

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 484

(SENATORS PALUMBO, LAIRD, TUCKER, EDGELL,  
WILLS, WELLS, KESSLER (MR. PRESIDENT),  
KLEMPA, JENKINS, BEACH AND YOST, *original sponsors*)

---

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

---

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

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

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

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

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

**ARTICLE 1. PURPOSES AND DEFINITIONS.**

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

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

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

8       (B) Sexual abuse or sexual exploitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

150 (C) Nutritional deprivation;

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

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

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

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

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

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

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

182       (11) (A) “Neglected child” means a child:

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

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

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

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



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

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

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

208 (15) "Sexual abuse" means:

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

217 (i) Sexual intercourse;

218 (ii) Sexual intrusion; or

219 (iii) Sexual contact;

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

228 (i) Sexual intercourse;

229 (ii) Sexual intrusion; or

230 (iii) Sexual contact;

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

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

240 (17) “Sexual exploitation” means an act whereby:

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (2) They are emotionally disturbed;

15       (3) They are older children;

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

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

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

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

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

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

#### **ARTICLE 5. JUVENILE PROCEEDINGS.**

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

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

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

19 (1) Dismiss the petition;

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

##### **§49-6-2. Petition to court when child believed neglected or abused — Right to counsel; improvement period; hearing; priority of proceeding; transcript.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 (2) The parent has:

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

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

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

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

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



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

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

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

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

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

41 (1) Dismiss the petition;

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

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

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

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

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

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

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

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

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

75 (ii) Be considered for adoption;

76 (iii) Be considered for legal guardianship;

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

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

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

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

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

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

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

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

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

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

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

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

147 (B) The parent has:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§49-6A-5. Reporting procedures.**

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

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

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

#### **ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES ACT.**

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

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

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



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

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

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

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

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

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

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

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

#### **ARTICLE 7. GENERAL PROVISIONS.**

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

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

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

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

15 (1) Where otherwise authorized by this chapter;

16 (2) To:

17 (A) The child;

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

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

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

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

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

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

39 (2) The child fatality review team;

40 (3) Child abuse citizen review panels;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

.....  
*Speaker of the House of Delegates*

\_\_\_\_\_

The within ..... this the .....

Day of ....., 2012.

.....  
*Governor*