthwith appear before a
21 circuit judge or a juvenile referee of the county wherein custody
22 was taken, or if no such judge or referee be available, before a
23 circuit judge or a juvenile referee of an adjoining county, and
24 shall immediately apply for an order ratifying the emergency

1 custody of the child pending the filing of a petition. The circuit
2 court of every county in the state shall appoint at least one of
3 the magistrates of the county to act as a juvenile referee, who
4 shall serve at the will and pleasure of the appointing court, and
5 who shall perform the functions prescribed for such position by the
6 provisions of this subsection. The parents, guardians or custodians
7 of the child or children may be present at the time and place of
8 application for an order ratifying custody, and if at the time the
9 child or children are taken into custody by the worker, the worker
10 knows which judge or referee is to receive the application, the
11 worker shall so inform the parents, guardians or custodians. The
12 application for emergency custody may be on forms prescribed by the
13 Supreme Court of Appeals or prepared by the prosecuting attorney or
14 the applicant, and shall set forth facts from which it may be
15 determined that the probable cause described above in this
16 subsection exists. Upon such sworn testimony or other evidence as
17 the judge or referee deems sufficient, the judge or referee may
18 order the emergency taking by the worker to be ratified. If
19 appropriate under the circumstances, the order may include
20 authorization for an examination as provided for in subsection (b),
21 section four of this article. If a referee issues such an order,
22 the referee shall by telephonic communication have such order
23 orally confirmed by a circuit judge of the circuit or an adjoining
24 circuit who shall on the next judicial day enter an order of

1 confirmation. If the emergency taking is ratified by the judge or
2 referee, emergency custody of the child or children shall be vested
3 in the department until the expiration of the next two judicial
4 days, at which time any such child taken into emergency custody
5 shall be returned to the custody of his or her parent or guardian
6 or custodian unless a petition has been filed and custody of the
7 child has been transferred under the provisions of section three of
8 this article.

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

13 (1) The parent has subjected the child, another child of the
14 parent, or any other child residing in the same household or under
15 the temporary or permanent custody of the parent to aggravated
16 circumstances which include, but are not limited to, abandonment,
17 torture, chronic abuse and sexual abuse;

18 (2) The parent has:

19 (A) Committed murder of the child's other parent, guardian or
20 custodian, another child of the parent, or any other child residing
21 in the same household or under the temporary or permanent custody
22 of the parent;

23 (B) Committed voluntary manslaughter of the child's other
24 parent, guardian or custodian, another child of the parent, or any

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

3 (C) Attempted or conspired to commit such a murder or
4 voluntary manslaughter or been an accessory before or after the
5 fact to either such crime;

6 (D) Committed unlawful or malicious wounding that results in
7 serious bodily injury to the child, the child's other parent,
8 guardian or custodian, to another child of the parent, or any other
9 child residing in the same household or under the temporary or
10 permanent custody of the parent; ~~or~~

11 (E) Committed sexual assault or sexual abuse of the child, the
12 child's other parent, guardian, or custodian, another child of the
13 parent, or any other child residing in the same household or under
14 the temporary or permanent custody of the parent; or

15 (F) Required by state or federal law to register with a sex
16 offender registry.

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

19 **§49-6-5. Disposition of neglected or abused children;**

20 (a) Following a determination pursuant to section two of this
21 article wherein the court finds a child to be abused or neglected,
22 the department shall file with the court a copy of the child's case
23 plan, including the permanency plan for the child. The term case
24 plan means a written document that includes, where applicable, the

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

1 become a permanent placement. This case plan shall serve as the
2 family case plan for parents of abused or neglected children.
3 Copies of the child's case plan shall be sent to the child's
4 attorney and parent, guardian or custodian or their counsel at
5 least five days prior to the dispositional hearing. The court shall
6 forthwith proceed to disposition giving both the petitioner and
7 respondents an opportunity to be heard. The court shall give
8 precedence to dispositions in the following sequence:

9 (1) Dismiss the petition;

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

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

15 (4) Order terms of supervision calculated to assist the child
16 and any abusing parent or battered parent or parents or custodian
17 which prescribe the manner of supervision and care of the child and
18 which are within the ability of any parent or parents or custodian
19 to perform;

20 (5) Upon a finding that the abusing parent or battered parent
21 or parents are presently unwilling or unable to provide adequately
22 for the child's needs, commit the child temporarily to the custody
23 of the state department, a licensed private child welfare agency or
24 a suitable person who may be appointed guardian by the court. The

1 court order shall state:

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

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

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

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

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

18 (ii) Be considered for adoption;

19 (iii) Be considered for legal guardianship;

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

22 (v) Be placed in another planned permanent living arrangement,
23 but only in cases where the department has documented to the
24 circuit court a compelling reason for determining that it would not

1 be in the best interests of the child to follow one of the options
2 set forth in subparagraphs (i), (ii), (iii) or (iv) of this
3 paragraph. The court may order services to meet the special needs
4 of the child. Whenever the court transfers custody of a youth to
5 the department, an appropriate order of financial support by the
6 parents or guardians shall be entered in accordance with section
7 five, article seven of this chapter; or

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

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

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

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

23 Notwithstanding any other provision of this article, the court
24 shall give consideration to the wishes of a child fourteen years of

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

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

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

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

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

24 (7) For purposes of the court's consideration of the

1 disposition custody of a child pursuant to the provisions of this
2 subsection, the department is not required to make reasonable
3 efforts to preserve the family if the court determines:

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

9 (B) The parent has:

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

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

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

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

1 custody of the parent; ~~or~~

2 (v) Committed sexual assault or sexual abuse of the child, the
3 child's other parent, guardian, or custodian, 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; or

6 (vi) Required by state or federal law to register with a sex
7 offender registry.

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

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

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

23 (2) The abusing parent or parents have willfully refused or
24 are presently unwilling to cooperate in the development of a

1 reasonable family case plan designed to lead to the child's return
2 to their care, custody and control;

3 (3) The abusing parent or parents have not responded to or
4 followed through with a reasonable family case plan or other
5 rehabilitative efforts of social, medical, mental health or other
6 rehabilitative agencies designed to reduce or prevent the abuse or
7 neglect of the child, as evidenced by the continuation or
8 insubstantial diminution of conditions which threatened the health,
9 welfare or life of the child;

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

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

18 (6) The abusing parent or parents have incurred emotional
19 illness, mental illness or mental deficiency of such duration or
20 nature as to render such parent or parents incapable of exercising
21 proper parenting skills or sufficiently improving the adequacy of
22 such skills; or

23 (7) The battered parent's parenting skills have been seriously
24 impaired and said person has willfully refused or is presently

1 unwilling or unable to cooperate in the development of a reasonable
2 treatment plan or has not adequately responded to or followed
3 through with the recommended and appropriate treatment plan.

4 (c) The court may, as an alternative disposition, allow the
5 parents or custodians an improvement period not to exceed six
6 months. During this period the court shall require the parent to
7 rectify the conditions upon which the determination was based. The
8 court may order the child to be placed with the parents, or any
9 person found to be a fit and proper person, for the temporary care
10 of the child during the period. At the end of the period, the court
11 shall hold a hearing to determine whether the conditions have been
12 adequately improved and at the conclusion of the hearing shall make
13 a further dispositional order in accordance with this section.

14 **§49-6-6. Modification of dispositional orders.**

15 (a) Upon motion of a child, a child's parent or custodian, or
16 the State Department of Health and Human Resources alleging a change
17 of circumstances requiring a different disposition, the court shall
18 conduct a hearing pursuant to section two of this article and may
19 modify a dispositional order if the court finds by clear and
20 convincing evidence a material change of circumstances and that such
21 modification is in the child's best interests: Provided, That a
22 dispositional order pursuant to subdivision (6), subsection (a) of
23 section five shall not be modified after the child has been adopted,
24 except as provided in subsections (b) and (c) of this section.

1 Adequate and timely notice of any motion for modification shall be
2 given to the child's counsel, counsel for the child's parent or
3 custodian ~~and, to the state department~~ and any person entitled to
4 notice and the right to be heard. The circuit court of origin has
5 exclusive jurisdiction over placement of the child, and such
6 placement shall not be disrupted or delayed by any administrative
7 process of the department.

8 (b) If the child is removed or relinquished from an adoptive
9 home or other permanent placement after the case has been
10 dismissed, any party with notice thereof and the receiving agency
11 shall promptly report the matter to the circuit court of origin,
12 the department, and the child's counsel, and the court shall
13 schedule a permanency hearing within sixty days, with notice given
14 to any appropriate parties and persons entitled to notice and the
15 right to be heard. The department shall convene a multidisciplinary
16 treatment team meeting within thirty days of the receipt of notice
17 of permanent placement disruption.

18 (c) If a child has not been adopted, the child or department
19 may move the court to place the child with a parent or custodian
20 whose rights have been terminated and/or restore such parent's or
21 guardian's rights. Under these circumstances, the court may order
22 such placement and/or restoration of a parent's or guardian's
23 rights if it finds by clear and convincing evidence a material
24 change of circumstances and that such placement and/or restoration

1 is in the child's best interests.

2 §49-6-8. ~~Foster care review; annual reports to the court~~
3 Permanency Hearing and Permanent Placement Review.

4 (a) If the court finds, pursuant to any provision of this
5 article, that the department is not required to make reasonable
6 efforts to preserve the family, then, notwithstanding any other
7 provision, a permanency hearing must be held within thirty days
8 following the entry of the court order so finding, and a permanent
9 placement review hearing must be conducted at least once every
10 three calendar months thereafter until a permanent placement is
11 achieved.

12 (b) If, twelve months after receipt by the department or its
13 authorized agent of physical custody of a child either by a court
14 ordered placement or by a voluntary agreement, the department has
15 not placed a child in an adoptive home or placed the child with a
16 natural parent or placed the child in legal guardianship or
17 permanently placed the child with a fit and willing relative, the
18 ~~department shall file with the court a petition for review of the~~
19 ~~case~~ court shall hold a permanency hearing. The department shall
20 ~~also file a report with the court~~ with the court a report detailing
21 the efforts that have been made to place the child in a permanent
22 home and copies of the child's case plan, including the permanency
23 plan as defined in section five, article six of this chapter.
24 Copies of the report shall be sent to the ~~child's attorney and be~~

1 ~~made available to the child's parent(s) or guardian~~ parties and
2 all persons entitled to notice and the right to be heard. The court
3 shall schedule a hearing ~~in chambers,~~ giving notice and the right
4 to be present to: The child's attorney; the child, if twelve years
5 of age or older; the child's parents; the child's guardians; the
6 child's foster parents; any preadoptive parent or any relative
7 providing care for the child; any person entitled to notice and the
8 right to be heard; and such other persons as the court may, in its
9 discretion, direct. The child's presence may be waived by the
10 child's attorney at the request of the child or if the child would
11 suffer emotional harm. The purpose of the hearing is to review the
12 child's case, to determine whether and under what conditions the
13 child's commitment to the department shall continue and to
14 determine what efforts are necessary to provide the child with a
15 permanent home. In the case of a child who will not be returned to
16 his or her parent, the court shall consider in-state and out-of-
17 state placement options, and, if the court considers an out-of-
18 state placement, the court shall determine whether such placement
19 is in the best interests of the child; in the case of a child who
20 has attained the sixteen years of age, the court shall determine
21 the services needed to assist the child to make the transition from
22 foster care to independent living. In any case in which the court
23 decides to order the child placed in an out-of-state facility or
24 program it shall set forth in the order directing the placement the

1 reasons why the child was not placed in an in-state facility or
2 program. At the conclusion of the hearing the court shall, in
3 accordance with the best interests of the child, enter an
4 ~~appropriate order containing all such appropriate findings. of~~
5 ~~disposition.~~ The court order shall state: (1) Whether or not the
6 department made reasonable efforts to preserve the family and to
7 prevent out-of-home placement or that the specific situation made
8 such effort unreasonable; (2) whether or not the department made
9 reasonable efforts to finalize the permanency plan for the child;
10 and (3) identify services required to meet the child's needs.
11 ~~needs: Provided, That the department is not required to make~~
12 ~~reasonable efforts to preserve the family if the court determines~~
13 ~~any of the conditions set forth in subdivision (7), subsection (a),~~
14 ~~section five of this article exist. The court shall possess~~
15 ~~continuing jurisdiction over cases reviewed under this section for~~
16 ~~so long as a child remains in temporary foster care or, when a~~
17 ~~child is returned to his or her natural parents subject to~~
18 ~~conditions imposed by the court, for so long as the conditions are~~
19 ~~effective.~~

20 (b) ~~(c)~~ The state department court shall file a supplementary
21 petition for review with the court shall conduct another permanency
22 hearing within twelve months and every twelve months thereafter for
23 every each child that who remains in the physical or legal custody
24 of the State Department of Health and Human Resources until the

1 child is placed in an adoptive home or returned to his or her
2 parents or placed in legal guardianship or permanently placed with
3 a fit and willing relative.

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

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

18 ~~(e)~~ (f) The state department shall notify, in writing, the
19 court, the child, if over the age of twelve, the child's attorney,
20 the parents and the parents' attorney forty-eight hours prior to
21 the move if this is a planned move, or within forty-eight hours of
22 the next business day after the move if this is an emergency move,
23 except where such notification would endanger the child or the
24 foster family. This notice shall not be required in any case where

1 the child is in imminent danger in the child's current placement.
2 The location of the child need not be disclosed, but the purpose of
3 the move should be. This requirement is not waived by placement of
4 the child in a home or other residence maintained by a private
5 provider. No notice shall be provided pursuant to this provision to
6 any parent or parent's attorney whose parental rights have been
7 terminated pursuant to this article.

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

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

16 **§49-6-9a. Custody Ordered from Family Court in emergency**
17 **situations.**

18 (a) Where any child in a family court proceeding is in
19 circumstances constituting imminent danger in the presence of a
20 family court judge, and the family court judge finds the child to
21 be neglected or abused as defined in section three, article one of
22 this chapter, the judge may order the child to be taken into the
23 emergency custody of the Department of Health and Human Resources
24 without the court order otherwise required by section three of this

1 article, if the judge finds that: (1) There exists an imminent
2 danger to the physical well-being of the child as defined in
3 section three, article one of this chapter; and (2) there are no
4 reasonable, available alternatives to the emergency custody order.
5 Upon notification by the family court judge that there exists an
6 imminent danger to the physical well-being of the child, the
7 department shall immediately respond and assist the judge in
8 emergency placement of the child.

9 (b) A child taken into emergency protective custody as subject
10 to imminent danger under the provisions of this section may be
11 housed by the department or an authorized child shelter facility if
12 no other reasonable alternative is available to the court. The
13 authority to hold the child in protective custody as provided by
14 this section, absent a petition and proper order granting temporary
15 custody pursuant to section three of this article, shall terminate
16 by operation of law upon expiration of ninety-six hours from the
17 time the child is initially taken into protective custody.

18 (c) The family court shall, within two judicial days of its
19 emergency custody order issued pursuant to this section, file a
20 written order specifying all the facts upon which the decision to
21 order the child into protective custody was based and the date,
22 time and place of the taking. A copy of the written order shall be
23 transmitted forthwith to the department, the circuit court and
24 prosecuting attorney of the county. Upon receiving the written

1 order, the circuit court shall forthwith cause to be entered and
2 served an administrative order in the name of and regarding the
3 affected child directing the department to submit to the family and
4 circuit court an investigative report, including whether the
5 department intends to file a petition under section three of this
6 article, or appear before the circuit court in not more than
7 ninety-six hours from the taking at a scheduled hearing, to show
8 cause why the department's investigation report has not been
9 submitted to the circuit court and referring family court. The
10 scheduled hearing may be mooted by the department's earlier
11 submission of the investigative report or, in the alternative, the
12 filing of a child abuse and neglect petition under section three of
13 this article. The family court shall retain full jurisdiction of
14 the child custody proceedings or protective order proceedings, or
15 both, until a child abuse and neglect petition is filed.

16 (d) Any worker for the department assuming custody of a child
17 pursuant to the provisions of this section shall immediately notify
18 the child's parents, parent, guardian or custodian of the taking of
19 custody of the child and the underlying reasons for taking custody,
20 if the whereabouts of the parents, parent, guardian or custodian
21 are known or can be discovered with due diligence; and if not,
22 notice and explanation shall be given to the child's closest
23 relative, if his or her whereabouts are known or can be discovered
24 with due diligence within a reasonable time. An inquiry shall be

1 made of relatives and neighbors, and if an appropriate relative or
2 neighbor is willing to assume custody of such child, such child
3 shall temporarily be placed in such custody.

4 (e) No child may be taken into custody under circumstances not
5 justified by this section or pursuant to section three of this
6 article without appropriate process. Any retention of a child or
7 order for retention of a child not complying with the time limits
8 and other requirements specified in this article is void by
9 operation of law.

10 **§49-6-12. Improvement period in cases of child neglect or abuse**

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

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

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

21 (3) In the order granting the improvement period, the court
22 (A) orders that a hearing be held to review the matter within sixty
23 days of the granting of the improvement period, or (B) orders that
24 a hearing be held to review the matter within ninety days of the

1 granting of the improvement period and that the department submit
2 a report as to the respondents progress in the improvement period
3 within sixty days of the order granting the improvement period; and

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

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

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

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

18 (3) In the order granting the improvement period, the court
19 (A) orders that a hearing be held to review the matter within sixty
20 days of the granting of the improvement period, or (B) orders that
21 a hearing be held to review the matter within ninety days of the
22 granting of the improvement period and that the department submit
23 a report as to the respondent's progress in the improvement period
24 within sixty days of the order granting the improvement period;

1 (4) Since the initiation of the proceeding, the respondent has
2 not previously been granted any improvement period or the
3 respondent demonstrates that since the initial improvement period,
4 the respondent has experienced a substantial change in
5 circumstances. Further, the respondent shall demonstrate that due
6 to that change in circumstances the respondent is likely to fully
7 participate in a further improvement period; and

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

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

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

17 (2) The respondent demonstrates, by clear and convincing
18 evidence, that the respondent is likely to fully participate in the
19 improvement period and the court further makes a finding, on the
20 :record, of the terms of the improvement period;

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

22 (A) Orders that a hearing be held to review the matter within
23 sixty days of the granting of the improvement period, or

24 (B) Orders that a hearing be held to review the matter within

1 ninety days of the granting of the improvement period and that the
2 department submit a report as to the respondent's progress in the
3 improvement period within sixty days of the order granting the
4 improvement period;

5 (4) Since the initiation of the proceeding, the respondent has
6 not previously been granted any improvement period or the respondent
7 demonstrates that since the initial improvement period, the
8 respondent has experienced a substantial change in circumstances.
9 Further, the respondent shall demonstrate that due to that change
10 in circumstances, the respondent is likely to fully participate in
11 the improvement period; and

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

16 (d) When any improvement period is granted to a respondent
17 pursuant to the provisions of this section, the respondent shall be
18 responsible for the initiation and completion of all terms of the
19 improvement period. The court may order the state department to pay
20 expenses associated with the services provided during the
21 improvement period when the respondent has demonstrated that he or
22 she is unable to bear such expenses.

23 (e) When any improvement period is granted to a respondent
24 pursuant to the provisions of this section, the respondent shall

1 execute a release of all medical information regarding that
2 respondent, including, but not limited to, information provided by
3 mental health and substance abuse professionals and facilities. Such
4 release shall be accepted by any such professional or facility
5 regardless of whether the release conforms to any standard required
6 by that facility.

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

16 (g) A court may extend any improvement period granted pursuant
17 to subsections (b) or (c) of this section for a period not to exceed
18 three months when the court finds that the respondent has
19 substantially complied with the terms of the improvement period;
20 that the continuation of the improvement period will not
21 substantially impair the ability of the department to permanently
22 place the child; and that such extension is otherwise consistent
23 with the best interest of the child.

24 (h) Upon the motion by any party, the court shall terminate any

1 improvement period granted pursuant to this section when the court
2 finds that respondent has failed to fully participate in the terms
3 of the improvement period.

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

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

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

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

1 **§49-6D-3. Family Unified child and family case plans for parents**
2 **of abused or neglected children.**

3 (a) The Department of Health and Human Resources shall develop
4 a unified child and family case plan for every family wherein a
5 person has been referred to the department after being allowed an
6 improvement period or where the child is placed in foster care under
7 the provisions of section twelve, article six of this chapter. The
8 case plan must be filed within sixty days of the child coming into
9 foster care or within thirty days of the inception of the
10 improvement period, whichever occurs first. The department may also
11 prepare a ~~family~~ case plan for any person who voluntarily seeks
12 child abuse and neglect services from the department, or who is
13 referred to the department by another public agency or private
14 organization. ~~The family case plan is to clearly set forth an~~
15 ~~organized, realistic method of identifying family problems and the~~
16 ~~logical steps to be used in resolving or lessening those problems.~~
17 The case plan provisions shall comply with federal law and the rules
18 of procedure for child abuse and neglect proceedings. Every family
19 case plan prepared by the department shall contain the following:

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

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

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

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

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

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

9 ~~(7) Time targets for the achievement of goals or portions of~~
10 ~~goals;~~

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

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

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

18 ~~(b) In cases where the family has been referred to the~~
19 ~~department by a court under the provisions of this chapter, and~~
20 ~~further action before the court is pending, the family case plan~~
21 ~~described in subsection (a) of this section shall be furnished to~~
22 ~~the court within thirty days after the entry of the order referring~~
23 ~~the case to the department, and shall be available to counsel for~~
24 ~~the parent, guardian or custodian and counsel for the child or~~

1 ~~children.~~ The department shall ~~encourage participation in~~ convene
2 a multidisciplinary treatment team, which shall develop the
3 ~~development the family case plan by the parent, guardian or~~
4 ~~custodian.~~ Parents, guardians, or custodians shall participate fully
5 in the development of the case plan, and the child shall also fully
6 participate if sufficiently mature and ~~if the child is above the age~~
7 ~~of twelve years and~~ the child's participation is otherwise
8 appropriate. ~~by the child. It shall be the duty of counsel for the~~
9 ~~participants to participate in the development of the family case~~
10 ~~plan.~~ The family case plan may be modified from time to time ~~by the~~
11 ~~department~~ to allow for flexibility in goal development, and in each
12 such case the modifications shall be submitted to the court in
13 writing. Reasonable efforts to place a child for adoption or with
14 a legal guardian may be made at the same time as reasonable efforts
15 are being made to prevent removal or to make it possible for a child
16 to return safely home. The court shall examine the proposed family
17 case plan or any modification thereof, and upon a finding by the
18 court that the plan or modified plan can be easily communicated,
19 explained and discussed so as to make the participants accountable
20 and able to understand the reasons for any success or failure under
21 the plan, the court shall inform the participants of the probable
22 action of the court if goals are met or not met.

23 (c) ~~(1) In addition to the family case plan provided for under~~
24 ~~the provisions of subsection (b) of this section, the department~~

1 ~~shall prepare, as an appendix to the family case plan, an expanded~~
2 ~~"worker's case plan". As utilized by the department under the~~
3 ~~provisions of this section, the worker's case plan shall consist of~~
4 ~~the following:~~

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

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

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

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

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

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

20 ~~(2) Because the nature of the information contained in the~~
21 ~~worker's case plan described in subdivision (1) of this subsection~~
22 ~~may, in some cases, be construed to be negative with respect to the~~
23 ~~probability of change, or may be viewed as a caseworker's attempt~~
24 ~~to impose personal values into the situation, or may raise barriers~~

~~1 of hostility and resistance between the caseworker and the family
2 members, the worker's case plan shall not be made available to the
3 court or to persons outside of the department, but shall be used by
4 the department for the purpose of confirming the effectiveness of
5 the family case plan or for determining that changes in the family
6 case plan need to be made.~~

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

10 (1) For the development and establishment of training programs
11 for professional and paraprofessional personnel in the fields of
12 medicine, law, education, social work and other relevant fields who
13 are engaged in, or intend to work in, the field of the prevention,
14 identification and treatment of child abuse and neglect; and
15 training programs for children, and for persons responsible for the
16 welfare of children, in methods of protecting children from child
17 abuse and neglect;

18 (2) For the establishment and maintenance of centers, serving
19 defined geographic areas, staffed by multidisciplinary teams and
20 community teams of personnel trained in the prevention,
21 identification, and treatment of child abuse and neglect cases, to
22 provide a broad range of services related to child abuse and
23 neglect, including direct support ~~and supervision of satellite~~
24 ~~centers and attention homes,~~ as well as providing advice and

1 consultation to individuals, agencies and organizations which
2 request such services;

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

7 (4) For other innovative programs and projects that show
8 promise of successfully identifying, preventing or remedying the
9 causes of child abuse and neglect, including, but not limited to,
10 programs and services designed to improve and maintain parenting
11 skills, programs and projects for parent self-help, and for
12 prevention and treatment of drug-related child abuse and neglect;
13 and

14 (5) Assisting public agencies or nonprofit private
15 organizations or combinations thereof in making applications for
16 grants from, or in entering into contracts with, the secretary of
17 the federal department of health and human services for
18 demonstration programs and projects designed to identify, prevent
19 and treat child abuse and neglect.

20 ~~(e)~~ (d) Agencies, organizations and programs funded to carry
21 out the purposes of this section shall be structured so as to comply
22 with any applicable federal law, any regulation of the federal
23 department of health and human services or the secretary thereof,
24 and any final comprehensive plan of the federal advisory board on

1 child abuse and neglect. In funding organizations, the department
2 shall, to the extent feasible, ensure that parental organizations
3 combating child abuse and neglect receive preferential treatment.

4 **ARTICLE 7. GENERAL PROVISIONS.**

5 **§49-7-1. Confidentiality of records**

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

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

18 (1) Where otherwise authorized by this chapter;

19 (2) To:

20 (A) The child;

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

22 or

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

24 (3) With the written consent of the child or of someone

1 authorized to act on the child's behalf; or

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

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

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

18 (2) The child fatality review team;

19 (3) Child abuse citizen review panels;

20 (4) Multidisciplinary investigative and treatment teams; or

21 (5) A grand jury, circuit court or family ~~law master~~ court,
22 upon a finding that information in the records is necessary for the
23 determination of an issue before the grand jury, circuit court or
24 family ~~law master~~ court.

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

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

19 (f) Any person who willfully violates the provisions of this
20 section is guilty of a misdemeanor and, upon conviction thereof,
21 shall be fined not more than one thousand dollars, or confined in
22 the county or regional jail for not more than six months, or be both
23 fined and confined. A person convicted of violating the provisions
24 of this section shall also be liable for damages in the amount of

1 \$300 or actual damages, whichever is greater.

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

6 **§49-7-36. Quarterly status review and yearly permanency hearings.**

7 (a) For each child who remains in foster care as a result of
8 a juvenile proceeding or as a result of a child abuse and neglect
9 proceeding, the circuit court with the assistance of the
10 multidisciplinary treatment team shall conduct quarterly status
11 reviews in order to determine the safety of the child, the
12 continuing necessity for and appropriateness of the placement, the
13 extent of compliance with the case plan, and the extent of progress
14 which has been made toward alleviating or mitigating the causes
15 necessitating placement in foster care, and to project a likely date
16 by which the child may be returned to and safety maintained in the
17 home or placed for adoption or legal guardianship.

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

22 (c) For each child or transitioning adult who continues to
23 remain in foster care, the circuit court shall conduct a permanency
24 hearing no later than twelve months after the date the child or

1 transitioning adult is considered to have entered foster care, and
2 at least once every twelve months thereafter until permanency is
3 achieved. For purposes of permanency planning for transitioning
4 adults, the circuit court shall make factual findings and
5 conclusions of law as to whether the department made reasonable
6 efforts to finalize a permanency plan to prepare a transitioning
7 adult for emancipation or independence or another approved
8 permanency option such as, but not limited to, adoption or legal
9 guardianship pursuant to the West Virginia Guardianship and
10 Conservatorship Act.

11 (d) Nothing in this section shall be construed to abrogate the
12 responsibilities of the circuit court from conducting required
13 hearings as provided in other provisions of this code, procedural
14 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, they have been completely underscored.