

**Senate Bill No. 402**

(By Senators Snyder and Miller)

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[Introduced February 28, 2013; referred to the Committee on  
Government Organization; then to the Committee on the Judiciary.]

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A BILL to repeal §48-26-404, §48-26-405, §48-26-601, §48-26-602,  
§48-26-901, §48-26-902, §48-26-1003, §48-26-1005, §48-26-1006  
and §48-26-1007 of the Code of West Virginia, 1931, as  
amended; to amend and reenact §48-26-202, §48-26-203, §48-26-  
204, §48-26-205, §48-26-206, §48-26-301, §48-26-401, §48-26-  
402, §48-26-403, §48-26-406, §48-26-603, §48-26-604, §48-26-  
701, §48-26-1001, §48-26-1002 and §48-26-1004 of said code;  
and to amend said code by adding thereto nine new sections,  
designated §48-26-207, §48-26-208, §48-26-209, §48-26-210,  
§48-26-211, §48-26-212, §48-26-213, §48-26-214 and §48-26-407,  
all relating to the Family Protection Services Board; revising  
definitions; adding definitions; revising qualifications for  
membership on the board; adding two new members to the board;  
clarifying that the two ex officio members have voting

1 privileges; providing for appointments for unexpired terms;  
2 providing appointments for members who become disqualified;  
3 authorizing legislative rules; increasing the percentage of  
4 board funds which may be used for administrative functions;  
5 authorizing the board to develop formulas to direct funds to  
6 certain programs; prohibiting programs from falsely  
7 representing that they are licensed; authorizing the board to  
8 develop preliminary and full application forms; providing for  
9 conditional, provisional and full licenses; authorizing the  
10 board to issue licenses for up to three years; authorizing the  
11 board to issue notices to cease and desist; setting forth  
12 procedures for hearings and appeals; requiring programs to  
13 report annually to the board; and providing confidentiality  
14 protections for programs participants.

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

16 That §48-26-404, §48-26-405, §48-26-601, §48-26-602, §48-26-  
17 901, §48-26-902, §48-26-1003, §48-26-1005, §48-26-1006 and §48-26-  
18 1007 of the Code of West Virginia, 1931, as amended, be repealed;  
19 that §48-26-202, §48-26-203, §48-26-204, §48-26-205, §48-26-206,  
20 §48-26-301, §48-26-401, §48-26-402, §48-26-403, §48-26-406, §48-26-  
21 603, §48-26-604, §48-26-701, §48-26-1001, §48-26-1002 and §48-26-  
22 1004 of said code be amended and reenacted; and that said code be  
23 amended by adding thereto nine new sections, designated §48-26-207,

1 §48-26-208, §48-26-209, §48-26-210, §48-26-211, §48-26-212, §48-26-  
2 213, §48-26-214 and §48-26-407, all to read as follows:

3 **ARTICLE 26. DOMESTIC VIOLENCE ACT.**

4 PART 2. DEFINITIONS.

5 **§48-26-202. Advocacy defined.**

6 "Advocacy" means assisting victims and survivors of domestic  
7 violence, dating violence, sexual assault, stalking or human  
8 trafficking, and their children, in securing rights, remedies and  
9 services, by directly providing for, or referring to public and  
10 private agencies to provide for, safety planning; shelter; housing;  
11 legal services; outreach; counseling; case management; information  
12 and referral; training; employment; child care; health care;  
13 transportation; financial literacy education, financial planning  
14 and related economic empowerment services; parenting and other  
15 educational services; and other support services.

16 **§48-26-203. Batterer Intervention and Prevention Program defined.**

17 "Batterer intervention and prevention program", previously  
18 referred to as a program of intervention for perpetrators, means a  
19 licensed educational program that provides classes to individuals  
20 who commit acts of domestic violence or abuse, offering nonviolent  
21 strategies and values that promote respect and equality in intimate  
22 partner relationships.

23 **§48-26-204. Board defined.**

1 "Board" means the Family Protection Services Board created  
2 pursuant to Chapter 53 of the Acts of the Legislature of 1989, and  
3 subsequently recodified as section three hundred one of this  
4 article.

5 **§48-26-205. Closure defined.**

6 "Closure" means the temporary or permanent prohibition of  
7 specified services and the corresponding suspension of licensure of  
8 a program or program component which violates the standards  
9 established by the board or which threatens the health, well being  
10 or safety of its program participants or staff.

11 **§48-26-206. Department defined.**

12 "Department" means the Department of Health and Human  
13 Resources.

14 **§48-26-207. Domestic Violence Legal Services Fund defined.**

15 "Domestic Violence Legal Services Fund" means the special  
16 revenue account established by section six hundred three of this  
17 article, for the purposes set forth in that section.

18 **§48-26-208. Domestic violence program defined.**

19 "Domestic violence program" means a licensed program of a  
20 locally controlled nonprofit organization, established primarily  
21 for the purpose of providing advocacy services, comprising both a  
22 shelter component and an outreach component, to victims of domestic

1 violence, dating violence, sexual assault, stalking or human  
2 trafficking, and their children: *Provided*, That the board may  
3 temporarily or permanently close either the shelter component or  
4 the outreach component of a domestic violence program.

5 **§48-26-209. Family Protection Fund defined.**

6 "Family Protection Fund" means the special revenue account  
7 established by Chapter 74 of the Acts of the Legislature of 1981,  
8 held by the department, for the purpose of collecting marriage  
9 license fees pursuant to section six hundred four, article two of  
10 this chapter and section ten, article one, chapter fifty-nine of  
11 this code, divorce surcharge fees pursuant to section twenty-eight-  
12 a, article one, chapter fifty-nine of this code, and fees for  
13 failure to present a premarital education course completion  
14 certificate pursuant to section ten, article one, chapter fifty-  
15 nine of this code, and distributed to licensed domestic violence  
16 programs, in accordance with the formula designated by the board.

17 **§48-26-210. Intimate partner defined.**

18 "Intimate partner" means a current or former spouse, a person  
19 with whom one shares a child in common, a person with whom one is  
20 cohabiting or has cohabited, or a person with whom one is or has  
21 been in a relationship of a romantic or intimate nature.

22 **§48-26-211. Licenses defined.**

1 (a) "Conditional license" means a license issued for up to  
2 ninety days, to programs that have violations of safety or  
3 accountability standards which may threaten the health, well-being  
4 or safety of its program participants or staff, or the responsible  
5 operation of the program, or that have a history or pattern of  
6 noncompliance with established standards.

7 (b) "Provisional license" means a license issued for up to one  
8 hundred and eighty days, to programs that are in noncompliance with  
9 nonlife threatening safety, programmatic, facility or  
10 administrative standards, which may be extended for an additional  
11 six months, if the board determines that the program is making  
12 active progress toward compliance.

13 (c) "Full license" means a license issued for up to the  
14 maximum licensure period of three years, to programs that are in  
15 compliance with the standards established by the board and have no  
16 violations of safety or accountability standards which may threaten  
17 the health, well-being or safety of its program participants or  
18 staff, or the responsible operation of the program.

19 **§48-26-212. Monitored parenting and exchange defined.**

20 (a) "Monitored parenting" means the contact between a  
21 noncustodial parent, guardian or other adult and one or more  
22 children, in the presence of a third person who monitors the  
23 contact to promote the safety of the participants.

1 (b) "Monitored exchange" means the observation of movement of  
2 a child or children from the custodial parent or guardian to the  
3 noncustodial parent or other adult as court ordered at the  
4 beginning of the visit and back to the custodial parent or guardian  
5 at the end of the visit, without allowing contact between the  
6 adults.

7 (c) "Monitored parenting and exchange program" means a  
8 licensed program offered by a locally controlled nonprofit  
9 organization for purposes of providing a neutral, safe and child-  
10 friendly environment to allow the child or children access to the  
11 noncustodial parent or other adult without allowing contact between  
12 the custodial and noncustodial adults.

13 **§48-26-213. Outreach defined.**

14 "Outreach" means a licensed domestic violence program's  
15 community-based activities to increase awareness and availability  
16 of services, in every county within the program's regional service  
17 area, to victims and survivors of domestic violence, dating  
18 violence, sexual assault, stalking or human trafficking, and their  
19 children.

20 **§48-26-214. Shelter defined.**

21 "Shelter" means residential services offered by a licensed  
22 domestic violence program on a temporary basis, to persons who are  
23 victims of domestic violence, dating violence, sexual assault,

1 stalking or human trafficking, and their children.

2 PART 3. FAMILY PROTECTION SERVICES BOARD.

3 **§48-26-301. Family Protection Services Board continued; terms.**

4 (a) The family protection services board ~~previously created,~~  
5 is continued.

6 (b) Membership of the board is comprised of ~~five~~ seven  
7 persons. The Governor, with the advice and consent of the Senate,  
8 shall appoint ~~three~~ five members of the board who meet the  
9 following qualifications:

10 (1) One appointed member must be a ~~commissioner of a shelter~~  
11 director of a licensed domestic violence program, selected from a  
12 list nominated by the board;

13 (2) One ~~appointed~~ member must be a member of a ~~major trade~~  
14 ~~association that represents shelters across the state~~ the West  
15 Virginia Coalition Against Domestic Violence, selected from a list  
16 nominated by the West Virginia Coalition Against Domestic Violence;

17 (3) One member must be a representative of a batterer  
18 intervention and prevention program licensed by the board, selected  
19 from a list nominated by the board;

20 (4) One member must be an administrator of the West Virginia  
21 Supreme Court of Appeals or his or her designee from the Division  
22 of Family Court Services who is familiar with monitored parenting  
23 and exchange program services, or a representative of a licensed



1 monitored parenting and exchange program, selected from a list  
2 nominated by the board; and

3 ~~(5) The final gubernatorial appointee~~ One member must be a  
4 ~~member of the public~~ citizen who is a resident of this state and  
5 who is not employed by, under contract with or volunteers for a  
6 program licensed by the board, and who is knowledgeable about  
7 services for victims and survivors of domestic violence, selected  
8 from a list nominated by the board;

9 ~~(c) The other two members are the~~ Secretary of the Department  
10 of Health and Human Resources, or his or her designee, and the  
11 ~~chairperson~~ chair of the Governor's Committee on Crime, Delinquency  
12 and Correction, or his or her designee shall serve as ex officio,  
13 voting members.

14 ~~(d) No more than one person who is employed by, under contract~~  
15 with or volunteers for any organization that is licensed to operate  
16 any program under the provisions of this article may serve on the  
17 board at the same time.

18 ~~(b) (e) The terms of the three~~ five members appointed by the  
19 Governor are ~~staggered terms of~~ for three years, staggered in  
20 accordance with prior enactments of this act. ~~The initial term of~~  
21 ~~the commissioner of the shelter is a one-year term, the initial~~  
22 ~~term of the representative of the trade association is a two-year~~  
23 ~~term and the initial term of the appointed member of the public is~~

1 ~~a three year term.~~

2 ~~(c) In the event that a member of the board ceases to be~~  
3 ~~qualified for appointment, then his or her appointment terminates.~~

4 ~~(g)~~ (f) If a member resigns or is unable to complete his or  
5 her term or ceases to be qualified, the Governor shall appoint  
6 within ninety days a person who meets the qualifications of this  
7 section to serve the remainder of the unexpired term, from a list  
8 nominated by the board.

9 PART 4. DUTIES OF FAMILY PROTECTION SERVICES BOARD.

10 **§48-26-401. Powers and duties of board.**

11 ~~It is the duty of the board to:~~

12 (a) The board shall:

13 ~~(1) Regulate its procedural practice;~~ Propose rules for  
14 legislative approval, in accordance with the provisions of article  
15 three, chapter twenty-nine-a of this code, to implement the  
16 provisions of this article and any applicable federal guidelines;

17 ~~(2) Receive and consider applications for the development of~~  
18 ~~shelters~~ licensure of domestic violence programs, batterer  
19 intervention and prevention programs and monitored parenting and  
20 exchange programs;

21 ~~(3) Facilitate the formation and operation of shelters;~~ Assess  
22 the need for domestic violence programs, batterer intervention and  
23 prevention programs and monitored parenting and exchange programs,

1 including licensure preapplication and application processes;

2 (4) ~~Promulgate rules to implement the provisions of this~~  
3 ~~article and any applicable federal guidelines;~~ Conduct licensure  
4 renewal reviews of domestic violence programs, batterer  
5 intervention and prevention programs and monitored parenting and  
6 exchange programs, which will ensure the safety, well-being and  
7 health of the programs' participants and staff;

8 (5) ~~Advise the secretary on matters of concern relative to his~~  
9 ~~or her responsibilities under this article~~ For each fiscal year,  
10 expend from the Family Protection Fund a sum not to exceed fifteen  
11 percent for the costs of administering the provisions of this  
12 article, and direct the Department of Health and Human Resources to  
13 distribute one half of the remaining funds equally and the other  
14 half of the remaining funds proportionately, to licensed domestic  
15 violence programs, in accordance with a formula determined by the  
16 board;

17 (6) ~~Study issues pertinent to family protection shelters,~~  
18 ~~programs for domestic violence victims, and report the results~~  
19 Submit an annual report on the status of programs licensed under  
20 the provisions of this article to the Governor and the Legislature;

21 (7) Conduct hearings as necessary under this article; and

22 (8) ~~Delegate to the secretary such powers and duties of the~~  
23 ~~board as the board may deem appropriate to delegate, including, but~~

1 ~~not limited to, the authority to approve, disapprove, revoke or~~  
2 ~~suspend licenses;~~ Collect data about licensed programs for use in  
3 an annual report of the board.

4 ~~(9) Deliver funds to shelters within forty-five days of the~~  
5 ~~approval of a proposal for such shelters;~~

6 ~~(10) Establish a system of peer review which will ensure the~~  
7 ~~safety, well-being and health of the clients of all shelters~~  
8 ~~operating in the state;~~

9 ~~(11) Evaluate annually each funded shelter to determine its~~  
10 ~~compliance with the goals and objectives set out in its original~~  
11 ~~application for funding or subsequent revisions;~~

12 ~~(12) To award to shelters, for each fiscal year, ninety-five~~  
13 ~~percent of the total funds collected and paid over during the~~  
14 ~~fiscal year to the special revenue account established pursuant to~~  
15 ~~section 2-604 of this chapter and to expend, during said period a~~  
16 ~~sum not in excess of five percent of said funds for cost of~~  
17 ~~administering provisions of this article;~~

18 ~~(13) Establish and enforce system of standards for annual~~  
19 ~~licensure for all shelters and programs in the state;~~

20 ~~(14) Enforce standards; and~~

21 ~~(15) Review its rules biannually.~~

22 (b) The board may:

23 (1) Advise the Secretary of the Department of Health and

1 Human Resources and the Chair of the Governor's Committee on Crime,  
2 Delinquency and Correction on matters of concern relative to their  
3 responsibilities under this article;

4 (2) Delegate to the Secretary of the Department of Health and  
5 Human Resources such powers and duties of the board as the board  
6 considers appropriate to delegate, including, but not limited to,  
7 the authority to approve, disapprove, revoke or suspend licenses;

8 (3) Advise administrators of state or federal funds of  
9 licensure violations and closures of programs; and

10 (4) Exercise all other powers necessary to implement the  
11 provisions of this article.

12 **§48-26-402. Requirements, qualifications and terms of licensure;**  
13 **collaboration to assist programs.**

14 (a) No domestic violence program, batterer intervention and  
15 prevention program or monitored parenting and exchange program may  
16 represent that it is licensed unless it is licensed by the board  
17 pursuant to the provisions of this article and the legislative  
18 rules promulgated pursuant to this article.

19 ~~(a)~~ (b) The board shall establish an preliminary application  
20 and full application forms for the initial licensing all shelters  
21 and programs of domestic violence programs, batterer intervention  
22 and prevention programs and monitored parenting and exchange  
23 programs.

1 (1) To meet basic eligibility requirements an applicant for  
2 licensure must complete a preliminary application form to  
3 demonstrate local need for the proposed service, method of  
4 governance and accountability, administrative and programmatic  
5 design, and fiscal efficiency. The board shall respond in writing  
6 within sixty days of receipt of the preliminary application;

7 (2) If the board approves the preliminary application, the  
8 applicant may complete a full application form;

9 (3) The board shall determine whether all documentation set  
10 forth on the licensure checklist has been submitted, and may  
11 request supplemental or clarifying information or documentation;  
12 and

13 (4) The board shall grant or deny a license within sixty days  
14 of the receipt of the completed full application form and all  
15 supplemental or clarifying information or documentation requested  
16 by the board.

17 ~~(b)~~ (c) Licenses may be granted or renewed on an annual basis  
18 ~~with all such licenses having a term of one year for periods not to~~  
19 ~~exceed three years: commencing on the first day of July and~~  
20 ~~terminating on the thirtieth day of June of the next year~~ Provided,  
21 That the board may conduct licensure reviews at any time during the  
22 licensure period, and may downgrade, suspend or revoke a license in  
23 accordance with the provisions of this article.

1 ~~(c) The board shall grant or deny any license within forty~~  
2 ~~five days of the receipt of the application.~~

3 (d) The license granted by the board shall be ~~conspicuously~~  
4 prominently displayed by the licensees.

5 (e) The board may grant a provisional license ~~or grant a~~  
6 ~~waiver of licensure if the board deems such waiver or provisional~~  
7 ~~license necessary for the shelter or program. All such waivers or~~  
8 ~~provisional licenses shall be reviewed semiannually.~~ for up to one  
9 hundred and eighty days, to a program which is noncompliant with  
10 nonlife threatening safety, programmatic, facility or  
11 administrative standards. A provisional license may be extended  
12 for up to an additional one hundred and eighty days, if the board,  
13 in its sole discretion, determines that the program is making  
14 active progress toward compliance.

15 (f) The board may grant a conditional license for up to ninety  
16 days to a program which has violations of safety or accountability  
17 standards which may threaten the health, well-being or safety of  
18 its participants or staff, or the responsible operation of the  
19 program, or that have a history or pattern of noncompliance with  
20 established standards. If a program does not correct the  
21 violations within the conditional license period, the board may  
22 institute closure proceedings.

23 (g) The Department of Health and Human Resources, the Division

1 of Justice and Community Services, the Family Protection Services  
2 Board, the WV Coalition Against Domestic Violence, the West  
3 Virginia Supreme Court of Appeals and the Division of Corrections  
4 may, collectively or in any combination as appropriate to the  
5 program, collaborate to provide technical assistance to prevent and  
6 resolve deficiencies in a program's ability to meet the standards  
7 to operate and maintain licensure.

8 (h) If the board obtains information that a person or persons  
9 has engaged in, is engaging in or is about to engage in an act  
10 which constitutes or will constitute a violation of the provisions  
11 of this article or the legislative rules promulgated pursuant to  
12 this article, it may issue a notice to the person or persons to  
13 cease and desist the act, or apply to the circuit court for an  
14 order enjoining the act. Upon a showing that the person has  
15 engaged, is engaging or is about to engage in such an act, the  
16 court may order an injunction, restraining order or other order as  
17 the court considers appropriate.

18 **§48-26-403. Legislative rules.**

19 (a) The board shall propose rules for legislative approval in  
20 accordance with the provisions of article three, chapter twenty-  
21 nine-a of this code to effectuate the provisions of this article.

22 (b) The rules shall include, at a minimum:

23 (1) Operating procedures of the board;



1 (2) Minimum standards, including, but not limited to,  
2 governance, administration, safety, referral process, intake,  
3 services, financial accountability, staffing, personnel policies,  
4 communication, program participant records, service plans,  
5 confidentiality, program evaluation, facility requirements,  
6 reports, restrictions, and other requirements in this article, for  
7 licensure of:

8 (A) Domestic violence programs, including requirements for  
9 both shelter and outreach components;

10 (B) Community-based, local government and Division of  
11 Corrections batterer intervention and prevention programs; and

12 (C) Monitored parenting and exchange programs; and

13 (3) A licensure checklist to determine the adequacy of  
14 applicants and licensees to meet licensure standards, to determine  
15 eligibility for a full license, provisional license, conditional  
16 license or no license.

17 (c) The rules in effect as of the effective date of the  
18 reenactment of this section will remain in effect until modified,  
19 amended or repealed provided that they are not inconsistent with  
20 this article.

21 **§48-26-406. Closure of programs.**

22 (a) The board may close any ~~shelter program~~ which violates the  
23 standards established under this article ~~and~~ or which threatens the

1 health, well-being ~~and or~~ safety of its ~~clients~~ participants or  
2 staff: *Provided*, That if a shelter is closed, the governing body  
3 of the program, in conjunction with the board, shall establish a  
4 plan to place ~~such clients~~ the participants in other shelters or  
5 alternative housing. ~~and to develop a method to continue serving~~  
6 ~~the areas served by the shelter to be closed.~~

7 ~~(b) The board may place a shelter, which violates standards~~  
8 ~~established under this article and which threatens the health, well~~  
9 ~~being and safety of its clients, under receivership and operate~~  
10 ~~said shelter. The board shall have access and may use all assets~~  
11 ~~of the shelter.~~

12 ~~(c) (b) In order to close or place a shelter in receivership~~  
13 domestic violence program or one of its components, a batterer  
14 intervention and prevention program or a monitored parenting and  
15 exchange program, the board ~~shall hold a public hearing within the~~  
16 ~~confines of municipality or county in which the shelter is located.~~  
17 ~~The board, by September 1, 1989, shall establish rules and~~  
18 ~~regulations to govern the conduct of such hearings: *Provided*, That~~  
19 ~~four members of the board must vote unanimously in the affirmative.~~  
20 ~~before a shelter is closed or placed in receivership.~~

21 ~~(d) (c) If a either the shelter disagrees with the findings of~~  
22 ~~the board, the shelter may appeal such ruling to the circuit court~~  
23 ~~of Kanawha County or the circuit court of the county where the~~

1 ~~shelter is located pursuant to the provisions of section four,~~  
2 ~~article five, chapter twenty-nine-a of this code~~ component or the  
3 outreach component of a domestic violence program is closed, the  
4 remaining component of the program may continue to be licensed and  
5 to receive funds.

6 **§48-26-407. Hearing procedures; judicial review.**

7 (a) When a license for a program is downgraded or discontinued  
8 through permanent or temporary closure and the governing body of  
9 the program believes that the downgrade or discontinuation is in  
10 violation of this article or the legislative rules promulgated  
11 pursuant to this article, the program's governing body is entitled  
12 to a hearing before the board.

13 (b) Hearings shall be held in accordance with the provisions  
14 of article five, chapter twenty-nine-a of this code.

15 (c) The board may conduct the hearing or elect to have a  
16 hearing examiner or an administrative law judge conduct the  
17 hearing. If the hearing is conducted by a hearing examiner or an  
18 administrative law judge:

19 (1) The hearing examiner or administrative law judge shall be  
20 licensed to practice law in this state and shall conform to the  
21 Code of Conduct for Administrative Law Judges as set forth by the  
22 Ethics Commission in legislative rule;

23 (2) At the conclusion of a hearing, the hearing examiner or

1 administrative law judge shall prepare a proposed written order  
2 containing recommended findings of fact and conclusions of law and  
3 may include recommended sanctions, including closure, if the board  
4 so directs;

5 (3) The board may accept, reject, modify or amend the  
6 recommendations of the hearing examiner or administrative law  
7 judge; and

8 (4) If the board rejects, modifies or amends the  
9 recommendations, the board shall state in the order a reasoned,  
10 articulate justification based on the record for the rejection,  
11 modification or amendment.

12 (d) Pursuant to the provisions of section one, article five,  
13 chapter twenty-nine-a of this code, informal disposition may also  
14 be made by the board by stipulation, agreed settlement, consent  
15 order or default. Further, the board may suspend its decision and  
16 place a license on conditional or provisional status.

17 (e) A licensee adversely affected by a decision of the board  
18 entered after a hearing may seek an appeal to the circuit court, in  
19 accordance with the provisions of section four, article five,  
20 chapter twenty-nine-a of this code, and may appeal a decision of  
21 the circuit court to the West Virginia Supreme Court of Appeals, in  
22 accordance with the provisions of article six, chapter twenty-nine-  
23 a of this code.

1 **§48-26-603. Domestic Violence Legal Services Fund.**

2 (a) There is ~~hereby established~~ continued in the State  
3 Treasury a special revenue account, designated as the "Domestic  
4 Violence Legal Services Fund," which shall be an appropriated fund  
5 for receipt of grants, gifts, fees, or federal or state funds  
6 designated for legal services for domestic violence victims.  
7 Expenditures from the fund shall be limited to attorneys employed  
8 or contracted by licensed domestic violence shelters programs, or  
9 employed or contracted by nonprofit agencies West Virginia's  
10 federally designated legal services program, its successor  
11 organization or other nonprofit organization as determined by the  
12 department, which establish a collaborative relationship with a  
13 licensed domestic violence shelter program, that to provide civil  
14 legal services to victims of domestic violence.

15 (b) Any court of this state may order a nonprevailing party to  
16 pay an amount equivalent to the reasonable attorney's fee to which  
17 the prevailing litigant would be entitled into the Domestic  
18 Violence Legal Services Fund, established in subsection (a) of this  
19 section, if the following circumstances occur:

20 (1) A prevailing litigant is entitled by statute or common law  
21 to a reasonable attorney's fee, and

22 (2) The prevailing litigant's legal counsel informs the court  
23 that no fee will be requested.

1 **§48-26-604. Annual reports of licensed programs.**

2 ~~A shelter or program receiving funds pursuant to this article~~  
3 ~~shall file an annual report with the board by the thirty-first day~~  
4 ~~of each October for the prior fiscal year. The report shall include~~  
5 ~~statistics on the number of persons served, the relationship of the~~  
6 ~~victim to the abuser, services provided to the abuser, the number~~  
7 ~~of referrals made for medical, psychological, financial,~~  
8 ~~educational, vocational, child care or legal services and the~~  
9 ~~results of an independent audit. No information contained in the~~  
10 ~~report may identify any person served by the shelter or enable any~~  
11 ~~person to determine the identity of any such person.~~

12 (a) All programs licensed pursuant to this article shall  
13 report specific information annually as required by the board.

14 (b) No information contained in a report may identify any  
15 person served by the program or enable any person to determine the  
16 identity of any such person.

17 PART 7. CONFIDENTIALITY.

18 **§48-26-701. Confidentiality.**

19 (a) No program ~~or shelter receiving funds~~ licensed pursuant to  
20 this article shall disclose, reveal or release or be compelled to  
21 disclose, reveal or release, any written records or personal or  
22 personally identifying information about a program participant  
23 created or maintained in providing services, regardless of whether

1 the information has been encoded, encrypted, hashed, or otherwise  
2 protected, pursuant to this article except:

3 (1) Upon ~~written~~ consent of the person seeking or who has  
4 sought services from the program; ~~or the shelter~~

5 (2) In any proceeding brought under sections four and five,  
6 article six, chapter nine of this code or article six, chapter  
7 forty-nine of this code;

8 (3) As mandated by article six-a, chapter forty-nine and  
9 article six, chapter nine of this code;

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

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

17 (6) ~~For treatment or internal review purposes to the staff of~~  
18 ~~any program or shelter if the client is also being cared for by~~  
19 ~~other health professionals in the program or shelter. As~~  
20 authorized by the releases signed by batterer intervention and  
21 prevention program participants pursuant to the provisions of  
22 subsection (b) of this section.

23 (b) Batterer intervention and prevention program participants

1 shall authorize the release of information by signing the following  
2 releases:

3 (1) Allowing the provider to inform the victim or alleged  
4 victim and the victim's advocates that the batterer is  
5 participating in a batterer intervention and prevention program  
6 with the provider and to provide information to the victim or  
7 alleged victim and her or his advocates, if necessary, for the  
8 victim's or alleged victim's safety;

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

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

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

23 (5) Allowing the provider to report to the victim or alleged



1 victim, or his or her advocate, without the participant's  
2 authorization, all perceived threats of harm, the participant's  
3 failure to attend and reason for termination.

4 (c) Monitored parenting and exchange programs may disclose to  
5 the custodial parent or guardian without the noncustodial adult's  
6 permission any perceived threat of harm or violation of the court  
7 order or violation of the monitored parenting and exchange program  
8 rules by the noncustodial adult.

9 (d) No monitored parenting and exchange program may release  
10 information about the child without consent of the custodial parent  
11 or guardian.

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

15 ~~(b)~~ (f) No consent or authorization for the transmission or  
16 disclosure of confidential information shall be effective unless it  
17 is in writing and signed by the ~~client~~ program participant whose  
18 information is being disclosed. Every person signing an  
19 authorization shall be given a copy.

20 (g) In no circumstances may a victim of domestic violence,  
21 dating violence, sexual assault, or stalking be required to provide  
22 a consent to release his or her personally identifying information  
23 as a condition of eligibility for the services, nor may any

1 personally-identifying information be shared in order to comply  
2 with federal or state reporting, evaluation, or data collection  
3 requirements: *Provided*, That nothing in this section prohibits a  
4 program from reporting suspected abuse or neglect, as defined by  
5 law and where specifically mandated by the state.

6 PART 10. MONITORED PARENTING AND EXCHANGE PROGRAMS.

7 **§48-26-1001. Court orders; use of monitored parenting and**  
8 **exchange programs without court order.**

9 ~~The Legislature finds that increasing numbers of children are~~  
10 ~~living with one parent and that many of these children have been~~  
11 ~~exposed to violence in the home. The Legislature further finds that~~  
12 ~~it is sometimes in the best interests of children that the exercise~~  
13 ~~of custodial responsibility, including the exchange of children, be~~  
14 ~~monitored in order to observe and record the exercise of custodial~~  
15 ~~responsibility and to discourage or prevent inappropriate conduct.~~  
16 ~~For these reasons, the Legislature declares that a program be~~  
17 ~~implemented to foster safe and neutral centers to monitor custodial~~  
18 ~~responsibility, including the exchange of children, through the~~  
19 ~~certification of children's centers for the monitoring of custodial~~  
20 ~~responsibility.~~

21 (a) Judges and magistrates may order persons to apply to a  
22 licensed monitored parenting and exchange program for monitored  
23 parenting or monitored exchange of children: *Provided*, That a

1 licensed monitored parenting and exchange program may not be  
2 required to perform duties which are beyond the program's capacity  
3 or scope of services.

4 (b) Judges and magistrates may require a person to pay a  
5 reasonable amount based on ability to pay and other relevant  
6 criteria for any fee charged by a monitored parenting and exchange  
7 program.

8 (c) Licensed monitored parenting and exchange programs may  
9 receive referrals from judges, magistrates, child protective  
10 services, attorneys and other agencies, for services under the  
11 terms and conditions of those services as set forth in rules  
12 promulgated by the board.

13 (d) Licensed monitored parenting and exchange programs may  
14 serve self-referrals when the adult parties agree to the use of the  
15 program.

16 **§48-26-1002. Exclusions.**

17 The provisions of this part do not apply to therapeutic or  
18 supervised visitation or exchanges or any activity conducted by the  
19 state or others in abuse and neglect proceedings pursuant to  
20 articles six and six-a, chapter forty-nine of this code in which  
21 assessment, evaluation, formulation of a treatment plan, case  
22 management, counseling, therapy or similar activities occur.

23 **§48-26-1004. Contract by persons using program.**

1       Every ~~center~~ program shall require that the ~~parents~~ parent,  
2 guardian or other ~~caretakers~~ adult sign a written contract prior to  
3 using the ~~center~~ program and that the use of the services provided  
4 by the ~~center~~ program can be terminated by the ~~center~~ program for  
5 violation of the contract.

NOTE: The purpose of this bill is to amend the Domestic Violence Act by adding and revising definitions; add two new members and revise qualifications for membership on the Family Protection Services Board; clarify that the two ex officio members have voting privileges; authorize legislative rules; increase the percentage of board funds which may be used for administrative functions; authorize the board to develop formulas to direct funds to certain programs; prohibit programs from falsely representing that they are licensed; authorize the board to develop preliminary and full application forms; provide for conditional, provisional and full licenses; authorize the board to issue licenses for up to three years; authorizing the board to issue notices to cease and desist; set forth procedures for hearings and appeals; require programs to report annually to the board; and provide confidentiality protections for programs participants.

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

§48-26-207, §48-26-208, §48-26-209, §48-26-210, §48-26-211, §48-26-212, §48-26-213, §48-26-214 and §48-26-407 are new; therefore, strike-throughs and underscoring have been omitted.

§48-26-202, §48-26-203, §48-26-204, §48-26-205 and §48-26-206 have been completely rewritten; therefore, strike-throughs and underscoring have been omitted.