

1 **ENROLLED**

2 **H. B. 2200**

3
4 (By Delegates Shott, Lane, McCuskey, Manchin and Fleischauer)

5 [Passed February 16, 2015; in effect from passage.]
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10 AN ACT to amend and reenact chapter forty-nine of the Code of West Virginia, 1931, as amended,
11 all relating to child welfare generally; revising, rearranging, consolidating and recodifying
12 the laws of the State of West Virginia relating to child welfare; and removing outdated
13 language and modifying the code to comply with court decisions concerning child welfare.

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

15 That chapter forty-nine of the Code of West Virginia, 1931, as amended, be amended and
16 reenacted, all to read as follows:

17 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

18 **PART I. GENERAL PROVISIONS AND PURPOSE.**

19 **§49-1-101. Short title; intent of recodification.**

20 (a) This chapter shall be known and may be cited as the “West Virginia Child Welfare Act.”

21 (b) The recodification of this chapter during the regular session of the Legislature in the year

1 2015 is intended to embrace in a revised, consolidated, and codified form and arrangement the laws
2 of the State of West Virginia relating to child welfare at the time of that enactment.

3 **§49-1-102. Legislative Intent; continuation of existing statutory provisions; no increase in**
4 **funding obligations.**

5 In recodifying the child welfare law of this state during the regular session of the
6 Legislature in the year 2015, it is intended by the Legislature that each specific reenactment of a
7 substantively similar prior statutory provision will be construed as continuing the intended meaning
8 of the corresponding prior statutory provision and any existing judicial interpretation of the prior
9 statutory provision. It is not the intent of the Legislature, by recodifying the child welfare law of this
10 state during the regular session of the Legislature in the year 2015 to alter the substantive law of this
11 state as it relates to child welfare or to increase or enlarge any funding obligation of any spending
12 unit of the state.

13 **§49-1-103. Operative date of enactment; effect on existing law.**

14 The amendment and reenactment of chapter forty-nine of this code, as enacted by the
15 Legislature during the regular session, 2015, are operative ninety days from passage. The prior
16 enactments of chapter forty-nine of this code, whether amended and reenacted or repealed by the
17 action of the Legislature during the 2015 regular session, have full force and effect until that time.

18 **§49-1-104. West Virginia Code replacement; no increase of funding obligations to be**
19 **construed.**

20 (a) The Department of Health and Human Resources and the Department of Military
21 Affairs and Public Safety are not required to change any form or letter that contains a citation to this

1 code that is changed or otherwise affected by the recodification of this chapter during the 2015
2 regular session of the Legislature unless specifically required by a provision of this code.

3 (b) No provision of the recodification of this chapter during the 2015 regular session
4 of the Legislature may be construed to increase or enlarge any funding obligation of any spending
5 unit of the state.

6 **§49-1-105. Purpose.**

7 (a) It is the purpose of this chapter to provide a system of coordinated child welfare
8 and juvenile justice services for the children of this state. The state has a duty to assure that proper
9 and appropriate care is given and maintained.

10 (b) The child welfare and juvenile justice system shall:

11 (1) Assure each child care, safety and guidance;

12 (2) Serve the mental and physical welfare of the child;

13 (3) Preserve and strengthen the child family ties;

14 (4) Recognize the fundamental rights of children and parents;

15 (5) Develop and establish procedures and programs which are family-focused rather
16 than focused on specific family members, except where the best interests of the child or the safety
17 of the community are at risk;

18 (6) Involve the child, the child's family or the child's caregiver in the planning and
19 delivery of programs and services;

20 (7) Provide community-based services in the least restrictive settings that are
21 consistent with the needs and potentials of the child and his or her family;

1 (8) Provide for early identification of the problems of children and their families, and
2 respond appropriately to prevent abuse and neglect or delinquency;

3 (9) Provide for the rehabilitation of status offenders and juvenile delinquents;

4 (10) As necessary, provide for the secure detention of juveniles alleged or adjudicated
5 delinquent;

6 (11) Provide for secure incarceration of children or juveniles adjudicated delinquent
7 and committed to the custody of the director of the Division of Juvenile Services; and

8 (12) Protect the welfare of the general public.

9 (c) It is also the policy of this state to ensure that those persons and entities offering
10 quality child care are not over-encumbered by licensure and registration requirements and that the
11 extent of regulation of child care facilities and child placing agencies be moderately proportionate
12 to the size of the facility.

13 (d) Through licensure, approval, and registration of child care, the state exercises its
14 benevolent police power to protect the user of a service from risks against which he or she would
15 have little or no competence for self protection. Licensure, approval, and registration processes
16 shall, therefore, continually balance the child's rights and need for protection with the interests, rights
17 and responsibility of the service providers.

18 **§49-1-106. Location of child welfare services; state and federal cooperation; juvenile services.**

19 (a) The child welfare service of the state shall be located within and administered by the
20 Department of Health and Human Resources. The Division of Juvenile Services of the Department
21 of Military Affairs and Public Safety shall administer the secure predispositional juvenile detention

1 and juvenile correctional facilities of the state. Notwithstanding any other provision of this code to
2 the contrary, the administrative authority of the Division of Juvenile Services over any child or
3 juvenile in this state extends only to those detained or committed to a secure detention facility or
4 secure correctional facility operated and maintained by the division by an order of a court of
5 competent jurisdiction during the period of actual detention or confinement in the facility.

6 (b) The Department of Health and Human Resources is designated as the state entity to
7 cooperate with the United States Department of Health and Human Services and United States
8 Department of Justice in extending and improving child welfare services, to comply with federal
9 regulations, and to receive and expend federal funds for these services. The Division of Juvenile
10 Services of the Department of Military Affairs and Public Safety is designated as the state entity to
11 cooperate with the United States Department of Health and Human Services and United States
12 Department of Justice in operating, maintaining and improving juvenile correction facilities and
13 centers for the predispositional detention of children, to comply with federal regulations, and to
14 receive and expend federal funds for these services.

15 (c) The Division of Juvenile Services of the Department of Military Affairs and Public Safety
16 is authorized to operate and maintain centers for juveniles needing detention pending disposition by
17 a court having juvenile jurisdiction or temporary care following that court action.

18 PART II. DEFINITIONS.

19 **§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

20 When used in this chapter, terms defined in this section have the meanings ascribed to them
21 that relate to, but are not limited to, child abuse and neglect, except in those instances where a

1 different meaning is provided or the context in which the word is used clearly indicates that a
2 different meaning is intended.

3 “Abandonment” means any conduct that demonstrates the settled purpose to forego the duties
4 and parental responsibilities to the child;

5 "Abused child" means a child whose health or welfare is being harmed or threatened by:

6 (A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to
7 inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury,
8 upon the child or another child in the home. Physical injury may include an injury to the child as a
9 result of excessive corporal punishment;

10 (B) Sexual abuse or sexual exploitation;

11 (C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of
12 section fourteen-h, article two, chapter sixty-one of this code; or

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

15 "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age,
16 whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in
17 the petition charging child abuse or neglect.

18 "Battered parent," for the purposes of part seven, article two of this chapter, means a
19 respondent parent, guardian, or other custodian who has been adjudicated by the court to have not
20 condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or
21 children due to being the victim of domestic violence as defined by section two hundred two, article

1 twenty-seven, chapter forty-eight of this code which was perpetrated by the same person or persons
2 determined to have abused or neglected the child or children.

3 "Child abuse and neglect services" means social services which are directed toward:

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

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

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

9 (D) In cases where children have been removed from their families, providing time-limited
10 reunification services to the children and the families so as to reunify those children with their
11 families or some portion thereof;

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

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

16 "Condition requiring emergency medical treatment" means a condition which, if left
17 untreated for a period of a few hours, may result in permanent physical damage; that condition
18 includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness
19 and evidence of ingestion of significant amounts of a poisonous substance.

20 "Imminent danger to the physical well-being of the child" means an emergency situation in
21 which the welfare or the life of the child is threatened. These conditions may include an emergency

1 situation when there is reasonable cause to believe that any child in the home is or has been sexually
2 abused or sexually exploited, or reasonable cause to believe that the following conditions threaten
3 the health, life, or safety of any child in the home:

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

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

8 (C) Nutritional deprivation;

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

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

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

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

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

17 (I) Any other condition that threatens the health, life, or safety of any child in the home.

18 "Neglected child" means a child:

19 (A) Whose physical or mental health is harmed or threatened by a present refusal, failure or
20 inability of the child's parent, guardian or custodian to supply the child with necessary food,
21 clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is not

1 due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

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

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

6 "Petitioner or co-petitioner" means the Department or any reputable person who files a child
7 abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

8 "Permanency plan" means the part of the case plan which is designed to achieve a permanent
9 home for the child in the least restrictive setting available.

10 "Respondent" means all parents, guardians, and custodians identified in the child abuse and
11 neglect petition who are not petitioners or co-petitioners.

12 "Sexual abuse" means:

13 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section
14 three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts
15 to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact
16 that for a child who is less than sixteen years of age the child may have willingly participated in that
17 conduct or the child may have suffered no apparent physical injury or mental or emotional injury as
18 a result of that conduct or, for a child sixteen years of age or older the child may have consented to
19 that conduct or the child may have suffered no apparent physical injury or mental or emotional injury
20 as a result of that conduct; or

21 (B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a

1 child, or procures another person to display his or her sex organs to a child, for the purpose of
2 gratifying the sexual desire of the parent, guardian or custodian, of the person making that display,
3 or of the child, or for the purpose of affronting or alarming the child.

4 "Sexual contact" means sexual contact as that term is defined in section one, article eight-b,
5 chapter sixty-one of this code.

6 "Sexual exploitation" means an act where:

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

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

14 "Sexual intercourse" means sexual intercourse as that term is defined in section one, article
15 eight-b, chapter sixty-one of this code.

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

18 "Serious physical abuse" means bodily injury which creates a substantial risk of death, which
19 causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or
20 impairment of the function of any bodily organ.

21 **§49-1-202. Definitions related, but not limited, to adult, child, developmental disability, and**

1 **transitioning adult status.**

2 When used in this chapter, terms defined in this section have the meanings ascribed to them
3 that relate to, but are not limited to, adult, child, developmental disability, and transitioning adult
4 status, except in those instances where a different meaning is provided or the context in which the
5 word is used clearly indicates that a different meaning is intended.

6 “Adult” means a person who is at least eighteen years of age.

7 "Child" or "Juvenile" means any person under eighteen years of age or is a transitioning adult.

8 Once a child or juvenile is transferred to a court with criminal jurisdiction pursuant to section seven
9 hundred ten, article four of this chapter, he or she shall remain a child or juvenile for the purposes
10 of the applicability of this chapter. Unless otherwise stated, for the purpose of child care services
11 "child" means an individual who meets one of the following conditions:

12 (A) Is under thirteen years of age;

13 (B) Is thirteen to eighteen years of age and under court supervision; or

14 (C) Is thirteen to eighteen years of age and presenting a significant delay of at least
15 twenty-five percent in one or more areas of development, or a six month delay in two or more areas
16 as determined by an early intervention program, special education program or other multidisciplinary
17 team.

18 "Juvenile delinquent" means a juvenile who has been adjudicated as one who commits an act
19 which would be a crime under state law or a municipal ordinance if committed by an adult.

20 "Status offender" means a juvenile who has been adjudicated as one:

21 (A) Who habitually and continually refuses to respond to the lawful supervision by his or her

1 parents, guardian or legal custodian such that the juvenile's behavior substantially endangers the
2 health, safety or welfare of the juvenile or any other person;

3 (B) Who has left the care of his or her parents, guardian or custodian without the consent of
4 that person or without good cause; or

5 (C) Who is habitually absent from school without good cause.

6 "Transitioning adult" means an individual with a transfer plan to move to an adult setting
7 who meets one of the following conditions:

8 (A) Is eighteen years of age but under twenty-one years of age, was in the custody of the
9 Department of Health and Human Resources upon reaching eighteen years of age and committed an
10 act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the
11 juvenile court, and requires supervision and care to complete an education and or treatment program
12 which was initiated prior to the eighteenth birthday; or

13 (B) Is eighteen years of age but under twenty-one years of age, was adjudicated abused,
14 neglected, or in the custody of the Department of Health and Human Resources upon reaching
15 eighteen years of age and enters into a contract with the Department of Health and Human Resources
16 to continue in an educational, training, or treatment program which was initiated prior to the
17 eighteenth birthday.

18 **§49-1-203. Definitions related, but not limited, to licensing and approval of programs.**

19 When used in this chapter, terms defined in this section have the meanings ascribed to them
20 that relate to, but are not limited to, licensing and approval of programs, except in those instances
21 where a different meaning is provided or the context in which the word is used clearly indicates that

1 a different meaning is intended.

2 "Approval" means a finding by the Secretary of the Department of Health and Human
3 Resources that a facility operated by the state has met the requirements of legislative rules
4 promulgated for operation of that facility and that a Certificate of Approval or a Certificate of
5 Operation has been issued.

6 "Certification of Approval" or "Certificate of Operation" means a statement issued by the
7 Secretary of the Department of Health and Human Resources that a facility meets all of the necessary
8 requirements for operation.

9 "Certificate of license" means a statement issued by the Secretary of the Department of
10 Health and Human Resources authorizing an individual, corporation, partnership, voluntary
11 association, municipality or county, or any agency thereof, to provide specified services for a limited
12 period of time in accordance with the terms of the certificate.

13 "Certificate of registration" means a statement issued by the Secretary of the Department of
14 Health and Human Resources to a family child care home, informal family child care home or
15 relative family child care home, upon receipt of a self-certification statement of compliance with the
16 legislative rules promulgated pursuant to this chapter.

17 "License" means the grant of official permission to a facility to engage in an activity which
18 would otherwise be prohibited.

19 "Registration" means the process by which a family child care home, informal family child
20 care home or a relative family child care home self-certifies compliance with the legislative rules
21 promulgated pursuant to this chapter.

1 "Rule" means legislative rules promulgated by the Secretary of the Department of Health and
2 Human Resources or a statement issued by the Secretary of the Department of Health and Human
3 Resources of the standards to be applied in the various areas of child care.

4 "Variance" means a declaration that a rule may be accomplished in a manner different from
5 the manner set forth in the rule.

6 "Waiver" means a declaration that a certain legislative rule is inapplicable in a particular
7 circumstance.

8 **§49-1-204. Definitions related, but not limited, to custodians, legal guardians and family.**

9 When used in this chapter, terms defined in this section have the meanings ascribed to them
10 that relate to, but are not limited to, custodians, legal guardians and family, except in those instances
11 where a different meaning is provided or the context in which the word is used clearly indicates that
12 a different meaning is intended.

13 "Caregiver" means any person who is at least eighteen years of age and:

14 (A) Is related by blood, marriage or adoption to the minor, but who is not the legal custodian
15 or guardian of the minor; or

16 (B) Has resided with the minor continuously during the immediately preceding period of six
17 months or more.

18 "Custodian" means a person who has or shares actual physical possession or care and custody
19 of a child, regardless of whether that person has been granted custody of the child by any contract
20 or agreement.

21 "Dysfunctional family," for the purposes of part two, article two of this chapter, means a

1 parent or parents or an adult or adults and a child or children living together and functioning in an
2 impaired or abnormal manner so as to cause substantial physical or emotional danger, injury or harm
3 to one or more children thereof regardless of whether those children are natural offspring, adopted
4 children, step children or unrelated children to that parents.

5 "Legal or minor guardianship" means the permanent relationship between a child and a
6 caretaker, established by order of the court having jurisdiction over the child or juvenile, pursuant
7 to this chapter and chapter forty-four of this code.

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

11 "Parental rights" means any and all rights and duties regarding a parent to a minor child.

12 "Parenting skills" means a parent's competency in providing physical care, protection,
13 supervision and psychological support appropriate to a child's age and state of development.

14 "Siblings" means children who have at least one biological parent in common or who have
15 been legally adopted by the same parent or parents.

16 **§49-1-205. Definitions related, but not limited, to developmental disabilities.**

17 When used in this chapter, terms defined in this section have the meanings ascribed to them
18 that relate to, but are not limited to, developmental disabilities, except in those instances where a
19 different meaning is provided or the context in which the word is used clearly indicates that a
20 different meaning is intended.

21 "Developmental disability" means a severe, chronic disability of a person which:

1 (A) Is attributable to a mental or physical impairment or a combination of mental and
2 physical impairments;

3 (B) Is manifested before the person attains age twenty-two;

4 (C) Results in substantial functional limitations in three or more of the following areas of
5 major life activity:

6 (i) Self-care;

7 (ii) Receptive and expressive language;

8 (iii) Learning;

9 (iv) Mobility;

10 (v) Self-direction;

11 (vi) Capacity for independent living; and

12 (vii) Economic self-sufficiency; and

13 (D) Reflects the person's need for services and supports which are of lifelong or extended
14 duration and are individually planned and coordinated.

15 (E) The term "developmental disability", when applied to infants and young children, means
16 individuals from birth to age five, inclusive, who have substantial developmental delays or specific
17 congenital or acquired conditions with a high probability of resulting in developmental disabilities
18 if services are not provided.

19 "Family or primary caregiver," for the purposes of part six, article two of this chapter, means
20 the person or persons with whom the developmentally disabled person resides and who is primarily
21 responsible for the physical care, education, health and nurturing of the disabled person pursuant to

1 the provisions of part six, article two of this chapter. The term does not include hospitals, nursing
2 homes, personal care homes or any other similar institution.

3 "Legal guardian," for the purposes of part six of article two of this chapter, means the person
4 who is appointed legal guardian of a developmentally disabled person and who is responsible for the
5 physical and financial aspects of caring for that person, regardless of whether the disabled person
6 resides with his or her legal guardian or another family member.

7 **§49-1-206. Definitions related, but not limited, to child advocacy, care, residential, and**
8 **treatment programs.**

9 When used in this chapter, terms defined in this section have the meanings ascribed to them
10 that relate to, but are not limited to, child advocacy, care, residential and treatment programs, except
11 in those instances where a different meaning is provided or the context in which the word is used
12 clearly indicates that a different meaning is intended.

13 "Child advocacy center (CAC)" means a community-based organization that is a member in
14 good standing with the West Virginia Child Abuse Network, Inc., as set forth in section one hundred
15 one, article three of this chapter.

16 "Child care" means responsibilities assumed and services performed in relation to a child's
17 physical, emotional, psychological, social and personal needs and the consideration of the child's
18 rights and entitlements, but does not include secure detention or incarceration under the jurisdiction
19 of the Division of Juvenile Services pursuant to part nine, article two of this chapter. It includes the
20 provision of child care services or residential services.

21 "Child care center" means a facility maintained by the state or any county or municipality

1 thereof, or any agency or facility maintained by an individual, firm, corporation, association or
2 organization, public or private for the care of thirteen or more children for child care services in any
3 setting, if the facility is open for more than thirty days per year per child.

4 "Child care services" means direct care and protection of children during a portion of a
5 twenty-four hour day outside of the child's own home which provides experiences to children that
6 foster their healthy development and education.

7 "Child placing agency" means a child welfare agency organized for the purpose of placing
8 children in private family homes for foster care or for adoption. The function of a child-placing
9 agency may include the investigation and certification of foster family homes and foster family group
10 homes as provided in this chapter. The function of a child placing agency may also include the
11 supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

12 "Child welfare agency" means any agency or facility maintained by the state or any county
13 or municipality thereof, or any agency or facility maintained by an individual, firm, corporation,
14 association or organization, public or private, to receive children for care and maintenance or for
15 placement in residential care facilities, including, without limitation, private homes, or any facility
16 that provides care for unmarried mothers and their children. A child welfare agency does not include
17 juvenile detention facilities or juvenile correctional facilities operated by or under contract with the
18 Division of Juvenile Services, pursuant to part nine, article two of this chapter, nor any other facility
19 operated by that division for the secure housing or holding of juveniles committed to its custody.

20 "Community based" means a facility, program or service located near the child's home or
21 family and involving community participation in planning, operation and evaluation and which may

1 include, but is not limited to, medical, educational, vocational, social and psychological guidance,
2 training, special education, counseling, alcoholism and any treatment and other rehabilitation
3 services.

4 "Facility" means a place or residence, including personnel, structures, grounds and
5 equipment, used for the care of a child or children on a residential or other basis for any number of
6 hours a day in any shelter or structure maintained for that purpose. Facility does not include any
7 juvenile detention facility or juvenile correctional facility operated by or under contract with the
8 Division of Juvenile Services, for the secure housing or holding of juveniles committed to its
9 custody.

10 "Family child care facility" means any facility which is used to provide nonresidential child
11 care services for compensation for seven to twelve children, including children who are living in the
12 household, who are under six years of age. No more than four of the total number of children may
13 be under twenty-four months of age. A facility may be in a provider's residence or a separate
14 building.

15 "Family child care home" means a facility which is used to provide nonresidential child care
16 services for compensation in a provider's residence. The provider may care for four to six children,
17 at one time including children who are living in the household, who are under six years of age. No
18 more than two of the total number of children may be under twenty-four months of age.

19 "Family resource network" means:

20 (A) A local community organization charged with service coordination, needs and resource
21 assessment, planning, community mobilization and evaluation, and which has met the following

1 criteria:

2 (i) Agreeing to a single governing entity;

3 (ii) Agreeing to engage in activities to improve service systems for children and families
4 within the community;

5 (iii) Addressing a geographic area of a county or two or more contiguous counties;

6 (iv) Having nonproviders, which include family representatives and other members who are
7 not employees of publicly funded agencies, as the majority of the members of the governing body,
8 and having family representatives as the majority of the nonproviders;

9 (v) Having representatives of local service agencies, including, but not limited to, the public
10 health department, the behavioral health center, the local health and human resources agency and the
11 county school district, on the governing body; and

12 (vi) Accepting principles consistent with the cabinet's mission as part of its philosophy.

13 (B) A family resource network may not provide direct services, which means to provide
14 programs or services directly to children and families.

15 "Family support," for the purposes of part six, article two of this chapter, means goods and
16 services needed by families to care for their family members with developmental disabilities and to
17 enjoy a quality of life comparable to other community members.

18 "Family support program" means a coordinated system of family support services
19 administered by the Department of Health and Human Resources through contracts with behavioral
20 health agencies throughout the state.

21 "Foster family home" means a private residence which is used for the care on a residential

1 basis of no more than five children who are unrelated by blood, marriage or adoption to any adult
2 member of the household.

3 "Health care and treatment" means:

4 (A) Developmental screening;

5 (B) Mental health screening;

6 (C) Mental health treatment;

7 (D) Ordinary and necessary medical and dental examination and treatment;

8 (E) Preventive care including ordinary immunizations, tuberculin testing and well-child care;

9 and

10 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment
11 does not include an abortion.

12 "Home-based family preservation services" means services dispensed by the Department of
13 Human Services or by another person, association or group who has contracted with that division
14 to dispense services when those services are intended to stabilize and maintain the natural or
15 surrogate family in order to prevent the placement of children in substitute care. There are two types
16 of home-based family preservation services and they are as follows:

17 (A) Intensive, short term intervention of four to six weeks; and

18 (B) Home-based, longer term after care following intensive intervention.

19 "Informal family child care" means a home that is used to provide nonresidential child care
20 services for compensation for three or fewer children, including children who are living in the
21 household, who are under six years of age. Care is given in the provider's own home to at least one

1 child who is not related to the caregiver.

2 "Nonsecure facility" means any public or private residential facility not characterized by
3 construction fixtures designed to physically restrict the movements and activities of individuals held
4 in lawful custody in that facility and which provides its residents access to the surrounding
5 community with supervision.

6 "Out of school time" means a child care service which offers activities to children before and
7 after school, on school holidays, when school is closed due to emergencies, and on school calendar
8 days set aside for teacher activities.

9 "Placement" means any temporary or permanent placement of a child who is in the custody
10 of the state in any foster home, group home or other facility or residence.

11 "Pre- adjudicatory community supervision" means supervision provided to a youth prior to
12 adjudication, a period of supervision up to one year for an alleged status or delinquency offense.

13 "Regional family support council" means the council established by the regional family
14 support agency to carry out the responsibilities specified in part six, article two of this chapter.

15 "Relative family child care" means a home that provides nonresidential child care services
16 only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt,
17 uncle, great-aunt, great-uncle or adult sibling of the child or children receiving care. Care is given
18 in the provider's home.

19 "Residential services" means child care which includes the provision of nighttime shelter and
20 the personal discipline and supervision of a child by guardians, custodians or other persons or entities
21 on a continuing or temporary basis. It may include care and or treatment for transitioning adults.

1 Residential Services does not include or apply to any juvenile detention facility or juvenile
2 correctional facility operated by the Division of Juvenile Services, created pursuant to this chapter,
3 for the secure housing or holding of juveniles committed to its custody.

4 "Secure facility" means any public or private residential facility which includes construction
5 fixtures designed to physically restrict the movements and activities of children or other individuals
6 held in lawful custody in that facility.

7 "Staff-secure facility" means any public or private residential facility characterized by staff
8 restrictions of the movements and activities of individuals held in lawful custody in that facility and
9 which limits its residents' access to the surrounding community, but is not characterized by
10 construction fixtures designed to physically restrict the movements and activities of residents.

11 "State family support council" means the council established by the Department of Health
12 and Human Resources pursuant to part six, article two of this chapter to carry out the responsibilities
13 specified in article two of this chapter.

14 "Time-limited reunification services" means individual, group and family counseling,
15 inpatient, residential or outpatient substance abuse treatment services, mental health services,
16 assistance to address domestic violence, services designed to provide temporary child care and
17 therapeutic services for families, including crisis nurseries and transportation to or from those
18 services, provided during fifteen of the most recent twenty-two months a child or juvenile has been
19 in foster care, as determined by the earlier date of the first judicial finding that the child is subjected
20 to abuse or neglect, or the date which is sixty days after the child or juvenile is removed from home.

21 **§49-1-207. Definitions related to court actions.**

1 When used in this chapter, terms defined in this section have the meanings ascribed to them
2 that relate to, but are not limited to, court actions, except in those instances where a different
3 meaning is provided or the context in which the word is used clearly indicates that a different
4 meaning is intended.

5 "Court" means the circuit court of the county with jurisdiction of the case or the judge in
6 vacation unless otherwise specifically provided.

7 "Court appointed special advocate (CASA) program" means a community organization that
8 screens, trains and supervises CASA volunteers to advocate for the best interests of children who
9 are involved in abuse and neglect proceedings section one hundred two, article three of this chapter.

10 "Extrajudicial Statement" means any utterance, written or oral, which was made outside of
11 court.

12 "Multidisciplinary team" means a group of professionals and paraprofessionals representing
13 a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat
14 specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited
15 to, medical, educational, child care and law-enforcement personnel, social workers, psychologists
16 and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses
17 and to provide comprehensive coordinated treatment with continuity and follow-up for both parents
18 and children.

19 "Community team" means a multidisciplinary group which addresses the general problem
20 of child abuse and neglect in a given community and may consist of several multidisciplinary teams
21 with different functions.

1 "Res gestae" means a spontaneous declaration made by a person immediately after an event
2 and before the person has had an opportunity to conjure a falsehood.

3 "Valid court order" means an order issued by a court of competent jurisdiction relating to a
4 child brought before the court and who is the subject of that order. Prior to the entry of the order the
5 child shall have received the full due process rights guaranteed to that child or juvenile by the
6 Constitutions of the United States and the State of West Virginia.

7 "Violation of a traffic law of West Virginia" means a violation of chapter seventeen-a,
8 seventeen-b, seventeen-c or seventeen-d of this code except a violation of section one or two, article
9 four, chapter seventeen-c of this code relating to hit and run or section one, two or three, article five
10 of that chapter, relating, respectively, to negligent homicide, driving under the influence of alcohol,
11 controlled substances or drugs and reckless driving.

12 **§49-1-208. Definitions related, but not limited, to state and local agencies.**

13 When used in this chapter, terms defined in this section have the meanings ascribed to them
14 that relate to, but are not limited to, state and local agencies, except in those instances where a
15 different meaning is provided or the context in which the word is used clearly indicates that a
16 different meaning is intended.

17 "Department" or "state department" means the West Virginia Department of Health and
18 Human Resources.

19 "Division of Juvenile Services" means the division within the West Virginia Department of
20 Military Affairs and Public Safety.

21 "Law-enforcement officer" means a law-enforcement officer of the State Police, a

1 municipality or county sheriff's department.

2 "Secretary" means the Secretary of the West Virginia Department of Health and Human
3 Resources.

4 **§49-1-209. Definitions related, but not limited, to missing children.**

5 As used in article six of this chapter:

6 "Child" means an individual under the age of eighteen years who is not emancipated;

7 "Clearinghouse" means the West Virginia missing children information clearinghouse;

8 "Custodian" means a parent, guardian, custodian or other person who exercises legal physical
9 control, care or custody of a child;

10 "Missing child" means a child whose whereabouts are unknown to the child's custodian and
11 the circumstances of whose absence indicate that:

12 (A) The child did not leave the care and control of the custodian voluntarily and the taking
13 of the child was not authorized by law; or

14 (B) The child voluntarily left the care and control of his or her custodian without the
15 custodian's consent and without intent to return;

16 "Missing child report" means information that is:

17 (A) Given to a law-enforcement agency on a form used for sending information to the
18 national crime information center; and

19 (B) About a child whose whereabouts are unknown to the reporter and who is alleged in the
20 form submitted by the reporter to be missing;

21 "Possible match" means the similarities between an unidentified body of a child and a

1 missing child that would lead one to believe they are the same child;

2 "Reporter" means the person who reports a missing child; and

3 "State agency" means an agency of the state, political subdivision of the state or public post-
4 secondary educational institution.

5 **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN**

6 PART I. GENERAL AUTHORITY AND DUTIES OF

7 THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.

8 **§49-2-101. Authorization and responsibility.**

9 (a) The Department of Health and Human Resources is authorized to provide care, support
10 and protective services for children who are handicapped by dependency, neglect, single parent
11 status, mental or physical disability, or who for other reasons are in need of public service. The
12 department is also authorized to accept children for care from their parent or parents, guardian,
13 custodian or relatives and to accept the custody of children committed to its care by courts. The
14 Department of Health and Human Resources or any county office of the department is also
15 authorized and to accept temporary custody of children for care from any law-enforcement officer
16 in an emergency situation.

17 (b) The Department of Health and Human Resources is responsible for the care of the infant
18 child of an unmarried mother who has been committed to the custody of the department while the
19 infant is placed in the same licensed child welfare agency as his or her mother. The department may
20 provide care for those children in family homes meeting required standards, at board or otherwise,
21 through a licensed child welfare agency, or in a state institution providing care for dependent or

1 neglected children. If practical, when placing any child in the care of a family or a child welfare
2 agency the department shall select a family holding the same religious belief as the parents or
3 relatives of the child or a child welfare agency conducted under religious auspices of the same belief
4 as the parents or relatives.

5 **§49-2-102. Minimum staffing complement for child protective services.**

6 For the sole purpose of increasing the number of full time front line child protective service
7 case workers and investigators, the Secretary of the Department of Health and Human Resources
8 shall have the authority to transfer funds between all general revenue accounts under the secretary's
9 authority and/or between personnel and nonpersonnel lines within each account under the secretary's
10 authority. Nothing in this section shall be construed to require the department to hire additional child
11 protective service workers at any time if the department determines that funds are not available for
12 those workers. Additionally, the secretary shall prepare a plan to allow the department to
13 progressively reduce caseload standards in West Virginia for child protective services workers,
14 which if adopted by the Legislature during the regular session of 1995, shall require implementation
15 no later than July 1, 1996, with the plan to be submitted to the joint committee on government and
16 finance by the September 30, 1994, and a final report to be submitted to the Legislature by January
17 1, 1995.

18 **§49-2-103. Proceedings by the state department.**

19 The state department shall have the authority to institute, in the name of the state,
20 proceedings incident to the performance of its duties under the provisions of this chapter.

21 **§49-2-104. Education of the public.**

1 The secretary shall provide ongoing education of the public in regard to the requirements of
2 this chapter through the use of mass media and other methods as are deemed appropriate and within
3 fiscal limitations.

4 **§49-2-105. Administrative and judicial review.**

5 Any person, corporation, governmental official or child welfare agency, aggrieved by a
6 decision of the secretary made pursuant to this chapter may contest the decision upon making a
7 request for a hearing by the secretary within thirty days of receipt of notice of the decision.
8 Administrative and judicial review shall be made in accordance with article five, chapter
9 twenty-nine-a of this code. Any decision issued by the secretary may be made effective from the date
10 of issuance. Immediate relief therefrom may be obtained upon a showing of good cause made by
11 verified petition to the Circuit Court of Kanawha County or the circuit court of any county where the
12 affected facility or child welfare agency may be located. The dependency of administrative or judicial
13 review shall not prevent the secretary from obtaining injunctive relief pursuant to section one
14 hundred twenty, article two of this chapter.

15 **§49-2-106. Department responsibility for foster care homes.**

16 It is the responsibility of the Department of Health and Human Resources to provide care for
17 neglected children who are committed to its care for custody or guardianship. The department may
18 provide this care for children in family homes meeting required standards of certification established
19 and enforced by the Department of Health and Human Resources.

20 **§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection.**

21 (a) The department shall establish minimum standards for foster-home care to which all

1 certified foster homes must conform by legislative rule. Any home that conforms to the standards
2 of care set by the department shall receive a certificate of operation.

3 (b) The certificate of operation shall be in force for one year from the date of issuance and
4 may be renewed unless revoked because of willful violation of this chapter.

5 (c) The certificate shall show the name of the person or persons authorized to conduct the
6 home, its exact location and the number of children that may be received and cared for at one time
7 and other information as set forth in legislative rule. No certified foster home shall provide care for
8 more children than are specified in the certificate.

9 (d) No unsupervised foster home shall be certified until an investigation of the home and its
10 standards of care has been made by the department or by a licensed child welfare agency serving as
11 a representative of the department.

12 **§49-2-108. Visits and inspections; records.**

13 The department or its authorized agent shall visit and inspect every certified foster home as
14 often as is necessary to assure proper care is given to the children. Every certified foster home shall
15 maintain a record of the children received. This record shall include information as prescribed by the
16 department in legislative rule and shall be in a form and manner as prescribed by the department in
17 legislative rule.

18 **§49-2-109. Placing children from other states in private homes of state.**

19 An institution or organization incorporated under the laws of another state shall not place a
20 child in a private home in the state without the approval of the department, and the agency so placing
21 the child shall arrange for supervision of the child through its own staff or through a licensed child

1 welfare agency in this state, and shall maintain responsibility for the child until he or she is adopted
2 or discharged from care with the approval of the department.

3 **§49-2-110. Development of standards of child care.**

4 The department shall develop standards for the care of children. It shall cooperate with,
5 advise and assist all child welfare agencies, including state institutions, which care for neglected,
6 delinquent, or mentally or physically handicapped children, and shall supervise those agencies. The
7 department, in cooperation with child welfare agencies, shall formulate and make available standards
8 of child care and services for children, to which all child welfare agencies must conform.

9 **§49-2-111. Supervision of child welfare agencies by the department; records and reports.**

10 (a) In order to improve standards of child care, the department shall cooperate with the
11 governing boards of child welfare agencies, assist the staffs of those agencies through advice on
12 progressive methods and procedures of child care and improvement of the service rendered, and
13 assist in the development of community plans of child care. The department, or its duly authorized
14 agent, may visit any child welfare agency to advise the agency on matters affecting the health of
15 children and to inspect the sanitation of the buildings used for their care.

16 (b) Each child welfare agency shall keep records of each child under its control and care as
17 the department may prescribe, and shall report to the department, whenever requested, facts as may
18 be required with reference to the children, upon forms furnished by the department. All records
19 regarding children and all facts learned about children and their parents or relatives shall be regarded
20 as confidential and shall be properly safeguarded by the agency and the department.

21 **§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of**

1 **articles of incorporation.**

2 (a) Before issuing a charter for the incorporation of any organization having as its purpose
3 the receipt of children for care or for placement in family homes, the Secretary of State shall provide
4 a copy of the petition, together with any other information in his or her possession pertaining to the
5 proposed corporation, to the secretary, and no charter for a corporation may be issued unless the
6 secretary shall first certify to the Secretary of State that it has investigated the need for the services
7 proposed and the merits of the proposed charitable corporation and recommends the issuance
8 thereof; applications for amendments of any existing charter shall be similarly referred and shall be
9 granted only upon similar approval.

10 (b) A child welfare agency may not be incorporated in this state unless the articles of
11 incorporation have first been examined and approved by the secretary, or his or her designee.
12 Proposed amendments to articles of incorporation shall be subject to the examination and approval
13 of the secretary, or his or her designee.

14 **§49-2-113. Residential child care centers; licensure, certification, approval and registration;**
15 **requirements.**

16 (a) Any person, corporation or child welfare agency, other than a state agency, which operates
17 a residential child care center shall obtain a license from the department.

18 (b) Any residential child care facility, day care center or any child-placing agency operated
19 by the state shall obtain approval of its operations from the secretary.

20 (c) Any family day care facility which operates in this state, including family day care
21 facilities approved by the department for receipt of funding, shall obtain a statement of certification

1 from the department.

2 (d) Every family day care home which operates in this state, including family day care homes
3 approved by the department for receipt of funding, shall obtain a certificate of registration from the
4 department. The facilities and placing agencies shall maintain the same standards of care applicable
5 to licensed facilities, centers or placing agencies of the same category.

6 (e) This section does not apply to:

7 (1) A kindergarten, preschool or school education program which is operated by a public
8 school or which is accredited by the state Department of Education, or any other kindergarten,
9 preschool or school programs which operate with sessions not exceeding four hours per day for any
10 child;

11 (2) An individual or facility which offers occasional care of children for brief periods while
12 parents are shopping, engaging in recreational activities, attending religious services or engaging in
13 other business or personal affairs;

14 (3) Summer recreation camps operated for children attending sessions for periods not
15 exceeding thirty days;

16 (4) Hospitals or other medical facilities which are primarily used for temporary residential
17 care of children for treatment, convalescence or testing;

18 (5) Persons providing family day care solely for children related to them;

19 (6) Any juvenile detention facility or juvenile correctional facility operated by or under
20 contract with the Division of Juvenile Services for the secure housing or holding of juveniles
21 committed to its custody;

1 (7) Any out-of-school time program that has been awarded a grant by the West Virginia
2 Department of Education to provide out-of-school time programs to kindergarten through twelfth
3 grade students when the program is monitored by the West Virginia Department of Education; or

4 (8) Any out-of-school time program serving children six years of age or older and meets all
5 of the following requirements, or is an out-of-school time program that is affiliated and in good
6 standing with a national Congressionally chartered organization and meets all of the following
7 requirements:

8 (A) The program is located in a facility that meets all fire and health codes;

9 (B) The program performs background checks on all volunteers and staff;

10 (C) The program's primary source of funding is not from fees for service; and

11 (D) The program has a formalized monitoring system in place.

12 (f) The secretary is authorized to issue an emergency rule relating to conducting a survey of
13 existing facilities in this state in which children reside on a temporary basis in order to ascertain
14 whether they should be subject to licensing under this article or applicable licensing provisions
15 relating to behavioral health treatment providers.

16 (g) Any informal family child care home or relative family child care home may voluntarily
17 register and obtain a certificate of registration from the department.

18 (h) All facilities or programs that provide out-of-school time care shall register with the
19 department upon commencement of operations and on an annual basis thereafter. The department
20 shall obtain information, such as the name of the facility or program, the description of the services
21 provided and any other information relevant to the determination by the department as to whether

1 the facility or program meets the criteria for exemption under this section.

2 (i) Any child care service that is licensed or receives a certificate of registration shall have
3 a written plan for evacuation in the event of fire, natural disaster or other threatening situation that
4 may pose a health or safety hazard to the children in the child care service.

5 (1) The plan shall include, but not be limited to:

6 (A) A designated relocation site and evacuation;

7 (B) Procedures for notifying parents of the relocation and ensuring family reunification;

8 (C) Procedures to address the needs of individual children including children with special
9 needs;

10 (D) Instructions relating to the training of staff or the reassignment of staff duties, as
11 appropriate;

12 (E) Coordination with local emergency management officials; and

13 (F) A program to ensure that appropriate staff are familiar with the components of the plan.

14 (2) A child care service shall update the evacuation plan by December 31, of each year. If a
15 child care service fails to update the plan, no action shall be taken against the child care service's
16 license or registration until notice is provided and the child care service is given thirty days after the
17 receipt of notice to provide an updated plan.

18 (3) A child care service shall retain an updated copy of the plan for evacuation and shall
19 provide notice of the plan and notification that a copy of the plan will be provided upon request to
20 any parent, custodian or guardian of each child at the time of the child's enrollment in the child care
21 service and when the plan is updated.

1 (4) All child care centers and family child care facilities shall provide the plan and each
2 updated copy of the plan to the Director of the Office of Emergency Services in the county where
3 the center or facility is located.

4 **§49-2-114. Application for license or approval.**

5 (a) Any person or corporation or any governmental agency intending to act as a child welfare
6 agency shall apply for a license, approval or registration certificate to operate child care facilities
7 regulated by this chapter. Applications for licensure, approval or registration shall be made
8 separately for each child care facility to be licensed, approved, certified or registered.

9 (b) The secretary shall prescribe by legislative rule forms and reasonable application
10 procedures including, but not limited to, fingerprinting of applicants and other persons responsible
11 for the care of children for submission to the State Police and, if necessary, to the Federal Bureau
12 of Investigation for criminal history record checks.

13 (c) Before issuing a license, or approval, the secretary shall investigate the facility, program
14 and persons responsible for the care of children. The investigation shall include, but not be limited
15 to, review of resource need, reputation, character and purposes of applicants, a check of personnel
16 criminal records, if any, and personnel medical records, the financial records of applicants, review
17 of the facilities emergency evacuation plan and consideration of the proposed plan for child care
18 from intake to discharge.

19 (d) Before a home registration is granted, the secretary shall make inquiry as to the facility,
20 program and persons responsible for the care of children. The inquiry shall include self-certification
21 by the prospective home of compliance with standards including, but not limited to:

1 (1) Physical and mental health of persons present in the home while children are in care;

2 (2) Criminal and child abuse or neglect history of persons present in the home while children
3 are in care;

4 (3) Discipline;

5 (4) Fire and environmental safety;

6 (5) Equipment and program for the children in care; and

7 (6) Health, sanitation and nutrition.

8 (e) Further inquiry and investigation may be made as the secretary may direct and sees as
9 necessary.

10 (f) The secretary shall make a decision on each application within sixty days of its receipt and
11 shall provide to unsuccessful applicants written reasons for the decision.

12 **§49-2-115. Conditions of licensure, approval and registration.**

13 (a) A license or approval is effective for a period up to two years from the date of issuance,
14 unless revoked or modified to provisional status based on evidence of a failure to comply with this
15 chapter or any legislative rules promulgated by the secretary. The license or approval shall be
16 reinstated upon application to the secretary and a determination of compliance.

17 (b) An initial six-month license or approval shall be issued to an applicant establishing a new
18 service found to be in compliance on initial review with regard to policy, procedure, organization,
19 risk management, human resources, service environment and record keeping regulations.

20 (c) A provisional license or approval may be issued when a licensee is not in compliance with
21 the legislative rules promulgated by the secretary but does not pose a significant risk to the rights,

1 well-being, health and safety of a consumer. It shall expire not more than six months from date of
2 issuance, and not be consecutively reissued unless the provisional recommendation is that of the
3 State Fire Marshal.

4 (d) A renewal license or approval may be issued of any duration up to two years at the
5 discretion of the secretary. In the event a renewal license is not issued, the facility must make
6 discharge plans for residents and cease operation within thirty days of the expiration of the license.

7 (e) A certificate of registration is effective for a period up to two years from the date of
8 issuance, unless revoked based on evidence of a failure to comply with this article or any rules
9 promulgated pursuant to this article. The certificate of registration shall be reinstated upon
10 application to the secretary, including a statement of assurance of continued compliance with the
11 legislative rules promulgated pursuant to this article.

12 (f) The license, approval or registration issued under this article is not transferable and
13 applies only to the facility and its location stated in the application. The license, registration or
14 approval shall be publicly displayed. The foster and adoptive family homes, informal family child
15 care homes and relative family child care homes shall be required to display registration certificates
16 of registration or approval upon request rather than by posting.

17 (g) Provisional certificates of registration may be issued to family child care homes.

18 (h) The secretary, as a condition of issuing a license, registration or approval, may:

19 (1) Limit the age, sex or type of problems of children allowed admission to a particular
20 facility;

21 (2) Prohibit intake of any children; or

1 (3) Reduce the number of children which the agency, facility or home operated by the agency
2 is licensed, approved, certified or registered to receive.

3 **§49-2-116. Investigative authority; evaluation; complaint.**

4 (a) The secretary shall enforce this article.

5 (b) An on-site evaluation of every facility regulated pursuant to this chapter, except registered
6 family child care homes, informal family child care and relative family child care homes shall be
7 conducted no less than once per year by announced or unannounced visits.

8 (c) A random sample of not less than five percent of the total number of registered family
9 child care homes, informal family child care homes and relative family child care homes shall be
10 monitored annually through on-site evaluations.

11 (d) The secretary shall have access to the premises, personnel, children in care and records
12 of each facility subject to inspection, including at a minimum, case records, corporate and financial
13 records and board minutes. Applicants for licenses, approvals, and certificates of registration shall
14 consent to reasonable on-site administrative inspections, made with or without prior notice, as a
15 condition of licensing, approval, or registration.

16 (e) When a complaint is received by the secretary alleging violations of licensure, approval,
17 or registration requirements, the secretary shall investigate the allegations. The secretary may notify
18 the facility's director before or after a complaint is investigated and shall cause a written report of
19 the results of the investigation to be made.

20 (f) The secretary may enter any unlicensed, unregistered or unapproved child care facility or
21 personal residence for which there is probable cause to believe that the facility or residence is

1 operating in violation of this article. Those entries shall be made with a law-enforcement officer
2 present. The secretary may enter upon the premises of any unregistered residence only after two
3 attempts by the secretary to bring this facility into compliance.

4 **§49-2-117. Revocation; provisional licensure and approval.**

5 (a) The secretary may revoke or make provisional the licensure registration of any home
6 facility or child welfare agency regulated pursuant to this chapter if a facility materially violates this
7 article, or any terms or conditions of the license, registration or approval issued, or fails to maintain
8 established requirements of child care. This section does not apply to family child care homes.

9 (b) The secretary may revoke the certificate of registration of any family child care home if
10 a facility materially violates this article, or any terms or conditions of the registration certificate
11 issued, or fails to maintain established requirements of child care.

12 **§49-2-118. Closing of facilities by the secretary; placement of children.**

13 When the secretary finds that the operation of a facility constitutes an immediate danger of
14 serious harm to children served by the facility, the secretary shall issue an order of closure
15 terminating operation of the facility. When necessary, the secretary shall place or direct the
16 placement of the children in a residential facility which has been closed into appropriate facilities.
17 A facility closed by the secretary may not operate pending administrative or judicial review without
18 court order.

19 **§49-2-119. Supervision; consultation; State Fire Marshall to cooperate.**

20 (a) The secretary shall provide supervision to ascertain compliance with the rules
21 promulgated pursuant to this chapter through regular monitoring, visits to facilities, documentation,

1 evaluation and reporting. The secretary is responsible for training and education, within fiscal
2 limitations, specifically for the improvement of care in family child care homes and facilities. The
3 secretary shall consult with applicants, the personnel of child welfare agencies, and children under
4 care to assure the highest quality child care possible.

5 (b) The State Fire Marshal shall cooperate with the secretary in the administration of this
6 article by providing reports and assistance as may be requested by the secretary.

7 **§49-2-120. Penalties; injunctions; venue.**

8 (a) Any individual or corporation which operates a child welfare agency, residential facility
9 or child care center without a license when a license is required is guilty of a misdemeanor and, upon
10 conviction, shall be confined in jail not exceeding one year, or fined not more than \$500, or both
11 fined and confined.

12 (b) Any family child care facility which operates without a license when a license is required
13 is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.

14 (c) Where a violation of this article or a legislative rule promulgated by the secretary may
15 result in serious harm to children under care, the secretary may seek injunctive relief against any
16 person, corporation, child welfare agency, child placing agency, child care center, family child care
17 facility, family child care home or governmental official through proceedings instituted by the
18 Attorney General, or the appropriate county prosecuting attorney, in the Circuit Court of Kanawha
19 County or in the circuit court of any county where the children are residing or may be found.

20 **§49-2-121. Rule-making.**

21 (a) The secretary shall promulgate legislative rules in accordance with chapter twenty-nine-a

1 of this code regarding the licensure, approval, certification and registration of child care facilities and
2 the implementation of this article. The rules shall provide at a minimum the requirement that every
3 residential child care facility shall be subject to an annual time study regarding the quantification of
4 staff supervision time at each facility. Every residential child care facility shall participate in the time
5 study at the request of the department.

6 (b) The secretary shall review the rules promulgated pursuant to this article at least once
7 every five years, making revisions when necessary or convenient.

8 (c) The rules shall incorporate by reference the requirements of the Integrated Pest
9 Management Program established by legislative rule by the Department of Agriculture under section
10 four, article sixteen-a, chapter nineteen of this code.

11 **§49-2-122. Waivers and variances to rules.**

12 Waivers or variances of rules may be granted by the secretary if the health, safety or
13 well-being of a child would not be endangered thereby. The secretary shall promulgate by legislative
14 rule criteria and procedures for the granting of waivers or variances so that uniform practices may
15 be maintained throughout the state.

16 **§49-2-123. Annual reports; directory; licensing reports and recommendations.**

17 (a) The secretary shall submit on or before January 1, of each year a report to the Governor
18 and the Legislative Oversight Commission on Health and Human Resources Accountability,
19 concerning the regulation of child welfare agencies, child placing agencies, child care centers, family
20 child care facilities, family child care homes, informal family child care homes, relative family child
21 care homes and child care facilities during the year. The report shall include at a minimum, data

1 on the number of children and staff at each facility (except family child care, informal family child
2 care homes and relative family child care), applications received, types of licenses, approvals and
3 registrations granted, denied, made provisional or revoked and any injunctions obtained or facility
4 closures ordered.

5 (b) The secretary also shall compile annually a directory of licensed, certified and approved
6 child care providers including a brief description of their program and facilities, the program's
7 capacity and a general profile of children served. A listing of family child care homes shall also be
8 compiled annually.

9 (c) Licensing reports and recommendations for licensure which are a part of the yearly review
10 of each licensed facility shall be sent to the facility director. Copies shall be available to the public
11 upon written request to the secretary.

12 **§49-2-124. Certificate of need not required; conditions; review.**

13 (a) A certificate of need, as provided in article two-d, chapter sixteen of this code, is not
14 required by an entity proposing behavioral health care facilities or behavioral health care services
15 for children who are placed out of their home, or who are at imminent risk of being placed out of
16 their home, if a summary review is performed in accordance with this section.

17 (b) A summary review of proposed health care facilities or health care services for children
18 who are placed out of their home, or who are at imminent risk of being placed out of their home, is
19 initiated when the proposal is recommended to the health care cost review authority by the Secretary
20 of the Department of Health and Human Resources and the secretary has made the following
21 findings:

- 1 (1) That the proposed facility or service is consistent with the state health plan;
- 2 (2) That the proposed facility or service is consistent with the department’s programmatic
3 and fiscal plan for behavioral health services for children with mental health and addiction disorders;
- 4 (3) That the proposed facility or service contributes to providing services that are child and
5 family driven, with priority given to keeping children in their own homes;
- 6 (4) That the proposed facility or service will contribute to reducing the number of child
7 placements in out-of-state facilities by making placements available in in-state facilities;
- 8 (5) That the proposed facility or service contributes to reducing the number of child
9 placements in in-state or out-of-state facilities by returning children to their families, placing them
10 in foster care programs or making available school-based and out-patient services; and
- 11 (6) If applicable, that the proposed services will be community-based, locally accessible and
12 provided in an appropriate setting consistent with the unique needs and potential of each child and
13 his or her family.
- 14 (c) The secretary’s findings required by subsection (b) of this section shall be filed with the
15 secretary’s recommendation and appropriate documentation. If the secretary’s findings are supported
16 by the accompanying documentation, the proposal shall not require a certificate of need.
- 17 (d) Any entity that does not qualify for summary review shall be subject to certificate of need
18 review.
- 19 (e) Notwithstanding any other provision of law to the contrary, the provision of regular or
20 therapeutic foster care services does not constitute a behavioral health care facility or a behavioral
21 health care service that would subject it to the summary review procedure established in this section

1 or to the certificate of need requirements provided in article two-d, chapter sixteen of this code.

2 **§49-2-125. Commission to Study Residential Placement of Children; findings; requirements;**
3 **reports; recommendations; termination.**

4 (a) The Legislature finds that the state's current system of serving children and families in
5 need of or at risk of needing social, emotional and behavioral health services is fragmented. The
6 existing categorical structure of government programs and their funding streams discourages
7 collaboration, resulting in duplication of efforts and a waste of limited resources. Children are
8 usually involved in multiple child-serving systems, including child welfare, juvenile justice and
9 special education. More than ten percent of children presently in care are presently in out-of-state
10 placements. Earlier efforts at reform have focused on quick fixes for individual components of the
11 system at the expense of the whole. It is the purpose of this section to establish a mechanism to
12 achieve systemic reform by which all of the state's child-serving agencies involved in the residential
13 placement of at-risk youth jointly and continually study and improve upon this system and make
14 recommendations to their respective agencies and to the Legislature regarding funding and statutory,
15 regulatory and policy changes. It is further the Legislature's intent to build upon these
16 recommendations to establish an integrated system of care for at-risk youth and families that makes
17 prudent and cost-effective use of limited state resources by drawing upon the experience of
18 successful models and best practices in this and other jurisdictions, which focuses on delivering
19 services in the least restrictive setting appropriate to the needs of the child, and which produces
20 better outcomes for children, families and the state.

21 (b) There is created within the Department of Health and Human Resources the Commission

1 to Study the Residential Placement of Children. The commission consists of the Secretary of the
2 Department of Health and Human Resources, the Commissioner of the Bureau for Children and
3 Families, the Commissioner for the Bureau for Behavioral Health and Health Facilities, the
4 Commissioner for the Bureau for Medical Services, the State Superintendent of Schools, a
5 representative of local educational agencies, the Director of the Office of Institutional Educational
6 Programs, the Director of the Office of Special Education Programs and Assurance, the Director of
7 the Division of Juvenile Services and the Executive Director of the Prosecuting Attorney's Institute.
8 At the discretion of the West Virginia Supreme Court of Appeals, circuit and family court judges and
9 other court personnel, including the Administrator of the Supreme Court of Appeals and the Director
10 of the Juvenile Probation Services Division, may serve on the commission. These statutory members
11 may further designate additional persons in their respective offices who may attend the meetings of
12 the commission if they are the administrative head of the office or division whose functions
13 necessitate their inclusion in this process. In its deliberations, the commission shall also consult and
14 solicit input from families and service providers.

15 (c) The Secretary of the Department of Health and Human Resources shall serve as chair of
16 the commission, which shall meet on a quarterly basis at the call of the chair.

17 (d) At a minimum, the commission shall study:

18 (1) The current practices of placing children out-of-home and into in-residential placements,
19 with special emphasis on out-of-state placements;

20 (2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve
21 the needs of children requiring residential placements;

1 (3) Strategies and methods to reduce the number of children who must be placed in
2 out-of-state facilities and to return children from existing out-of-state placements, initially targeting
3 older youth who have been adjudicated delinquent;

4 (4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;

5 (5) The availability of and investment in community-based, less restrictive and less costly
6 alternatives to residential placements;

7 (6) Ways in which up-to-date information about in-state placement availability may be made
8 readily accessible to state agency and court personnel, including an interactive secure web site;

9 (7) Strategies and methods to promote and sustain cooperation and collaboration between the
10 courts, state and local agencies, families and service providers, including the use of inter-agency
11 memoranda of understanding, pooled funding arrangements and sharing of information and staff
12 resources;

13 (8) The advisability of including "no-refusal" clauses in contracts with in-state providers for
14 placement of children whose treatment needs match the level of licensure held by the provider;

15 (9) Identification of in-state service gaps and the feasibility of developing services to fill
16 those gaps, including funding;

17 (10) Identification of fiscal, statutory and regulatory barriers to developing needed services
18 in-state in a timely and responsive way;

19 (11) Ways to promote and protect the rights and participation of parents, foster parents and
20 children involved in out-of-home care;

21 (12) Ways to certify out-of-state providers to ensure that children who must be placed

1 out-of-state receive high quality services consistent with this state's standards of licensure and rules
2 of operation; and

3 (13) Any other ancillary issue relative to foster care placement.

4 (e) The commission shall report annually to the Legislative Oversight Commission on Health
5 and Human Resources Accountability its conclusions and recommendations, including an
6 implementation plan whereby:

7 (1) Out-of-state placements shall be reduced by at least ten percent per year and by at least
8 fifty percent within three years;

9 (2) Child-serving agencies shall develop joint operating and funding proposals to serve the
10 needs of children and families that cross their jurisdictional boundaries in a more seamless way;

11 (3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in order
12 for agencies to work collaboratively while maximizing the availability of federal funds;

13 (4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;

14 (5) System of care components and cooperative relationships shall be incrementally
15 established at the local, state and regional levels, with links to existing resources, such as family
16 resource networks and regional summits, wherever possible; and

17 (6) Recommendations for changes in fiscal, statutory and regulatory provisions are included
18 for legislative action.

19 (f) The commission shall terminate on December 31, 2015, unless continued by act of the
20 Legislature.

21 PART II. HOME-BASED FAMILY PRESERVATION ACT

1 **§49-2-201. Findings and purpose.**

2 The Legislature finds that there exists a need in this state to assist dysfunctional families by
3 providing nurture and care to those families' children as an alternative to removing children from the
4 families.

5 The Legislature also finds that the family is the primary social institution responsible for
6 meeting the needs of children and that the state has an obligation to assist families in this regard.

7 The Legislature further finds that children have significant emotional and social ties to the
8 natural or surrogate family beyond basic care and nurture for which the family is responsible.

9 The purpose of this article is to establish a pilot program to evaluate the utility of providing
10 intensive intervention with the families of children that are at risk of being removed from the home.
11 For these limited purposes, the department is authorized to use available appropriate funds for that
12 intervention service, but only to the extent that moneys would normally be available for the removal
13 and placement of the particular child at risk.

14 **§49-2-202. When family preservation services required.**

15 Home-based family preservation services are required in all cases where the removal of a
16 child or children is seriously being considered, whether from a natural home or a surrogate home,
17 wherein a child or children have lived for a substantial period of time. However, those services are
18 not required when the child appears in imminent danger of serious bodily or serious emotional
19 injury.

20 **§49-2-203. Caseload limits for home-based preservation services.**

21 For purposes of this article, no contractor employee of the department may exceed three

1 families during any period of time when that contractor employee is engaged in providing intensive,
2 short term home-based family preservation intervention. In addition, no caseload may exceed six
3 families during any period of time when home-based aftercare is provided pursuant to this article.
4 When providing either type of home-based family preservation services to any family, the
5 department or contractor shall provide trained personnel who shall be available during nonworking
6 hours to assist families on an emergency basis.

7 **§49-2-204. Situational criteria requiring service.**

8 The services required by this article shall be made available to any dysfunctional family in
9 which there exists an imminent risk of placement of at least one child outside the home as the result
10 of abuse, neglect, dependency or delinquency or any emotional and behavioral problems. Payment
11 for contractual services shall be on a cost-per-family basis. Any renewal of a contract shall be based
12 on performance.

13 **§49-2-205. Service delivery through service contracts; accountability.**

14 The services required by this article which are not practically deliverable directly from the
15 department may be subcontracted to professionally qualified private individuals, associations,
16 agencies, corporations, partnerships or groups. The service provider shall be required to submit
17 monthly activity reports as to any services rendered to the department of human services. The
18 activity reports shall include project evaluation in relation to individual families being served as well
19 as statistical data concerning families that are referred for services which are not served due to
20 unavailability of resources. The costs of program evaluation are an allowable cost consideration in
21 any service contract negotiated in accordance with this article. The department shall conduct a

1 thorough investigation of the contractors utilized by the department pursuant to this article.

2 **§49-2-206. Special services to be provided.**

3 The costs of providing special services to families receiving regular services in accordance
4 with this article are allowable to the extent those goods and services are justified pursuant to carrying
5 out the purposes of this article. Those special services may include, but are not limited to,
6 homemaker assistance, food, clothing, educational materials, respite care and recreational or social
7 activities.

8 **§49-2-207. Development of home-based family preservation services.**

9 The department is authorized to use appropriate state, federal, and/or private funds within
10 its budget for the provision of family preservation and reunification services. Appropriated state
11 funding made available through capture of additional federal funds shall be utilized to provide family
12 preservation and reunification services as described in this article. Costs of providing home-based
13 services described in this article shall not exceed the costs of out-of-home care which would be
14 incurred otherwise.

15 PART III.

16 QUALITY IMPROVEMENT AND RATING SYSTEM FOR CHILD CARE.

17 **§49-2-301. Findings and intent; advisory council.**

18 (a) The Legislature finds that:

19 (1) High quality early childhood development substantially improves the intellectual and
20 social potential of children and reduces societal costs;

21 (2) A child care program quality rating and improvement system provides incentives and

1 resources to improve the quality child care programs; and

2 (3) A child care program quality rating and improvement system provides information about
3 the quality of child care programs to parents so they may make more informed decisions about the
4 placement of their children.

5 (b) It is the intent of the Legislature to require the Secretary of the Department of Health and
6 Human Resources promulgate a legislative rule and establish a plan for the phased implementation
7 of a child care program quality rating and improvement system not inconsistent with the provisions
8 of this article.

9 (c) The Secretary of the Department of Health and Human Resources shall create a Quality
10 Rating and Improvement System Advisory Council to provide advice on the development of the rule
11 and plan for the phased implementation of a child care program quality rating and improvement
12 system and the ongoing program review and policies for quality improvement. The secretary shall
13 facilitate meetings of the advisory council. The advisory council shall include representatives from
14 the provider community, advocacy groups, the Legislature, providers of professional development
15 services for the early childhood community, regulatory agencies and others who may be impacted
16 by the creation of a quality rating and improvement system.

17 (d) Nothing in this article requires an appropriation, or any specific level of appropriation,
18 by the Legislature.

19 **§49-2-302. Creation of statewide quality rating system; rule-making; minimum requirements.**

20 (a) The Secretary of the Department of Health and Human Resources shall propose rules for
21 legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this

1 code to implement a quality rating and improvement system. The quality rating and improvement
2 system shall be applicable to licensed child care centers and facilities and registered family child care
3 homes. If other types of child care settings, such as school-age child care programs become licensed
4 after the implementation of a statewide quality rating and improvement system, the secretary may
5 develop quality criteria and incentives that will allow the other types of child care settings to
6 participate in the quality rating and improvement system. The rules shall include, but are not limited
7 to, the following:

8 (1) A four-star rating system for registered family child care homes and a four-star rating
9 system for all licensed programs, including family child care facilities and child care centers, to
10 easily communicate to consumers four progressively higher levels of quality child care. One star
11 indicating meeting the minimum acceptable standard and four stars indicating meeting or exceeding
12 the highest standard. The system shall reflect the cumulative attainment of the standards at each level
13 and all lesser levels. However, any program accredited by the National Association for the
14 Education of Young Children or the National Association for Family Child Care, as applicable, shall
15 automatically be awarded four-star status;

16 (2) Program standards for registered family child care homes and program standards for all
17 licensed programs, including family child care facilities and child care centers, that are each divided
18 into four levels of attributes that progressively improve the quality of child care beginning with basic
19 state registration and licensing requirements at level one, through achievement of a national
20 accreditation by the appropriate organization at level four. Participation beyond the first level is
21 voluntary. The program standards shall be categorized using the West Virginia State Training and

1 Registry System Core Knowledge Areas or its equivalent;

2 (3) Accountability measures that provide for a fair, valid, accurate and reliable assessment
3 of compliance with quality standards, including, but not limited to:

4 (A) Evaluations conducted by trained evaluators with appropriate early childhood education
5 and training on the selected assessment tool and with a demonstrated inter-rater reliability of
6 eighty-five percent or higher. The evaluations shall include an on-site inspection conducted at least
7 annually to determine whether programs are rated correctly and continue to meet the appropriate
8 standards. The evaluations and observations shall be conducted on at least a statistically valid
9 percentage of center classrooms, with a minimum of one class per age group;

10 (B) The use of valid and reliable observation and assessment tools, such as environmental
11 rating scales for early childhood, infant and toddler, school-age care and family child care as
12 appropriate for the particular setting and age group;

13 (C) An annual self-assessment using the proper observation and assessment tool for programs
14 rated at two stars; and

15 (D) Model program improvement planning shall be designed to help programs improve their
16 evaluation results and level of program quality.

17 (b) The rules required pursuant to this section shall include policies relating to the review,
18 reduction, suspension or disqualification of child care programs from the quality rating and
19 improvement system.

20 (c) The rules shall provide for implementation of the statewide quality rating system effective
21 July 1, 2011, subject to section three hundred four of this article.

1 **§49-2-303. Statewide quality improvement system; financial plan; staffing requirements;**
2 **public awareness campaign; management information system; financial**
3 **assistance for child care programs; program staff; child care consumers.**

4 Attached to the proposed rules required in section three hundred two of this article, the
5 Secretary of the Department of Health and Human Resources shall submit a financial plan to support
6 the implementation of a statewide quality rating and improvement system and help promote quality
7 improvement. The financial plan shall be considered a part of the rule and shall include specific
8 proposals for implementation of the provisions of this section as determined by the secretary. The
9 plan shall address, but is not limited to, the following:

10 (1) State agency staffing requirements may include the following:

11 (A) Highly trained evaluators to monitor the assessment process and ensure inter-rater
12 reliability of eighty-five percent or higher;

13 (B) Technical assistance staff responsible for career advising, accreditation support services,
14 improvement planning, portfolio development and evaluations for improvement planning only. The
15 goal for technical assistance staffing is to ensure that individualized technical assistance is available
16 to participating programs;

17 (C) A person within the department to collaborate with other professional development
18 providers to maximize funding for training, scholarships and professional development. The person
19 filling this position also shall encourage community and technical colleges to provide courses
20 through nontraditional means, such as online training, evening classes and off-campus training;

21 (D) Additional infant and toddler specialists to provide high level professional development

1 for staff caring for infants and to provide on-site assistance with infant and toddler issues;

2 (E) At least one additional training specialist at each of the child care resource and referral
3 agencies to support new training topics and to provide training for school-age child care programs.
4 Training providers, such as the child care resource and referral agencies shall purchase new training
5 programs on topics, such as business management, the Devereux Resiliency Training and Mind in
6 the Making; and

7 (F) Additional staff necessary for program administration;

8 (2) Implementation of a broad public awareness campaign and communication strategies that
9 may include the following:

10 (A) Brochures, internet sites, posters, banners, certificates, decals and pins to educate parents;
11 and

12 (B) Strategies, such as earned media campaigns, paid advertising campaigns, e-mail and
13 internet-based outreach, face-to-face communication with key civic groups and grassroots organizing
14 techniques; and

15 (3) Implementation of an internet-based management information system that meets the
16 following requirements:

17 (A) The system shall allow for multiple agencies to access and input data;

18 (B) The system shall provide the data necessary to determine if the quality enhancements
19 result in improved care and better outcomes for children;

20 (C) The system shall allow access by Department of Health and Human Resources subsidy
21 and licensing staff, child care resource and referral agencies, the agencies that provide training and

1 scholarships, evaluators and the child care programs;

2 (D) The system shall include different security levels in order to comply with the numerous
3 confidentiality requirements;

4 (E) The system shall assist in informing practice; determining training needs; and tracking
5 changes in availability of care, cost of care, changes in wages and education levels; and

6 (F) The system shall provide accountability for child care programs and recipients and assure
7 funds are being used effectively;

8 (4) Financial assistance for child care programs needed to improve learning environments,
9 attain high ratings and sustain long-term quality without passing additional costs on to families that
10 may include, but are not limited to:

11 (A) Assistance to programs in assessment and individual program improvement planning and
12 providing the necessary information, coaching and resources to assist programs to increase their level
13 of quality;

14 (B) Subsidizing participating programs for providing child care services to children of
15 low-income families in accordance with the following:

16 (i) Base payment rates shall be established at the seventy-fifth percentile of market rate; and

17 (ii) A system of tiered reimbursement shall be established which increases the payment rates
18 by a certain amount above the base payment rates in accordance with the rating tier of the child care
19 program;

20 (C) Two types of grants shall be awarded to child care programs in accordance with the
21 following:

1 (i) An incentive grant shall be awarded based on the type of child care program and the level
2 at which the child care program is rated with the types of child care programs having more children
3 and child care programs rated at higher tiers being awarded a larger grant than the types of child care
4 programs having less children and child care programs rated at lower tiers; and

5 (ii) Grants for helping with the cost of national accreditation shall be awarded on an equitable
6 basis.

7 (5) Support for increased salaries and benefits for program staff to increase educational levels
8 essential to improving the quality of care that may include, but are not limited to:

9 (A) Wage supports and benefits provided as an incentive to increase child care programs
10 ratings and as an incentive to increase staff qualifications in accordance with the following:

11 (i) The cost of salary supplements shall be phased in over a five-year period;

12 (ii) The Secretary of the Department of Health and Human Resources shall establish a salary
13 scale for each of the top three rating tiers that varies the salary support based on the education of the
14 care giver and the rating tier of the program; and

15 (iii) Any center with at least a tier two rating that employs at least one staff person
16 participating in the scholarship program required pursuant to paragraph (B) of this subdivision or
17 employs degree staff may apply to the Secretary of the Department of Health and Human Resources
18 for funding to provide health care benefits based on the Teacher Education and Compensation Helps
19 model in which insurance costs are shared among the employees, the employer and the state; and

20 (B) The provision of scholarships and establishment of professional development plans for
21 center staff that would promote increasing the credentials of center staff over a five-year period; and

1 (6) Financial assistance to the child care consumers whose income is at two hundred percent
2 of the federal poverty level or under to help them afford the increased market price of child care
3 resulting from increased quality.

4 **§49-2-304. Quality rating and improvement system pilot projects; independent third-party**
5 **evaluation; modification of proposed rule and financial plan; report to**
6 **Legislature; limitations on implementation.**

7 The secretary shall report annually to the Legislature on the progress on development and
8 implementation of a child care quality rating and improvement system and its impact on improving
9 the quality of child care in the state. The secretary may propose amendments to the rules and
10 financial plan necessary to promote implementation of the quality rating and improvement system
11 and improve the quality of child care and may recommend needed legislation. Nothing in this article
12 requires the implementation of a quality rating and improvement system unless funds are
13 appropriated therefore. The secretary may prioritize the components of the financial plan for
14 implementation and quality improvement for funding purposes. If insufficient funds are appropriated
15 for full implementation of the quality rating and improvement system, the rules shall provide for
16 gradual implementation over a period of several years.

17 PART IV. CHILDREN'S TRUST FUND.

18 **§49-2-401. Continuation, transfer and renaming of trust fund; funding.**

19 (a) The Children's Fund, created for the sole purpose of awarding grants, loans and loan
20 guarantees for child abuse and neglect prevention activities by enactment of chapter twenty-seven,
21 Acts of the Legislature, 1984, as last amended and reenacted by chapter one hundred fifty-nine, Acts

1 of the Legislature, 1999, is hereby continued and renamed the West Virginia Children's Trust Fund.
2 The fund shall be administered by the Commissioner of the Bureau for Children and Families. Gifts,
3 bequests or donations for this purpose, in addition to appropriations to the fund, shall be deposited
4 in the State Treasury in a special revenue account under the control of the Secretary of the
5 Department of Health and Human Resources or his or her designee.

6 (b) Each state taxpayer may voluntarily contribute a portion of the taxpayer's state income
7 tax refund to the Children's Trust Fund by designating the contribution on the state personal income
8 tax return form. The bureau shall approve the wording of the designation on the income tax return
9 form. The State Tax Commissioner shall determine by July 1, of each year the total amount
10 designated pursuant to this subsection and shall report that amount to the State Treasurer, who shall
11 credit that amount to the Children's Trust Fund.

12 (c) All interest accruing from investment of moneys in the Children's Trust Fund shall be
13 credited to the fund. The Legislative Auditor shall conduct an audit of the fund at least every five
14 fiscal years.

15 (d) Grants, loans and loan guarantees may be awarded from the Children's Trust Fund by the
16 Commissioner of the Bureau for Children and Families for child abuse and neglect prevention
17 activities.

18 (e) Upon the effective date of the enactment of this section, all employees, records,
19 responsibilities, obligations, assets and property, of whatever kind and character, of the Governor's
20 Cabinet on Children and Families are hereby transferred to the Bureau for Children and Families
21 within the Department of Health and Human Resources, including, but not limited to, all rights and

1 obligations held by the Governor's Cabinet on Children and Families under any grants, loans or loan
2 guarantees previously awarded from the Children's Trust Fund.

3 (f) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers,
4 bonds, authorizations and privileges which have been issued, made, granted or allowed to become
5 effective by the Governor, by any state department or agency or official thereof, or by a court of
6 competent jurisdiction, in the performance of functions which have been transferred to the Bureau
7 for Children and Families within the Department of Health and Human Resources, and were in effect
8 on the date the transfer occurred continue in effect, for the benefit of the department, according to
9 their terms until modified, terminated, superseded, set aside or revoked in accordance with the law
10 by the Governor, the Secretary of the Department of Health and Human Resources or other
11 authorized official, a court of competent jurisdiction or by operation of law.

12 PART V. CHILDREN WITH SPECIAL NEEDS.

13 **§49-2-501. Children to whom article applies; intent.**

14 It is the intention of this article that services for children with special health care needs shall
15 be extended only to those children for whom adequate care, treatment and rehabilitation are not
16 available from other than public sources.

17 **§49-2-502. Powers of the secretary.**

18 In the care and treatment of children with special health care needs the Secretary of the
19 Department of Health and Human Resources shall, so far as funds are available for the following
20 purposes:

21 (1) Locate children with special health care needs requiring medical, surgical or other

1 corrective treatment and provide competent diagnosis to determine the treatment required.

2 (2) Supply to children with special health care needs treatment, including hospitalization and
3 aftercare leading to correction and rehabilitation.

4 (3) Guide and supervise children with special health care needs to assure adequate care and
5 treatment.

6 **§49-2-503. Report of birth of special health care needs child.**

7 Within thirty days after the birth of a child with a congenital deformity, the physician,
8 midwife or other person attending the birth shall report to the Department of Health and Human
9 Resources, on forms prescribed by them, the birth of the child.

10 The report shall be solely for the use of the Department of Health and Human Resources and
11 shall not be open for public inspection.

12 **§49-2-504. Assistance by other agencies.**

13 So far as practicable, the services and facilities of the State Department of Education, The
14 Division of Vocational Rehabilitation Services and Division of Corrections or their successor
15 organizations shall be available to the Department of Health and Human Resources for the purposes
16 of this article.

17 **§49-2-505. Cost of treatment.**

18 All payments from any corporation, association, program or fund providing insurance
19 coverage or other payment for medicine, medical, surgical and hospital treatment, crutches, artificial
20 limbs and those other and additional approved mechanical appliances and devices as may be
21 reasonably required for a child with special health care needs, shall be applied toward the total cost

1 of treatment.

2 PART VI. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

3 **§49-2-601. Findings; intent.**

4 (a) The West Virginia Legislature finds that families are the greatest resource available to
5 individuals with developmental disabilities, and they must be supported in their role as primary
6 caregivers. It further finds that supporting families in their effort to care for their family members
7 at home is more efficient, cost effective and humane than placing the developmentally disabled
8 person in an institutional setting.

9 (b) The Legislature accepts the following as basic principles for providing services to support
10 families of people with developmental disabilities:

11 (1) The quality of life of children with developmental disabilities, their families and
12 communities is enhanced by caring for the children within their own homes. Children with
13 disabilities benefit by growing up in their own families, families benefit by staying together and
14 communities benefit from the inclusion of people with diverse abilities.

15 (2) Adults with developmental disabilities should be afforded the opportunity to make
16 decisions for themselves, live in typical homes and communities and exercise their full rights as
17 citizens. Developmentally disabled adults should have the option of living separately from their
18 families but when this is not the case, families of disabled adults should be provided the support
19 services they need.

20 (3) Services and support for families should be individualized and flexible, should focus on
21 the entire family and should promote the inclusion of people with developmental disabilities in all

1 aspects of school and community life.

2 (4) Families are the best experts about what they need. The service system can best assist
3 families by supporting families as decision makers as opposed to making decisions for them.

4 (c) The Legislature finds that there are at least ten thousand West Virginians with
5 developmental disabilities who live with and are supported by their families, and that the state's
6 policy is to prevent the institutionalization of people with developmental disabilities.

7 (d) To maximize the number of families supported by this program, each family will
8 contribute to the cost of goods and services based on their ability to pay, taking into account their
9 needs and resources.

10 (e) Therefore, it is the intent of the Legislature to initiate, within the resources available, a
11 program of services to support families who are caring for family members with developmental
12 disabilities in their homes.

13 **§49-2-602. Family support services; responsibilities; funds; case management; outreach;**
14 **differential fees.**

15 (a) The regional family support agency, designated under article two of this chapter, shall
16 direct and be responsible for the individual assessment of each developmentally disabled person
17 which it has designated and shall prepare a service plan with the developmentally disabled person's
18 family. The needs and preferences of the family will be the basis for determining what goods and
19 services will be made available within the resources available.

20 (b) The family support program may provide funds to families to purchase goods and services
21 included in the family service plan. Those goods and services related to the care of the

1 developmentally disabled person may include, but are not limited to:

- 2 (1) Respite care;
- 3 (2) Personal and attendant care;
- 4 (3) Child care;
- 5 (4) Architectural and vehicular modifications;
- 6 (5) Health-related costs not otherwise covered;
- 7 (6) Equipment and supplies;
- 8 (7) Specialized nutrition and clothing;
- 9 (8) Homemaker services;
- 10 (9) Transportation;
- 11 (10) Utility costs;
- 12 (11) Integrated community activities; and
- 13 (12) Training and technical assistance.

14 (c) As part of the family support program, the regional family support agency, designated
15 under section six hundred two of this article, shall provide case management for each family to
16 provide information, service coordination and other assistance as needed by the family.

17 (d) The family support program shall assist families of developmentally disabled adults in
18 planning and obtaining community living arrangements, employment services and other resources
19 needed to achieve, to the greatest extent possible, independence, productivity and integration of the
20 developmentally disabled adult into the community.

21 (e) The family support program shall conduct outreach to identify families in need of

1 assistance and shall maintain a waiting list of individuals and families in the event that there are
2 insufficient resources to provide services to all those who request them.

3 (f) The family support program may provide for differential fees for services under the
4 program or for appropriate cost participation by the recipient families consistent with the goals of
5 the program and the overall financial condition of the family.

6 (g) Funds, goods or services provided to eligible families by the family support program
7 under this article shall not be considered as income to those families for any purpose under this code
8 or under the rules and regulations of any agency of state government.

9 **§49-2-603. Eligibility; primary focus.**

10 (a) To be eligible for the family support program, a family must have at least one family
11 member who has a developmental disability, as defined in this article, living with the family.

12 (b) The primary focus of the family support program is supporting: (1) Developmentally
13 disabled children, school age and younger, within their families; (2) adults with developmental
14 disabilities who choose to live with their families; and (3) adults with developmental disabilities for
15 whom other community living arrangements are not available and who are living with their families.

16 **§49-2-604. Program administration; implementation; procedures; annual evaluation;**
17 **coordination; plans; grievances; reports.**

18 (a) The administering agency for the family support program is the Department of Health and
19 Human Resources.

20 (b) The Department of Health and Human Resources shall initially implement the family
21 support program through contracts with an agency within four of the state's behavioral health

1 regions, with the four regions to be determined by the Department of Health and Human Resources
2 in consultation with the state family support council. These regional family support agencies of the
3 family support program will be responsible for implementing this article and subsequent policies for
4 the families of persons with developmental disabilities residing within their respective regions.

5 (c) The Department of Health and Human Resources, in conjunction with the state family
6 support council, shall adopt policies and procedures regarding:

7 (1) Development of annual budgets;

8 (2) Program specifications;

9 (3) Criteria for awarding contracts for operation of regional family support programs and the
10 role of regional family support councils;

11 (4) Annual evaluation of services provided by each regional family support agency, including
12 consumer satisfaction;

13 (5) Coordination of the family support program and the use of its funds, throughout the state
14 and within each region, with other publicly funded programs, including Medicaid;

15 (6) Performance of family needs assessments and development of family service plans;

16 (7) Methodology for allocating resources to families within the funds available; and

17 (8) Resolution of grievances filed by families pertaining to actions of the family support
18 program.

19 (d) The Department of Health and Human Resources shall submit a report to the Governor
20 and the Legislature on the family support program by September 15, of every year so long as the
21 program is funded.

1 **§49-2-605. Regional and state family support councils; membership; meetings;**
2 **reimbursement of expenses.**

3 (a) Each regional family support agency shall establish a regional family support council
4 comprised of at least seven members, of whom at least a majority shall be persons with
5 developmental disabilities or their parents or primary caregivers. Each regional family support
6 council shall meet at least quarterly to advise the regional family support agency on matters related
7 to local implementation of the family support program and to communicate information and
8 recommendations regarding the family support program to the State Family Support Council.

9 (b) The Secretary of the Department of Health and Human Resources shall appoint a State
10 Family Support Council comprised of at least twenty-two members, of whom at least a majority shall
11 be persons with developmental disabilities or their parents or primary caregivers. A representative
12 elected by each regional council shall serve on the state council. The state council shall also include
13 a representative from each of the following agencies: The State Developmental Disabilities Council,
14 the State Protection and Advocacy Agency, the Center for Excellence in Disabilities, the Office of
15 Special Education, the Behavioral Health Care Providers Association and the Early Intervention
16 Interagency Coordinating Council.

17 (c) The state council shall meet at least quarterly. The state council will participate in the
18 development of program policies and procedures, annual contracts and perform other duties as are
19 necessary for statewide implementation of the family support program.

20 (d) Members of the state and regional councils who are a member of the family or the
21 primary caregiver of a developmentally disabled person shall be reimbursed for travel and lodging

1 expenses incurred in attending official meetings of their councils. Child care expenses related to the
2 developmentally disabled person shall also be reimbursed. Members of regional councils who are
3 eligible for expense reimbursement shall be reimbursed by their respective regional family support
4 agencies.

5 PART VII. CAREGIVERS CONSENT ACT.

6 **§49-2-701. Caregiver consent for minor’s health care; treatment.**

7 (a) Except for minor children placed under the custody of the Department of Health and
8 Human Resources pursuant to proceedings established by this chapter, a caregiver who possesses
9 and presents a notarized affidavit pursuant to section seven hundred three of this article may consent
10 on behalf of a minor to health care and treatment.

11 (b) Examination and treatment shall be prescribed by or under the supervision of a physician,
12 advanced practice nurse, dentist or mental health professional licensed to practice in the state.

13 **§49-2-702. Duty of health care facility or practitioner.**

14 The decision of a caregiver who possesses and presents a notarized affidavit of caregiver
15 consent for a minor’s health care pursuant to section seven hundred three of this article shall be
16 honored by a health care facility or practitioner unless the health care facility or practitioner has
17 actual knowledge that a parent, legal custodian or guardian of a minor has made a contravening
18 decision to consent to or to refuse medical treatment for the minor.

19 **§49-2-703. Affidavit of caregiver consent; requirements.**

20 An affidavit of caregiver consent for a minor’s health care shall include the following:

21 (1) The caregiver’s name and current home address;

- 1 (2) The caregiver's birth date;
- 2 (3) The relationship of the caregiver to the minor;
- 3 (4) The minor's name;
- 4 (5) The minor's birth date;
- 5 (6) The length of time the minor has resided with the caregiver;
- 6 (7) The caregiver's signature under oath affirming the truth of the matter asserted in the
7 affidavit;
- 8 (8) The signature of the minor's parent, guardian or legal custodian consenting to the
9 caregiver's authority over the minor's health care. The signature of the minor's parent, guardian or
10 legal custodian is not necessary if the affidavit includes the following:
 - 11 (A) A statement that the caregiver has attempted, but has been unable to obtain, the signature
12 of the minor's parent, guardian or legal custodian;
 - 13 (B) A statement that the minor's parent, guardian or legal custodian has not refused to give
14 consent for health care and treatment of the minor child; and
 - 15 (C) A description, in detail, of the attempts the caregiver made to obtain the signature of the
16 minor's parent, guardian or legal custodian; and
- 17 (9) A statement, as follows:
18 "General Notices:
19 This declaration does not affect the rights of the minor's parent, guardian or legal custodian
20 regarding the care, custody and control of the minor, other than with respect to health care, and does
21 not give the caregiver legal custody of the minor.

1 This affidavit is valid for one year unless the minor no longer resides in the caregiver's home.
2 Furthermore, the minor's parent, guardian or legal custodian may at any time rescind this affidavit
3 of caregiver consent for a minor's health care by providing written notification of the rescission to
4 the appropriate health care professional.

5 A person who relies in good faith on this affidavit of caregiver consent for a minor's health
6 care has no obligation to conduct any further inquiry or investigation and is not subject to civil or
7 criminal liability or to professional disciplinary action because of that reliance.”

8 **§49-2-704. Revocation and termination of consent; written notice; validity.**

9 (a) The affidavit of caregiver consent for a minor's health care is superseded by written
10 notification from the minor's parent, guardian or legal custodian to the health care professionals
11 providing services to the minor that the affidavit has been rescinded.

12 (b) The affidavit of caregiver consent for a minor's health care is valid for one year unless
13 the minor no longer resides in the caregiver's home or a parent, guardian or legal custodian revokes
14 his or her approval by written notification to the health care professionals providing services to the
15 minor that the affidavit has been rescinded. If a parent, guardian or legal custodian revokes approval,
16 the caregiver shall notify any health care provider or health service plans with which the minor has
17 been involved through the caregiver.

18 **§49-2-705. Good faith reliance on affidavit; applicability.**

19 (a) Any person who relies in good faith on the affidavit of caregiver consent for a minor's
20 health care:

21 (1) Has no obligation to conduct any further inquiry or investigation; and

1 (2) Is not subject to civil or criminal liability or to professional disciplinary action because
2 of the reliance.

3 (b) Subsection (a) of this section applies even if medical treatment is provided to a minor in
4 contravention of a decision of a parent, legal custodian or guardian of the minor who signed the
5 affidavit if the person providing care has no actual knowledge of the decision of the parent, legal
6 custodian or guardian.

7 **§49-2-706. Exceptions to applicability.**

8 The consent authorized by this section is not applicable for purposes of the Individuals with
9 Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, or Section 504 of the Rehabilitation Act of
10 1973, 29 U.S.C. §701.

11 **§49-2-707. Penalty for false statement.**

12 A person who knowingly makes a false statement in an affidavit under this article is guilty
13 of a misdemeanor and, upon conviction, shall be fined not more than \$1,000.

14 **§49-2-708. Rule-making authority.**

15 The Secretary of the Department of Health and Human Resources is authorized to propose
16 rules necessary to implement this article for legislative approval in accordance with article three,
17 chapter twenty-nine-a of this code.

18 **PART VIII. REPORTS OF CHILDREN SUSPECTED OF ABUSE.**

19 **§49-2-801. Purpose.**

20 It is the purpose of this article through the complete reporting of child abuse and neglect:

21 (1) To protect the best interests of the child;

1 (2) To offer protective services in order to prevent any further harm to the child or any other
2 children living in the home;

3 (3) To stabilize the home environment, to preserve family life whenever possible;

4 (4) To promote adult responsibility for protecting children; and

5 (5) To encourage cooperation among the states to prevent future incidents of child abuse and
6 neglect and in dealing with the problems of child abuse and neglect.

7 **§49-2-802. Establishment of child protective services; general duties and powers;**
8 **administrative procedure; immunity from civil liability; cooperation of other**
9 **state agencies.**

10 (a) The department shall establish or designate in every county a local child protective
11 services office to perform the duties and functions set forth in this article.

12 (b) The local child protective services office shall investigate all reports of child abuse or
13 neglect. Under no circumstances may investigating personnel be relatives of the accused, the child
14 or the families involved. In accordance with the local plan for child protective services, it shall
15 provide protective services to prevent further abuse or neglect of children and provide for or arrange
16 for and coordinate and monitor the provision of those services necessary to ensure the safety of
17 children. The local child protective services office shall be organized to maximize the continuity
18 of responsibility, care and service of individual workers for individual children and families. Under
19 no circumstances may the secretary or his or her designee promulgate rules or establish any policy
20 which restricts the scope or types of alleged abuse or neglect of minor children which are to be
21 investigated or the provision of appropriate and available services.

- 1 (c) Each local child protective services office shall:
- 2 (1) Receive or arrange for the receipt of all reports of children known or suspected to be
3 abused or neglected on a twenty-four hour, seven-day-a-week basis and cross-file all reports under
4 the names of the children, the family and any person substantiated as being an abuser or neglecter
5 by investigation of the Department of Health and Human Resources, with use of cross-filing of the
6 person's name limited to the internal use of the department;
- 7 (2) Provide or arrange for emergency children's services to be available at all times;
- 8 (3) Upon notification of suspected child abuse or neglect, commence or cause to be
9 commenced a thorough investigation of the report and the child's environment. As a part of this
10 response, within fourteen days there shall be a face-to-face interview with the child or children and
11 the development of a protection plan, if necessary for the safety or health of the child, which may
12 involve law-enforcement officers or the court;
- 13 (4) Respond immediately to all allegations of imminent danger to the physical well-being of
14 the child or of serious physical abuse. As a part of this response, within seventy-two hours there
15 shall be a face-to-face interview with the child or children and the development of a protection plan,
16 which may involve law-enforcement officers or the court; and
- 17 (5) In addition to any other requirements imposed by this section, when any matter regarding
18 child custody is pending, the circuit court or family court may refer allegations of child abuse and
19 neglect to the local child protective services office for investigation of the allegations as defined by
20 this chapter and require the local child protective services office to submit a written report of the
21 investigation to the referring circuit court or family court within the time frames set forth by the

1 circuit court or family court.

2 (d) In those cases in which the local child protective services office determines that the best
3 interests of the child require court action, the local child protective services office shall initiate the
4 appropriate legal proceeding.

5 (e) The local child protective services office shall be responsible for providing, directing or
6 coordinating the appropriate and timely delivery of services to any child suspected or known to be
7 abused or neglected, including services to the child's family and those responsible for the child's care.

8 (f) To carry out the purposes of this article, all departments, boards, bureaus and other
9 agencies of the state or any of its political subdivisions and all agencies providing services under the
10 local child protective services plan shall, upon request, provide to the local child protective services
11 office any assistance and information as will enable it to fulfill its responsibilities.

12 (g)(1) In order to obtain information regarding the location of a child who is the subject of
13 an allegation of abuse or neglect, the Secretary of the Department of Health and Human Resources
14 may serve, by certified mail or personal service, an administrative subpoena on any corporation,
15 partnership, business or organization for the production of information leading to determining the
16 location of the child.

17 (2) In case of disobedience to the subpoena, in compelling the production of documents, the
18 secretary may invoke the aid of:

19 (A) The circuit court with jurisdiction over the served party if the person served is a resident;
20 or

21 (B) The circuit court of the county in which the local child protective services office

1 conducting the investigation is located if the person served is a nonresident.

2 (3) A circuit court shall not enforce an administrative subpoena unless it finds that:

3 (A) The investigation is one the Division of Child Protective Services is authorized to make
4 and is being conducted pursuant to a legitimate purpose;

5 (B) The inquiry is relevant to that purpose;

6 (C) The inquiry is not too broad or indefinite;

7 (D) The information sought is not already in the possession of the Division of Child
8 Protective Services; and

9 (E) Any administrative steps required by law have been followed.

10 (4) If circumstances arise where the secretary, or his or her designee, determines it necessary
11 to compel an individual to provide information regarding the location of a child who is the subject
12 of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from
13 the circuit court with jurisdiction over the individual from whom the information is sought.

14 (h) No child protective services caseworker may be held personally liable for any professional
15 decision or action taken pursuant to that decision in the performance of his or her official duties as
16 set forth in this section or agency rules promulgated thereupon. However, nothing in this subsection
17 protects any child protective services worker from any liability arising from the operation of a motor
18 vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional
19 misconduct.

20 **§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.**

21 (a) Any medical, dental or mental health professional, Christian Science practitioner,

1 religious healer, school teacher or other school personnel, social service worker, child care or foster
2 care worker, emergency medical services personnel, peace officer or law-enforcement official,
3 humane officer, member of the clergy, circuit court judge, family court judge, employee of the
4 Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach
5 or volunteer of an entity that provides organized activities for children, or commercial film or
6 photographic print processor who has reasonable cause to suspect that a child is neglected or abused
7 or observes the child being subjected to conditions that are likely to result in abuse or neglect shall
8 immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the
9 circumstances or cause a report to be made to the Department of Health and Human Resources. In
10 any case where the reporter believes that the child suffered serious physical abuse or sexual abuse
11 or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State
12 Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person
13 required to report under this article who is a member of the staff or volunteer of a public or private
14 institution, school, entity that provides organized activities for children, facility or agency shall also
15 immediately notify the person in charge of the institution, school, entity that provides organized
16 activities for children, facility or agency, or a designated agent thereof, who may supplement the
17 report or cause an additional report to be made.

18 (b) Any person over the age of eighteen who receives a disclosure from a credible witness
19 or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than
20 forty-eight hours after receiving that disclosure or observing the sexual abuse or sexual assault,
21 report the circumstances or cause a report to be made to the Department of Health and Human

1 Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the
2 report. In the event that the individual receiving the disclosure or observing the sexual abuse or
3 sexual assault has a good faith belief that the reporting of the event to the police would expose either
4 the reporter, the subject child, the reporter's children or other children in the subject child's
5 household to an increased threat of serious bodily injury, the individual may delay making the report
6 while he or she undertakes measures to remove themselves or the affected children from the
7 perceived threat of additional harm and the individual makes the report as soon as practicable after
8 the threat of harm has been reduced. The law-enforcement agency that receives a report under this
9 subsection shall report the allegations to the Department of Health and Human Resources and
10 coordinate with any other law-enforcement agency, as necessary to investigate the report.

11 (c) Nothing in this article is intended to prevent individuals from reporting suspected abuse
12 or neglect on their own behalf. In addition to those persons and officials specifically required to
13 report situations involving suspected abuse or neglect of children, any other person may make a
14 report if that person has reasonable cause to suspect that a child has been abused or neglected in a
15 home or institution or observes the child being subjected to conditions or circumstances that would
16 reasonably result in abuse or neglect.

17 **§49-2-804. Notification of disposition of reports.**

18 The Department of Health and Human Resources shall continue to develop, update and
19 implement a procedure to notify any person mandated to report suspected child abuse and neglect
20 pursuant to section eight hundred three of this article, of whether an investigation into the reported
21 suspected abuse or neglect has been initiated and when the investigation is completed.

1 **§49-2-805. Educational programs; requirements.**

2 Subject to appropriation in the budget, the department shall conduct educational and training
3 programs for persons required to report suspected abuse or neglect, and the general public, as well
4 as implement evidence-based programs that reduce incidents of child maltreatment including sexual
5 abuse. Training for persons require to report and the general public shall include:

6 (1) Indicators of child abuse and neglect;

7 (2) Tactics used by sexual abusers;

8 (3) How and when to make a report; and

9 (4) Protective factors that prevent abuse and neglect in order to promote adult responsibility
10 for protecting children, encourage maximum reporting of child abuse and neglect, and to improve
11 communication, cooperation and coordination among all agencies involved in the identification,
12 prevention and treatment of the abuse and neglect of children.

13 **§49-2-806. Mandatory reporting of suspected animal cruelty by child protective service**
14 **workers.**

15 In the event a child protective service worker, in response to a report mandated by section
16 eight hundred two and eight hundred three of this article, forms a reasonable suspicion that an animal
17 is the victim of cruel or inhumane treatment, he or she shall report the suspicion and the basis
18 therefor to the county humane officer provided under section one, article ten, chapter seven of this
19 code within twenty-four hours of the response to the report.

20 **§49-2-807. Mandatory reporting to medical examiner or coroner; postmortem investigation.**

21 Any person or official who is required pursuant to section eight hundred three of this article

1 to report cases of suspected child abuse or neglect and who has reasonable cause to suspect that a
2 child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical
3 examiner or coroner. Upon the receipt of that report, the medical examiner or coroner shall cause
4 an investigation to be made and report his or her findings to the police, the appropriate prosecuting
5 attorney, the local child protective service agency and, if the institution making a report is a hospital,
6 to the hospital.

7 **§49-2-808. Photographs and X rays.**

8 Any person required to report cases of children suspected of being abused and neglected may
9 take or cause to be taken, at public expense, photographs of the areas of trauma visible on a child
10 and, if medically indicated, cause to be performed radiological examinations of the child. Any
11 photographs or X rays taken shall be sent to the appropriate child protective service as soon as
12 possible.

13 **§49-2-809. Reporting procedures.**

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

19 (b) A copy of any report of serious physical abuse, sexual abuse or assault shall be forwarded
20 by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner
21 or medical examiner's office. All reports under this article are confidential. Reports of known or

1 suspected institutional child abuse or neglect shall be made and received as all other reports made
2 pursuant to this article.

3 **§49-2-810. Immunity from liability.**

4 Any person, official or institution participating in good faith in any act permitted or required
5 by this article are immune from any civil or criminal liability that otherwise might result by reason
6 of those actions.

7 **§49-2-811. Abrogation of privileged communications; exception.**

8 The privileged quality of communications between husband and wife and between any
9 professional person and his or her patient or his or her client, except that between attorney and client,
10 is hereby abrogated in situations involving suspected or known child abuse or neglect.

11 **§49-2-812. Failure to report; penalty.**

12 Any person, official or institution required by this article to report a case involving a child
13 known or suspected to be abused or neglected, or required by section eight hundred nine of this
14 article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly
15 prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon
16 conviction, shall be confined in jail not more than thirty days or fined not more than \$1,000, or both
17 fined and confined.

18 **§49-2-813. Statistical index; reports.**

19 The Department of Health and Human Resources shall maintain a statewide child abuse and
20 neglect statistical index of all substantiated allegations of child abuse or neglect cases to include
21 information contained in the reports required under this article and any other information considered

1 appropriate by the Secretary of the Department of Health and Human Resources. Nothing in the
2 statistical data index maintained by the Department of Health and Human Resources may contain
3 information of a specific nature that would identify individual cases or persons. Notwithstanding
4 section two hundred one, article four of this chapter, the Department of Health and Human
5 Resources shall provide copies of the statistical data maintained pursuant to this subsection to the
6 State Police child abuse and neglect investigations unit to carry out its responsibilities to protect
7 children from abuse and neglect.

8 PART IX. GENERAL AUTHORITY AND DUTIES

9 OF THE DIVISION OF JUVENILE SERVICES.

10 **§49-2-901. Policy; cooperation.**

11 (a) It is the policy of the state to:

12 (1) Provide a coordinated continuum of care for its children who have been charged with an
13 offense which would be a crime if committed by an adult, whether they are taken into custody and
14 securely detained or released pending adjudication by the court; and

15 (2) Ensure the safe and efficient custody of a securely detained child through the entire
16 juvenile justice process, and this can best be accomplished by the state by providing for cooperation
17 and coordination between the agencies of government which are charged with responsibilities for
18 the children of the state.

19 (b) When any juvenile is ordered by the court to be transferred from the custody of one of
20 these agencies into the custody of the other, the Department of Health and Human Resources and
21 the Division of Juvenile Services shall cooperate with each other to the maximum extent necessary

1 in order to ease the child's transition and to reduce unnecessary cost, duplication and delay.

2 **§49-2-902. Division of Juvenile Services; transfer of functions; juvenile placement.**

3 (a) The Division of Juvenile Services is created within the Department of Military Affairs
4 and Public Safety. The director shall be appointed by the Governor with the advice and consent of
5 the Senate and shall be responsible for the control and supervision of each of its offices. The director
6 may appoint deputy directors and assign them duties as may be necessary for the efficient
7 management and operation of the division.

8 (b) The Division of Juvenile Services consists, at a minimum, of three subdivisions:

9 (1) The Office of Juvenile Detention, which is responsible for operating and maintaining
10 centers for the predispositional detention of juveniles, including juveniles who have been transferred
11 to adult criminal jurisdiction pursuant to part eight, article four of this chapter and juveniles who are
12 awaiting transfer to a juvenile corrections facility;

13 (2) The Office of Juvenile Corrections, which is also responsible for operating and
14 maintaining juvenile corrections facilities; and

15 (3) The Office of Community-Based Services, shall provide at a minimum, masters level
16 therapy services; family, individual and group counseling; community service activities;
17 transportation; and aftercare programs.

18 (c) Notwithstanding any provisions of this code to the contrary, whenever a juvenile is
19 ordered into the custody of the Division of Juvenile Services, the director may place the juvenile
20 while he or she is in the division's custody at whichever facility operated by the division is deemed
21 by the director to be most appropriate considering the juvenile's well-being and any

1 recommendations of the court placing the juvenile in the division's custody.

2 **§49-2-903. Powers and duties; comprehensive strategy; cooperation.**

3 The Division of Juvenile Services has the following duties as to juveniles in detention
4 facilities or juvenile corrections facilities:

5 (1) Cooperating with the United States Department of Justice in operating, maintaining and
6 improving juvenile correction facilities and predispositional detention centers, complying with
7 regulations thereof, and receiving and expending federal funds for the services;

8 (2) Providing care for children needing secure detention pending disposition by a court
9 having juvenile jurisdiction or temporary care following a court action;

10 (3) Assigning the necessary personnel and providing adequate space for the support and
11 operation of any facility providing for the secure detention of children committed to the care of the
12 Division of Juvenile Services;

13 (4) Proposing rules which outline policies and procedures governing the operation of
14 correctional, detention and other facilities in its division wherein juveniles may be securely housed;

15 (5) Assigning the necessary personnel and providing adequate space for the support and
16 operation of its facilities;

17 (6) Developing a comprehensive plan to maintain and improve a unified state system of
18 regional predispositional detention centers for juveniles;

19 (7) Working in cooperation with the Department of Health and Human Resources in
20 establishing, maintaining, and continuously refining and developing a balanced and comprehensive
21 state program for children who have been adjudicated delinquent;

1 (8) In cooperation with the Department of Health and Human Resources establishing
2 programs and services within available funds, designed to:

3 (A) Prevent juvenile delinquency;

4 (B) To divert juveniles from the juvenile justice system:

5 (C) To provide community-based alternatives to juvenile detention and correctional facilities;

6 and

7 (D) To encourage a diversity of alternatives within the juvenile justice system;

8 Working in collaboration with the Department of Health and Human Resources, the Division
9 of Juvenile Services shall employ a comprehensive strategy for the social and rehabilitative
10 programming and treatment of juveniles, consistent with the principles adopted by the Office of
11 Juvenile Justice and Delinquency Prevention of the Office of Justice Programs of the United States
12 Department of Justice.

13 **§49-2-904. Rules for specialized training for juvenile corrections officers and detention center**
14 **employees.**

15 The Division of Juvenile Services shall propose rules for Legislative approval pursuant to
16 chapter twenty-nine-a of this code, which require juvenile corrections officers and detention center
17 employees to complete specialized training and certification. The training programs shall meet the
18 standards of those offered or endorsed by the Office of Juvenile Justice and Delinquency Prevention
19 of the Office of Justice Programs of the United States Department of Justice.

20 **§49-2-905. Juvenile detention and corrections facility personnel.**

21 (a) All persons employed at a juvenile detention or corrections facility shall be employed at

1 a salary and with benefits consistent with the approved plan of compensation of the Division of
2 Personnel, created under section five, article six, chapter twenty-nine of this code; all employees will
3 also be covered by the policies and procedures of the West Virginia Public Employees Grievance
4 Board, created under article two, chapter six-c of this code and the classified service protection
5 policies of the Division of Personnel.

6 (b) The Division of Juvenile Services of the Department of Military Affairs and Public Safety
7 is authorized to assign the necessary personnel and provide adequate space for the support and
8 operation of any facility operated by the Division of Juvenile Services of the Department of Military
9 Affairs and Public Safety providing for the detention of children as provided in this article, subject
10 to and not inconsistent with the appropriation and availability of funds.

11 **§49-2-906. Medical and other treatment of juveniles in custody of the division; consent;**
12 **service providers; medical care; pregnant inmates; claims processing and**
13 **administration by the department; authorization of cooperative agreements.**

14 (a) Notwithstanding any other provision of law to the contrary, the director, or his or her
15 designee, is hereby authorized to consent to the medical or other treatment of any juvenile in the
16 legal or physical custody of the director or the division.

17 (b) In providing or arranging for the necessary medical and other care and treatment of
18 juveniles committed to the division's custody, the director shall use service providers who provide
19 the same or similar services to juveniles under existing contracts with the Department of Health and
20 Human Resources. In order to obtain the most advantageous reimbursement rates, to capitalize on
21 an economy of scale and to avoid duplicative systems and procedures, the department shall

1 administer and process all claims for medical or other treatment of juveniles committed to the
2 division's custody.

3 (c) In providing or arranging for the necessary medical and other care and treatment of
4 juveniles committed to the division's custody, the director shall assure that pregnant inmates will not
5 be restrained after reaching the second trimester of pregnancy until the end of the pregnancy.
6 However, if the inmate, based upon her classification, discipline history or other factors deemed
7 relevant by the director poses a threat of escape, or to the safety of herself, the public, staff, or the
8 unborn child, the inmate may be restrained in a manner reasonably necessary. Additionally, that
9 prior to directing the application of restraints and where there is no threat to the safety of the inmate,
10 the public, staff or the fetus, the director or designee shall consult with an appropriate health care
11 professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the
12 inmate or the fetus.

13 (d) For purposes of implementing the mandates of this section, the director is hereby
14 authorized and directed to enter into any necessary agreements with the Department of Health and
15 Human Resources. An agreement will include, at a minimum, for the direct and incidental costs
16 associated with that care and treatment to be paid by the Division of Juvenile Services.

17 **§49-2-907. Examination, diagnosis, classification and treatment; period of custody.**

18 (a) As a part of the dispositional proceeding for a juvenile who has been adjudicated
19 delinquent, the court may, upon its own motion or upon request of counsel, order the juvenile to be
20 delivered into the custody of the Director of the Division of Juvenile Services, who shall cause the
21 juvenile to be transferred to a juvenile diagnostic center for a period not to exceed sixty days. During

1 this period, the juvenile will undergo examination, diagnosis, classification and a complete medical
2 examination and shall at all times be kept apart from the general juvenile population in the director's
3 custody.

4 (b) During the examination period established by subsection (a) of this section, the director,
5 or his or her designee, shall convene and direct a multidisciplinary treatment team for the juvenile
6 which team will include the juvenile, if appropriate, the juvenile's probation officer, the juvenile's
7 social worker, if any, the juvenile's custodial parent or parents, the juvenile's guardian, attorneys
8 representing the juvenile or the parents, the guardian ad litem, if any, the prosecuting attorney and
9 an appropriate school official or representative. The team may also include, where appropriate, a
10 court-appointed special advocate, a member of a child advocacy center and any other person who
11 may assist in providing recommendations for the particular needs of the juvenile and the family.

12 (c) Not later than sixty days after commitment pursuant to this section the juvenile shall be
13 remanded and delivered to the custody of the director, an appropriate agency or any other person that
14 the court by its order directs. Within ten days after the end of the examination, diagnosis and
15 classification, the Director of the Division of Juvenile Services shall make or cause to be made a
16 report to the court containing the results, findings, conclusions and recommendations of the
17 multidisciplinary team with respect to that juvenile.

18 **§49-2-908. Educational services for juveniles placed in predispositional and postdispositional**
19 **facilities; authorization; cooperation; rule-making.**

20 (a) The State Board of Education is authorized to provide for adequate and appropriate
21 education opportunities for juveniles placed in secure predispositional or post dispositional centers

1 operated by or under contract with the Division of Juvenile Services.

2 (b) Subject to appropriations by the Legislature, the state board is authorized:

3 (1) To provide education programs and services for juveniles on the grounds of secure
4 predispositional or postdispositional centers;

5 (2) To hire classroom teachers and other school personnel necessary to provide adequate and
6 appropriate education opportunities to these juveniles, and

7 (3) To provide education services for the detained juveniles on a twelve-month basis.

8 (c) The Division of Juvenile Services shall cooperate with the state board and the state
9 superintendent in the establishment and maintenance of education programs authorized under this
10 section. Subject to appropriations by the Legislature, the Division of Juvenile Services shall provide,
11 or cause to be provided, adequate space and facilities for the education programs. The state board
12 may not be required to construct, improve or maintain any building, other improvement to real estate
13 or fixtures attached thereto at any secure predispositional detention center for the purpose of
14 establishing and maintaining an education program.

15 (d) The state board may develop and approve rules in accordance with article three-a, chapter
16 twenty-nine-a of this code for the education of juveniles in secure predispositional detention centers.

17 **§49-2-909. Arrest authority of juvenile correctional and detention officers.**

18 (a) Persons employed by the Division of Juvenile Services as juvenile correctional officers
19 are authorized and empowered to arrest persons already in the custody of the Division of Juvenile
20 Services for violations of law that occur in the officer's presence, including escape.

21 (b) Nothing in this section may be construed as to make a juvenile correctional officer

1 employed by the Division of Juvenile Services a law-enforcement officer as defined in section one,
2 article twenty-nine, chapter thirty of this code.

3 **§49-2-910. Juvenile trustee accounts and funds, earnings and personal property of juveniles;**
4 **return of property; reports;**

5 (a) The Director of Juvenile Services may establish at each facility under his or her
6 jurisdiction a “Juvenile Trustee Fund”. The administrator or designee of each facility may receive
7 and take charge of the money and personal property, as defined by policy, of all juveniles in his or
8 her facility and all money or personal property, as defined by policy, sent to the juveniles or earned
9 by the juveniles as compensation for work performed while they are domiciled there. The
10 administrator or designee shall credit the money and earnings to the juveniles entitled to it and shall
11 keep an accurate account of all the money and personal property so received, which account is
12 subject to examination by the Director of Juvenile Services and the Assistant Director of Budget and
13 Finance of the Division of Juvenile Services. The administrator or designee shall deposit the moneys
14 in one or more responsible banks in accounts to be designated a “Juvenile Trustee Fund”.

15 (b) The administrator or designee shall keep in an account for all juveniles at least ten percent
16 of all money earned during the juveniles commitment and pay the money to the juvenile at the time
17 of the juvenile's release. The administrator or designee may authorize the juvenile to withdraw
18 money from his or her mandatory savings for the purpose of preparing the juvenile for reentry into
19 society.

20 (c) The administrator or designee shall deliver to the juvenile at the time he or she leaves the
21 facility, or as soon as practicable after departure, all personal property, moneys and earnings then

1 credited to the juvenile, or in case of the death of the juvenile before authorized release from the
2 facility, the administrator or designee shall deliver the property to the juvenile's personal
3 representative. If a conservator is appointed for the juvenile while he or she is domiciled at the
4 facility, the administrator or designee shall deliver to the conservator, upon proper demand, all
5 moneys and personal property belonging to the juvenile that are in the custody of the administrator.

6 (d) If any money is credited to a former juvenile resident after remittance of the sum of
7 money as provided in subsection (c) of this section, the administrator or designee shall mail the funds
8 to the former juvenile resident's last known address. If the funds are returned to the facility, the
9 administrator or designee will forward those funds to the Division of Juvenile Service's Assistant
10 Director of Budget and Finance to submit the funds to the State Treasurer's Office-Unclaimed
11 Property Division.

12 (e) The facility shall compile a monthly report that specifically documents juvenile trustee
13 fund receipts and expenditures and submit the reconciled monthly bank statements to the Division
14 of Juvenile Service's Assistant Director of Budget and Finance.

15 **§49-2-911. Juvenile benefit funds; uses; reports.**

16 (a) There is hereby established a special revenue account in the State Treasury for each
17 juvenile benefit fund established by the director. Moneys received by an institution for deposit in an
18 juvenile benefit fund shall be deposited with the State Treasurer to be credited to the special revenue
19 account created for the institution's juvenile benefit fund. Moneys in a special revenue account
20 established for a juvenile benefit fund may be expended by the institution for the purposes set forth
21 in this section.

1 (b) Moneys in an account established for a juvenile benefit fund may be expended by the
2 facility for the purposes set forth in this section. Moneys to be deposited into a juvenile benefit fund
3 consist of:

4 (1) All profit from the exchange or commissary operation and, if the commissary is operated
5 by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the
6 Division of Juvenile Services by the vendor;

7 (2) All net proceeds from vending machines used for juvenile resident visitation;

8 (3) All proceeds from contracted juvenile resident telephone commissions;

9 (4) Any funds that may be assigned by juveniles or donated to the facility by the general
10 public or a service organization on behalf of all the juveniles; and

11 (5) Any funds confiscated considered contraband.

12 (c) The juvenile benefit fund may only be used for the following purposes at juvenile
13 facilities:

14 (1) Open-house visitation functions or other nonroutine campus-wide activities which will
15 enhance programming goals of the facility;

16 (2) Holiday functions which may include decorations, food and gifts for residents or family
17 of residents;

18 (3) Rental of videos;

19 (4) Payment of video license;

20 (5) Supplemental supplies and equipment which will enrich the facilities' program activities;

21 (6) Hardship needs for juvenile residents if approved by the Division of Juvenile Services

1 Director; and

2 (7) Any special activities or rewards for residents.

3 (d) The facility shall compile a monthly report that specifically documents juvenile benefit
4 fund receipts and expenditures and submit the reconciled monthly bank statements to the Division
5 of Juvenile Services Assistant Director of Budget and Finance.

6 PART X. WEST VIRGINIA

7 JUVENILE OFFENDER REHABILITATION ACT.

8 **§49-2-1001. Purpose; intent.**

9 It is the intent of the Legislature to provide for the creation of all reasonable means and
10 methods that can be established by a humane and enlightened state, solicitous of the welfare of its
11 children, for the prevention of delinquency and for the care and rehabilitation of juvenile delinquents
12 and status offenders. It is further the intent of the Legislature that this state, through the Department
13 of Health and Human Resources and the Division of Juvenile Services, establish, maintain, and
14 continuously refine and develop, a balanced and comprehensive state program for juveniles who are
15 potentially delinquent or are status offenders or juvenile delinquents in the care or custody of the
16 department.

17 **§49-2-1002. Responsibilities of the Department of Health and Human Resources and Division**
18 **of Juvenile Services of the Department of Military Affairs and Public Safety;**
19 **programs and services; rehabilitation; cooperative agreements.**

20 (a) The Department of Health and Human Resources and the Division of Juvenile Services
21 of the Department of Military Affairs and Public Safety shall establish programs and services

1 designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to
2 provide community-based alternatives to juvenile detention and correctional facilities and to
3 encourage a diversity of alternatives within the child welfare and juvenile justice system. The
4 development, maintenance and expansion of programs and services may include, but not be limited
5 to, the following:

6 (1) Community-based programs and services for the prevention and treatment of juvenile
7 delinquency through the development of foster-care and shelter-care homes, group homes, halfway
8 houses, homemaker and home health services, twenty-four hour intake screening, volunteer and
9 crisis home programs, day treatment and any other designated community-based diagnostic,
10 treatment or rehabilitative service;

11 (2) Community-based programs and services to work with parents and other family members
12 to maintain and strengthen the family unit so that the juvenile may be retained in his or her home;

13 (3) Youth service bureaus and other community-based programs to divert youth from the
14 juvenile court or to support, counsel, or provide work and recreational opportunities for status
15 offenders, juvenile delinquents and other youth to help prevent delinquency;

16 (4) Projects designed to develop and implement programs stressing advocacy activities aimed
17 at improving services for and protecting rights of youth affected by the juvenile justice system;

18 (5) Educational programs or supportive services designed to encourage status offenders,
19 juvenile delinquents, and other youth to remain in elementary and secondary schools or in alternative
20 learning situations;

21 (6) Expanded use of professional and paraprofessional personnel and volunteers to work

1 effectively with youth;

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

4 (8) A statewide program designed to reduce the number of commitments of juveniles to any
5 form of juvenile facility as a percentage of the state juvenile population; to increase the use of
6 nonsecure community-based facilities as a percentage of total commitments to juvenile facilities; and
7 to discourage the use of secure incarceration and detention; and

8 (9) Transitional programs designed to assist youth who are in the custody of the state upon
9 reaching the age of eighteen years.

10 (b)(1) The Department of Health and Human Resources shall establish an individualized
11 program of rehabilitation for each status offender referred to the department and to each alleged
12 juvenile delinquent referred to the department after being allowed a preadjudicatory community
13 supervision period by the juvenile court, and for each adjudicated juvenile delinquent who, after
14 adjudication, is referred to the department for investigation or treatment or whose custody is vested
15 in the department.

16 (2) Individualized program of rehabilitation shall take into account the programs and services
17 to be provided by other public or private agencies or personnel which are available in the community
18 to deal with the circumstances of the particular juvenile.

19 (3) For alleged juvenile delinquents and status offenders, those individualized program of
20 rehabilitation shall be furnished to the juvenile court and made available to counsel for the juvenile;
21 it may be modified from time to time at the direction of the department or by order of the juvenile

1 court.

2 (4) The department may develop an individualized program of rehabilitation for any juvenile
3 referred for noncustodial counseling pursuant to section seven hundred two, article four of this
4 chapter, or for any other juvenile upon the request of a public or private agency.

5 (c) The Department of Health and Human Resources and the Division of Juvenile Services
6 are directed to enter into cooperative arrangements and agreements with each other and with private
7 agencies or with agencies of the state and its political subdivisions to fulfill their respective duties
8 under this article and chapter.

9 **§49-2-1003. Rehabilitative facilities for status offenders; requirements; educational**
10 **instruction.**

11 (a) The Department of Health and Human Resources shall establish and maintain one or more
12 rehabilitative facilities to be used exclusively for the lawful custody of status offenders. Each facility
13 will be a nonsecure facility having as its purpose the rehabilitation of status offenders. The facility
14 will have a bed capacity for not more than twenty juveniles, and shall minimize the institutional
15 atmosphere and prepare the juvenile for reintegration into the community.

16 (b) Rehabilitative programs and services shall be provided by or through each facility and
17 may include, but not be limited to, medical, educational, vocational, social and psychological
18 guidance, training, counseling, alcoholism treatment, drug treatment and other rehabilitative services.
19 The Department of Health and Human Resources shall provide to each status offender committed
20 to the facility a program of treatment and services consistent with the individualized program of
21 rehabilitation developed for the juvenile. In the case of any other juvenile residing at the facility, the

1 department shall provide those programs and services as may be proper in the circumstances
2 including, but not limited to, any programs or services directed to be provided by the court.

3 (c) The board of education of the county in which the facility is located shall provide
4 instruction for juveniles residing at the facility. Residents who can be permitted to do so shall attend
5 local schools, and instruction shall otherwise take place at the facility.

6 (d) Facilities established pursuant to this section will be structured as community-based
7 facilities.

8 **§49-2-1004. The Juvenile Services Reimbursement Offender Fund; use; expenditures.**

9 There is created within the State Treasury a special revenue account designated “The Juvenile
10 Services Reimbursement Offender Fund” within and for the benefit of the Division of Juvenile
11 Services for expenses incurred in servicing juvenile status offenders in need of stabilization and
12 specialized supervision. Moneys shall be paid into the account by the Department of Health and
13 Human Resources, based upon an established per diem rate, or other funding sources. The
14 Department of Health and Human Resources and the Division of Juvenile Services shall jointly
15 establish the per diem rate to be paid into the fund by the Department of Health and Human
16 Resources for each juvenile status offender in need of stabilization and specialized supervision by
17 the Division of Juvenile Services pursuant to this article and by cooperative agreement. The Director
18 of Juvenile Services is authorized to make expenditures from the fund in accordance with article
19 three, chapter twelve of this code to offset expenses incurred by the Division of Juvenile Services
20 in housing, treatment and caring for juvenile offenders.

21 **§49-2-1005. Legal custody; law-enforcement agencies.**

1 The Department of Health and Human Resources may require any juvenile committed to its
2 legal custody to remain at and to return to the residence to which the juvenile is assigned by the
3 department or by the juvenile court. In aid of that authority, and upon request of a designated
4 employee of the department, any police officer, sheriff, deputy sheriff, or juvenile court probation
5 officer is authorized to take the juvenile into custody and return the juvenile to his or her place of
6 residence or into the custody of a designated employee of the department.

7 **§49-2-1006. Reporting requirements; cataloguing of services.**

8 (a) The Department of Health and Human Resources and the Division of Juvenile Services
9 shall annually review its programs and services and submit a report by December 31, of each year
10 to the Governor, the Legislature and the Supreme Court of Appeals. This report shall analyze and
11 evaluate the effectiveness of the programs and services being carried out by the Department of
12 Health and Human Resources or the Division of Juvenile Services. That report shall include, but is
13 not limited to:

14 (1) An analysis and evaluation of programs and services continued, established and
15 discontinued during the period covered by the report;

16 (2) A description of programs and services which should be implemented to further the
17 purposes of this article;

18 (3) Relevant information concerning the number of juveniles comprising the population of
19 any rehabilitative facility during the period covered by the report;

20 (4) The length of residence, the nature of the problems of each juvenile, the juvenile's
21 response to programs and services; and

1 (5) Any other information as will enable a user of the report to ascertain the effectiveness of
2 the facility as a rehabilitative facility.

3 (b) The Department of Health and Human Resources and the Division of Juvenile Services
4 shall prepare a descriptive catalogue of its juvenile programs and services available in local
5 communities throughout this state and shall distribute copies of the same to every juvenile court in
6 the state and, at the direction of the juvenile court, the catalogue shall be distributed to attorneys
7 practicing before the court. The catalogue shall:

8 (1) Be made available to members of the general public upon request:

9 (2) Contain sufficient information as to particular programs and services so as to enable a
10 user of the catalogue to make inquiries and referrals; and

11 (3) Be constructed so as to meaningfully identify and describe programs and services.

12 (c) The requirements of this section are not satisfied by a simple listing of specific agencies
13 or the individuals in charge of programs at a given time. The catalogue shall be updated and
14 republished or supplemented from time to time as may be required to maintain its usefulness as a
15 resource manual.

16 **ARTICLE 3. SPECIALIZED ADVOCACY PROGRAMS.**

17 **§49-3-101. Child advocacy centers; services; requirements.**

18 Child advocacy centers provide the following services to children in the child welfare
19 program in West Virginia:

20 (1) Operation of a child-appropriate or child-friendly facility that provides a comfortable,
21 private setting that is both physically and psychologically safe for clients.

1 (2) Participation in a multidisciplinary team for response to child abuse allegations.

2 (3) Operate a legal entity responsible for program and fiscal operations that has established
3 and implemented basic sound administrative practices.

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

8 (5) Conduct forensic interviews in a manner which is of a neutral, fact-finding nature and
9 coordinated to avoid duplicative interviewing.

10 (6) Provide specialized medical evaluation and treatment made available to clients as part
11 of the team response, either at the CAC or through coordination and referral with other specialized
12 medical providers.

13 (7) Offer therapeutic intervention through specialized mental health services made available
14 as part of the team response, either at the child advocacy center or through coordination and referral
15 with other appropriate treatment providers.

16 (8) Victim support and advocacy as part of the team response, either at the child advocacy
17 center or through coordination with other providers, throughout the investigation and subsequent
18 legal proceedings.

19 (9) Conducting team discussions and providing information sharing regarding the
20 investigation, case status and services needed by the child and family are to occur on a routine basis.

21 (10) Developing and implementing a system for monitoring case progress and tracking case

1 outcomes for team components.

2 (11) May establish a safe exchange location for children and families who have a parenting
3 agreement or an order providing for visitation or custody of the children that require a safe exchange
4 location.

5 **§49-3-102. Court appointed special advocate; operations.**

6 A court appointed special advocate (CASA) shall operate as follows:

7 (1) Standards: CASA programs shall be members in good standing with the West Virginia
8 Court Appointed Special Advocate Association, Inc., and the National Court Appointed Special
9 Advocates Association and adhere to all standards set forth by these entities.

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

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

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

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

20 (6) Training: Court appointed special advocates shall serve as volunteers without
21 compensation and shall receive training consistent with state and nationally developed standards.

1 **ARTICLE 4. COURT ACTIONS.**

2 PART I. GENERAL PROVISIONS.

3 **§49-4-101. Exercise of powers and jurisdiction by judge in vacation.**

4 The powers and jurisdiction of the court, under the provisions of this chapter, may be
5 exercised by the judge in vacation.

6 **§49-4-102. Procedure for appealing decisions.**

7 Cases under this chapter, if tried in any inferior court, may be reviewed by writ of error or
8 appeal to the circuit court, and if tried or reviewed in a circuit court, by writ of error or appeal to the
9 Supreme Court of Appeals.

10 **§49-4-103. Proceedings may not be evidence against child, or be published; adjudication is not**
11 **a conviction and not a bar to civil service eligibility.**

12 Any evidence given in any cause or proceeding under this chapter, or any order, judgment
13 or finding therein, or any adjudication upon the status of juvenile delinquent heretofore made or
14 rendered, may not in any civil, criminal or other cause or proceeding whatever in any court, be lawful
15 or proper evidence against the child for any purpose whatsoever except in subsequent cases under
16 this chapter involving the same child; nor may the name of any child, in connection with any
17 proceedings under this chapter, be published in any newspaper without a written order of the court;
18 nor may any adjudication upon the status of any child by a juvenile court operate to impose any of
19 the civil disabilities ordinarily imposed by conviction, nor may any child be deemed a criminal by
20 reason of the adjudication, nor may the adjudication be deemed a conviction, nor may any
21 adjudication operate to disqualify a child in any future civil service examination, appointment, or

1 application.

2 **§49-4-104. General provisions relating to court orders regarding custody; rules.**

3 (a) The Supreme Court of Appeals, in consultation with the Department of Health and
4 Human Resources and the Division of Juvenile Services in order to eliminate unnecessary state
5 funding of out-of-home placements where federal funding is available, shall develop and disseminate
6 form court orders to effectuate chapter forty-nine of this code which authorize disclosure and transfer
7 of juvenile records between agencies while requiring maintenance of confidentiality, Child Welfare
8 Services, 42 U.S.C. §620, *et seq.*, and 42 U.S.C. §670, *et seq.*, relating to the promulgation of
9 uniform court orders for placement of minor children and the rules promulgated thereunder, for use
10 in the courts of the state.

11 (b) Judges and magistrates, upon being supplied the form orders required by subsection (a)
12 of this section, shall act to ensure the proper form order is entered in the case so as to allow federal
13 funding of eligible out-of-home placements.

14 **§49-4-105. Hearing required to determine "reasonable efforts."**

15 A hearing by a circuit court of competent jurisdiction is required to determine whether or not
16 "reasonable efforts" have been made to stabilize and maintain the family situation before any child
17 may be placed outside the home, except that in the event any child appears in imminent danger of
18 serious bodily or emotional injury or death in any home, a post-removal hearing shall be substituted
19 for the pre-removal hearing.

20 **§49-4-106. Limitation on out-of-home placements.**

21 Before any child may be directed for placement in a particular facility or for services of a

1 child welfare agency licensed by the department, a court shall make inquiry into the bed space of the
2 facility available to accommodate additional children and the ability of the child welfare agency to
3 meet the particular needs of the child. A court may not order the placement of a child in a particular
4 facility, including status offender facilities operated by the Division of Juvenile Services, if it has
5 reached its licensed capacity or order conditions on the placement of the child which conflict with
6 licensure regulations applicable to the facility promulgated pursuant to article two of this chapter and
7 articles one-a, nine and seventeen, chapter twenty-seven of this code. Further, a child welfare agency
8 is not required to accept placement of a child at a particular facility if the facility remains at licensed
9 capacity or is unable to meet the particular needs of the child. A child welfare agency is not required
10 to make special dispensation or accommodation, reorganize existing child placement, or initiate early
11 release of children in placement to reduce actual occupancy at the facility.

12 **§49-4-107. Penalties.**

13 A person who violates an order, rule, or regulation made under the authority of this chapter,
14 or who violates this chapter for which punishment has not been specifically provided, is guilty of a
15 misdemeanor and, upon conviction shall be fined not less than \$10 nor more than \$100, or confined
16 in jail not less than five days nor more than six months, or both fined and confined.

17 **§49-4-108. Payment of services.**

18 At any time during any proceedings brought pursuant to this article, the court may upon its
19 own motion, or upon a motion of any party, order the Department of Health and Human Resources
20 to pay for professional services rendered by a psychologist, psychiatrist, physician, therapist or other
21 health care professional to a child or other party to the proceedings. Professional services include,

1 but are not limited to, treatment, therapy, counseling, evaluation, report preparation, consultation and
2 preparation of expert testimony. The Department of Health and Human Resources shall set the fee
3 schedule for the services in accordance with the Medicaid rate, if any, or the customary rate and
4 adjust the schedule as appropriate. Every psychologist, psychiatrist, physician, therapist or other
5 health care professional shall be paid by the Department of Health and Human Resources upon
6 completion of services and submission of a final report or other information and documentation as
7 required by the policies and procedures implemented by the Department of Health and Human
8 Resources.

9 **§49-4-109. Guardianship of estate of child unaffected.**

10 This chapter may not be construed to give the guardian appointed hereunder the guardianship
11 of the estate of the child, or to change the age of minority for any other purpose except the custody
12 of the child.

13 The guardian of the estate of a child committed to guardianship hereunder shall furnish, when
14 and in the form as may be required, full information concerning the property of the child to the state
15 department or to the court or judge before whom the case of the child is heard.

16 **§49-4-110. Foster care; quarterly status review; transitioning adults; annual permanency**
17 **hearings.**

18 (a) For each child who remains in foster care as a result of a juvenile proceeding or as a result
19 of a child abuse and neglect proceeding, the circuit court with the assistance of the multidisciplinary
20 treatment team shall conduct quarterly status reviews in order to determine the safety of the child,
21 the continuing necessity for and appropriateness of the placement, the extent of compliance with the

1 case plan, and the extent of progress which has been made toward alleviating or mitigating the
2 causes necessitating placement in foster care, and to project a likely date by which the child may be
3 returned to and safety maintained in the home or placed for adoption or legal guardianship.
4 Quarterly status reviews shall commence three months after the entry of the placement order. The
5 permanency hearing provided in subsection (c) of this section may be considered a quarterly status
6 review.

7 (b) For each transitioning adult as that term is defined in section two hundred two, article one
8 of this chapter who remains in foster care, the circuit court shall conduct status review hearings as
9 described in subsection (a) of this section once every three months until permanency is achieved.

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

19 (d) Nothing in this section may be construed to abrogate the responsibilities of the circuit
20 court from conducting required hearings as provided in other provisions of this code, procedural
21 court rules, or setting required hearings at the same time.

1 **§49-4-111. Criteria and procedure for temporary removal of child from foster home; foster**
2 **care arrangement termination; notice of child's availability for placement;**
3 **adoption; sibling placements; limitations.**

4 (a) The department may temporarily remove a child from a foster home based on an
5 allegation of abuse or neglect, including sexual abuse, that occurred while the child resided in the
6 home. If the department determines that reasonable cause exists to support the allegation, the
7 department shall remove all foster children from the arrangement, preclude contact between the
8 children and the foster parents, provide written notice to the multidisciplinary treatment team
9 members and schedule an emergency team meeting to address placement options. If, after
10 investigation, the allegation is determined to be true by the department or after a judicial proceeding
11 a court finds the allegation to be true or if the foster parents fail to contest the allegation in writing
12 within twenty calendar days of receiving written notice of the allegations, the department shall
13 permanently terminate all foster care arrangements with the foster parents. If the department
14 determines that the abuse occurred due to no act or failure to act on the part of the foster parents and
15 that continuation of the foster care arrangement is in the best interests of the child, the department
16 may, in its discretion, elect not to terminate the foster care arrangement or arrangements.

17 (b) When a child has been placed in a foster care arrangement for a period in excess of
18 eighteen consecutive months, and the department determines that the placement is a fit and proper
19 place for the child to reside, the foster care arrangement may not be terminated unless the termination
20 is in the best interest of the child and:

21 (1) The foster care arrangement is terminated pursuant to subsection (a) of this section;

1 (2) The foster care arrangement is terminated due to the child being returned to his or her
2 parent or parents;

3 (3) The foster care arrangement is terminated due to the child being united or reunited with
4 a sibling or siblings;

5 (4) The foster parent or parents agree to the termination in writing;

6 (5) The foster care arrangement is terminated at the written request of a foster child who has
7 attained the age of fourteen; or

8 (6) A court orders the termination upon a finding that the department has developed a more
9 suitable long-term placement for the child upon hearing evidence in a proceeding brought by the
10 department seeking removal and transfer.

11 (c) When a child has been residing in a foster home for a period in excess of six consecutive
12 months in total and for a period in excess of thirty days after the parental rights of the child's
13 biological parents have been terminated and the foster parents have not made an application to the
14 department to establish an intent to adopt the child within thirty days of parental rights being
15 terminated, the department may terminate the foster care arrangement if another, more beneficial,
16 long-term placement of the child is developed. If the child is twelve years of age or older, the child
17 shall be provided the option of remaining in the existing foster care arrangement if the child so
18 desires and if continuation of the existing arrangement is in the best interest of the child.

19 (d)(1) When a child is placed into foster care or becomes eligible for adoption and a sibling
20 or siblings have previously been placed in foster care or have been adopted, the department shall
21 notify the foster parents or adoptive parents of the previously placed or adopted sibling or siblings

1 of the child's availability for foster care placement or adoption to determine if the foster parents or
2 adoptive parents are desirous of seeking a foster care arrangement or adoption of the child.

3 (2) Where a sibling or siblings have previously been adopted, the department shall also notify
4 the adoptive parents of a sibling of the child's availability for foster care placement in that home and
5 a foster care arrangement entered into to place the child in the home if the adoptive parents of the
6 sibling are otherwise qualified or can become qualified to enter into a foster care arrangement with
7 the department and if the arrangement is in the best interests of the child.

8 (3) The department may petition the court to waive notification to the foster parents or
9 adoptive parents of the child's siblings. This waiver may be granted, ex parte, upon a showing of
10 compelling circumstances.

11 (e)(1) When a child is in a foster care arrangement and is residing separately from a sibling
12 or siblings who are in another foster home or who have been adopted by another family and the
13 parents with whom the placed or adopted sibling or siblings reside have made application to the
14 department to establish an intent to adopt or to enter into a foster care arrangement regarding a child
15 so that the child may be united or reunited with a sibling or siblings, the department shall, upon a
16 determination of the fitness of the persons and household seeking to enter into a foster care
17 arrangement or seek an adoption which would unite or reunite siblings, and if termination and new
18 placement are in the best interests of the children, terminate the foster care arrangement and place
19 the child in the household with the sibling or siblings.

20 (2) If the department is of the opinion based upon available evidence that residing in the same
21 home would have a harmful physical, mental or psychological effect on one or more of the sibling

1 children or if the child has a physical or mental disability which the existing foster home can better
2 accommodate, or if the department can document that the reunification of the siblings would not be
3 in the best interest of one or all of the children, the department may petition the circuit court for an
4 order allowing the separation of the siblings to continue.

5 (3) If the child is twelve years of age or older, the department shall provide the child the
6 option of remaining in the existing foster care arrangement if remaining is in the best interests of the
7 child. In any proceeding brought by the department to maintain separation of siblings, the separation
8 may be ordered only if the court determines that clear and convincing evidence supports the
9 department's determination.

10 (4) In any proceeding brought by the department seeking to maintain separation of siblings,
11 notice afforded, in addition to any other persons required by any provision of this code to receive
12 notice, to the persons seeking to adopt a sibling or siblings of a previously placed or adopted child
13 and the persons may be parties to the action.

14 (f) Where two or more siblings have been placed in separate foster care arrangements and
15 the foster parents of the siblings have made application to the department to enter into a foster care
16 arrangement regarding the sibling or siblings not in their home or where two or more adoptive
17 parents seek to adopt a sibling or siblings of a child they have previously adopted, the department's
18 determination as to placing the child in a foster care arrangement or in an adoptive home shall be
19 based solely upon the best interests of the siblings.

20 **§49-4-112. Subsidized adoption and legal guardianship; conditions.**

21 (a) From funds appropriated to the Department of Health and Human Resources, the secretary

1 shall establish a system of assistance for facilitating the adoption or legal guardianship of children.
2 An adoption subsidy shall be available for children who are legally free for adoption and who are
3 dependents of the department or a child welfare agency licensed to place children for adoption. A
4 legal guardianship subsidy may not require the surrender or termination of parental rights. For either
5 subsidy, the children must be in special circumstances because one or more of the following
6 conditions inhibit their adoption or legal guardianship placement:

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

8 (2) They are emotionally disturbed;

9 (3) They are older children;

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

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

12 (b) (1) The department shall provide assistance in the form of subsidies or other services to
13 parents who are found and approved for adoption or legal guardianship of a child certified as eligible
14 for subsidy by the department, but before the final decree of adoption or order of legal guardianship
15 is entered, there must be a written agreement between the family entering into the subsidized
16 adoption or legal guardianship and the department.

17 (2) Adoption or legal guardianship subsidies in individual cases may commence with the
18 adoption or legal guardianship placement, and will vary with the needs of the child as well as the
19 availability of other resources to meet the child's needs. The subsidy may be for special services
20 only, or for money payments, and either for a limited period, or for a long term, or for any
21 combination of the foregoing.

1 (3) The specific financial terms of the subsidy shall be included in the agreement between
2 the department and the adoptive parents or legal guardians. The agreement may recognize and
3 provide for direct payment by the department of attorney's fees to an attorney representing the
4 adoptive parent.

5 (4) The amount of the time-limited or long-term subsidy may in no case exceed that which
6 would be allowable from time to time for the child under foster family care or, in the case of a
7 special service, the reasonable fee for the service rendered.

8 (5) In addition, the department shall provide either Medicaid or other health insurance
9 coverage for any special needs child for whom there is an adoption or legal guardianship assistance
10 agreement between the department and the adoptive parent or legal guardian and who the department
11 determines cannot be placed with an adoptive parent or legal guardian without medical assistance
12 because the child has special needs for medical, mental health or rehabilitative care.

13 (c) After reasonable efforts have been made without the use of subsidy and no appropriate
14 adoptive family or legal guardian has been found for the child, the department shall certify the child
15 as eligible for a subsidy in the event of adoption or a legal guardianship. Reasonable efforts to place
16 a child without a subsidy shall not be required if it is in the best interest of the child because of the
17 factors as the existence of significant emotional ties developed between the child and the prospective
18 parent or guardian while in care as a foster child.

19 (d) If the child is the dependent of a voluntary licensed child-placing agency, that agency
20 shall present to the department evidence of the inability to place the child for adoption or legal
21 guardianship without the use of subsidy or evidence that the efforts would not be in the best interests

1 of the child. In no event may the value of the services and assistance provided by the department
2 under an agreement pursuant to this section exceed the value of assistance available to foster families
3 in similar circumstances. All records regarding subsidized adoptions or legal guardianships are to
4 be held in confidence; however, records regarding the payment of public funds for subsidized
5 adoptions or legal guardianships shall be available for public inspection provided they do not directly
6 or indirectly identify any child or persons receiving funds for the child.

7 **§49-4-113. Duration of custody or guardianship of children committed to department.**

8 (a) A child committed to the department for guardianship, after termination of parental rights,
9 shall remain in the care of the department until he or she attains the age of eighteen years, or is
10 married, or is adopted, or guardianship is relinquished through the court.

11 (b) A child committed to the department for custody shall remain in the care of the
12 department until he or she attains the age of eighteen years, or until he or she is discharged because
13 he or she is no longer in need of care.

14 **§49-4-114. Consent by agency or department to adoption of child; statement of**
15 **relinquishment by parent; counseling services; petition to terminate**
16 **parental rights; notice; hearing; court orders.**

17 (a)(1) Whenever a child welfare agency licensed to place children for adoption or the
18 Department of Health and Human Resources has been given the permanent legal and physical
19 custody of any child and the rights of the mother and the rights of the legal, determined, putative,
20 outside or unknown father of the child have been terminated by order of a court of competent
21 jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or

1 the department may consent to the adoption of the child pursuant to article twenty-two, chapter
2 forty-eight of this code.

3 (2) Relinquishment for an adoption to an agency or to the department is required of the same
4 persons whose consent or relinquishment is required under section three hundred one, article
5 twenty-two, chapter forty-eight of this code. The form of any relinquishment so required shall
6 conform as nearly as practicable to the requirements established in section three hundred three,
7 article twenty-two, chapter forty-eight, and all other provisions of that article providing for
8 relinquishment for adoption shall govern the proceedings herein.

9 (3) For purposes of any placement of a child for adoption by the department, the department
10 shall first consider the suitability and willingness of any known grandparent or grandparents to adopt
11 the child. Once grandparents who are interested in adopting the child have been identified, the
12 department shall conduct a home study evaluation, including home visits and individual interviews
13 by a licensed social worker. If the department determines, based on the home study evaluation, that
14 the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered
15 the placement of the child prior to the consideration of any other prospective adoptive parents.

16 (4) The department shall make available, upon request, for purposes of any private or agency
17 adoption proceeding, preplacement and post-placement counseling services by persons experienced
18 in adoption counseling, at no cost, to any person whose consent or relinquishment is required
19 pursuant to article twenty-two, chapter forty-eight of this code.

20 (b)(1) Whenever the mother has executed a relinquishment pursuant to this section, and the
21 legal, determined, putative, outsider or unknown father, as those terms are defined pursuant to part

1 one, article twenty-two, chapter forty-eight of this code, has not executed a relinquishment, the child
2 welfare agency or the department may, by verified petition, seek to have the father's rights
3 terminated based upon the grounds of abandonment or neglect of the child. Abandonment may be
4 established in accordance with section three hundred six, article twenty-two, chapter forty-eight of
5 this code.

6 (2) Unless waived by a writing acknowledged as in the case of deeds or by other proper
7 means, notice of the petition shall be served on any person entitled to parental rights of a child prior
8 to its adoption who has not signed a relinquishment of custody of the child.

9 (3) In addition, notice shall be given to any putative, outsider or unknown father who has
10 asserted or exercised parental rights and duties to and with the child and who has not relinquished
11 any parental rights and the rights have not otherwise been terminated, or who has not had reasonable
12 opportunity before or after the birth of the child to assert or exercise those rights, except that if the
13 child is more than six months old at the time the notice would be required and the father has not
14 asserted or exercised his or her parental rights and he or she knew the whereabouts of the child, then
15 the father shall be presumed to have had reasonable opportunity to assert or exercise any rights.

16 (c)(1) Upon the filing of the verified petition seeking to have the parental rights terminated,
17 the court shall set a hearing on the petition. A copy of the petition and notice of the date, time and
18 place of the hearing on the petition shall be personally served on any respondent at least twenty days
19 prior to the date set for the hearing.

20 (2) The notice shall inform the person that his or her parental rights, if any, may be
21 terminated in the proceeding and that the person may appear and defend any rights within twenty

1 days of the service. In the case of a person who is a nonresident or whose whereabouts are unknown,
2 service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt
3 requested, postage prepaid, to the person's last known address, with instructions to forward; or (3)
4 by publication. If personal service is not acquired, then if the person giving notice has any
5 knowledge of the whereabouts of the person to be served, including a last known address, service
6 by mail shall be first attempted as herein provided. Service achieved by mail shall be complete upon
7 mailing and is sufficient service without the need for notice by publication. In the event that no
8 return receipt is received giving adequate evidence of receipt of the notice by the addressee or of
9 receipt of the notice at the address to which the notice was mailed or forwarded, or if the
10 whereabouts of the person are unknown, then the person required to give notice shall file with the
11 court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the
12 diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that
13 the whereabouts of the person to be served cannot be ascertained and that due diligence has been
14 exercised to ascertain the person's whereabouts, then the court shall order service of the notice by
15 publication as a Class II publication in compliance with article three, chapter fifty-nine of this code,
16 and the publication area shall be the county where the proceedings are had, and in the county where
17 the person to be served was last known to reside. In the case of a person under disability, service
18 shall be made on the person and his or her personal representative, or if there be none, on a guardian
19 ad litem.

20 (3) In the case of service by publication or mail or service on a personal representative or a
21 guardian ad litem, the person is allowed thirty days from the date of the first publication or mailing

1 of the service on a personal representative or guardian ad litem in which to appear and defend the
2 parental rights.

3 (d) A petition under this section may be instituted in the county where the child resides or
4 where the child is living.

5 (e) If the court finds that the person certified to parental rights is guilty of the allegations set
6 forth in the petition, the court shall enter an order terminating his or her parental rights and shall
7 award the legal and physical custody and control of the child to the petitioner.

8 **§49-4-115. Emancipation.**

9 (a) A child over the age of sixteen may petition a court to be declared emancipated. The
10 parents or custodians shall be made respondents and, in addition to personal service thereon, there
11 shall be publication as a Class II legal advertisement in compliance with article three, chapter
12 fifty-nine of this code.

13 (b) Upon a showing that the child can provide for his or her physical and financial well-being
14 and has the ability to make decisions for himself or herself, the court may for good cause shown
15 declare the child emancipated. The child shall thereafter have full capacity to contract in his or her
16 own right and the parents or custodians have no right to the custody and control of the child or duty
17 to provide the child with care and financial support.

18 (c) A child over the age of sixteen years who marries is emancipated by operation of law.
19 An emancipated child has all of the privileges, rights and duties of an adult, including the right of
20 contract, except that the child remains a child as defined for the purposes of part ten, article two, or
21 part seven, article four of this chapter.

1 **§49-4-116. Voluntary placement; petition; requirements; attorney appointed; court hearing;**
2 **orders.**

3 (a) Within ninety days of the date of the signatures to a voluntary placement agreement, after
4 receipt of physical custody, the department shall file with the court a petition for review of the
5 placement. The petition shall include:

- 6 (1) A statement regarding the child's situation; and,
- 7 (2) The circumstance that gives rise to the voluntary placement.

8 (b) If the department intends to extend the voluntary placement agreement, the department
9 shall file with the court a copy of the child's case plan.

10 (c) The court shall appoint an attorney for the child, who shall receive a copy of the case plan
11 as provided in subsection (b) of this section.

12 (d) The court shall schedule a hearing and give notice of the time and place and right to be
13 present at the hearing to:

- 14 (1) The child's attorney;
- 15 (2) The child, if twelve years of age or older;
- 16 (3) The child's parents or guardians;
- 17 (4) The child's foster parents;
- 18 (5) Any preadoptive parent or relative providing care for the child; and
- 19 (6) Any other persons as the court may in its discretion direct.

20 The child's presence at the hearing may be waived by the child's attorney at the request of the
21 child or if the child would suffer emotional harm.

1 (e) At the conclusion of the proceedings, but no later than ninety days after the date of the
2 signatures to the voluntary placement agreement, the court shall enter an order:

3 (1) Determining whether or not continuation of the voluntary placement is in the best
4 interests of the child;

5 (2) Specifying under what conditions the child's placement will continue;

6 (3) Specifying whether or not the department is required to and has made reasonable efforts
7 to preserve and to reunify the family; and

8 (4) Providing a plan for the permanent placement of the child.

9 PART II. EMERGENCY POSSESSION OF CERTAIN

10 RELINQUISHED CHILDREN.

11 **§49-4-201. Accepting possession of certain relinquished children.**

12 (a) A hospital or health care facility operating in this state, shall, without a court order, take
13 possession of a child if the child is voluntarily delivered to the hospital or health care facility by the
14 child's parent within thirty days of the child's birth, and the parent did not express an intent to return
15 for the child.

16 (b) A hospital or health care facility that takes possession of a child under this article shall
17 perform any act necessary to protect the physical health or safety of the child. In accepting
18 possession of the child, the hospital or health care facility may not require the person to identify
19 himself or herself and shall otherwise respect the person's desire to remain anonymous.

20 **§49-4-202. Notification of possession of relinquished child; department responsibilities.**

21 (a) Not later than the close of the first business day after the date on which a hospital or

1 health care facility takes possession of a child pursuant to section two hundred one of this article,
2 the hospital or health care facility shall notify the Child Protective Services division of the
3 Department of Health and Human Resources that it has taken possession of the child and shall
4 provide the division any information provided by the parent delivering the child. The hospital or
5 health care facility shall refer any inquiries about the child to the Child Protective Services division.

6 (b) The Department of Health and Human Resources shall assume the care, control and
7 custody of the child as of the time of delivery of the child to the hospital or health care facility, and
8 may contract with private child care agency for the care and placement of the child after the child
9 leaves the hospital or health care facility.

10 **§49-4-203. Filing petition after accepting possession of relinquished child.**

11 A child of whom the Department of Health and Human Resources assumes care, control and
12 custody under this article is a relinquished child and to be treated in all respects as a child taken into
13 custody pursuant to section three hundred three, article four of this chapter. Upon taking custody of
14 a child under this article, the department, with the cooperation of the county prosecuting attorney,
15 shall cause a petition to be presented pursuant to section six hundred two, article four of this chapter.
16 The department and county prosecuting attorney may not identify in the petition the parent(s) who
17 utilized this article to relinquish his or her child. Thereafter, the department shall proceed in
18 compliance with part six, of this article.

19 **§49-4-204. Immunity from certain prosecutions.**

20 A parent who relinquishes his or her child in good faith within thirty days of the child's birth
21 under this article is immune from prosecution under subsection (a), section four, article eight-d,

1 chapter sixty-one of this code.

2 **§49-4-205. Adoption eligibility.**

3 The child is eligible for adoption as an abandoned child under chapter forty-eight of the code.

4 **PART III. EMERGENCY CUSTODY OF CHILDREN PRIOR TO PETITION.**

5 **§49-4-301. Custody of a neglected child by law enforcement in emergency situations;**
6 **protective custody; requirements; notices; petition for appointment of special**
7 **guardian; discharge; immunity.**

8 (a) A child believed to be a neglected child or an abused child may be taken into custody
9 without the court order otherwise required by section six hundred two of this article by a
10 law-enforcement officer if:

11 (1) The child is without supervision or shelter for an unreasonable period of time in light of
12 the child's age and the ability to care for himself or herself in circumstances presenting an immediate
13 threat of serious harm to that child; or

14 (2) That officer determines that the child is in a condition requiring emergency medical
15 treatment by a physician and the child's parents, parent, guardian or custodian refuses to permit the
16 treatment, or is unavailable for consent. A child who suffers from a condition requiring emergency
17 medical treatment, whose parents, parent, guardian or custodian refuses to permit the providing of
18 the emergency medical treatment, may be retained in a hospital by a physician against the will of the
19 parents, parent, guardian or custodian, as provided in subsection (c) of this section.

20 (b) A child taken into protective custody pursuant to subsection (a) of this section may be
21 housed by the department or in any authorized child shelter facility. The authority to hold the child

1 in protective custody, absent a petition and proper order granting temporary custody pursuant to
2 section six hundred two of this article, terminates by operation of law upon the happening of either
3 of the following events, whichever occurs first:

4 (1) The expiration of ninety-six hours from the time the child is initially taken into protective
5 custody; or

6 (2) The expiration of the circumstances which initially warranted the determination of an
7 emergency situation.

8 No child may be considered in an emergency situation and custody withheld from the child's
9 parents, parent, guardian or custodian presenting themselves, himself or herself in a fit and proper
10 condition and requesting physical custody of the child. No child may be removed from a place of
11 residence as in an emergency under this section until after:

12 (1) All reasonable efforts to make inquiries and arrangements with neighbors, relatives and
13 friends have been exhausted; or if no arrangements can be made; and

14 (2) The state department may place in the residence a home services worker with the child
15 for a period of not less than twelve hours to await the return of the child's parents, parent, guardian
16 or custodian.

17 Prior to taking a child into protective custody as abandoned at a place at or near the residence
18 of the child, the law-enforcement officer shall post a typed or legibly handwritten notice at the place
19 the child is found, informing the parents, parent, guardian or custodian that the child was taken by
20 a law-enforcement officer, the name, address and office telephone number of the officer, the place
21 and telephone number where information can continuously be obtained as to the child's whereabouts,

1 and if known, the worker for the state department having responsibility for the child.

2 (c) A child taken into protective custody pursuant to this section for emergency medical
3 treatment may be held in a hospital under the care of a physician against the will of the child's
4 parents, parent, guardian or custodian for a period not to exceed ninety-six hours. The parents,
5 parent, guardian or custodian may not be denied the right to see or visit with the child in a hospital.
6 The authority to retain a child in protective custody in a hospital as requiring emergency medical
7 treatment terminates by operation of law upon the happening of either of the following events,
8 whichever occurs first:

9 (1) When the condition, in the opinion of the physician, no longer required emergency
10 hospitalization, or;

11 (2) Upon the expiration of ninety-six hours from the initiation of custody, unless within that
12 time, a petition is presented and a proper order obtained from the circuit court.

13 (d) Prior to assuming custody of a child from a law-enforcement officer, pursuant to this
14 section, a physician or worker from the department shall require a typed or legibly handwritten
15 statement from the officer identifying the officer's name, address and office telephone number and
16 specifying all the facts upon which the decision to take the child into protective custody was based,
17 and the date, time and place of the taking.

18 (e) Any worker for the department assuming custody of a child pursuant to this section shall
19 immediately notify the parents, parent, guardian or custodian of the child of the taking of the custody
20 and the reasons therefor, if the whereabouts of the parents, parent, guardian or custodian are known
21 or can be discovered with due diligence; and if not, notice and explanation shall be given to the

1 child's closest relative, if his or her whereabouts are known or can be discovered with due diligence
2 within a reasonable time. An inquiry shall be made of relatives and neighbors, and if a relative or
3 appropriate neighbor is willing to assume custody of the child, the child will temporarily be placed
4 in custody.

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

9 (g) *Petition for appointment of special guardian.* -- Upon the verified petition of any person
10 showing:

11 (1) That any person under the age of eighteen years is threatened with or there is a substantial
12 possibility that the person will suffer death, serious or permanent physical or emotional disability,
13 disfigurement or suffering; and

14 (2) That disability, disfigurement or suffering is the result of the failure or refusal of any
15 parent, guardian or custodian to procure, consent to or authorize necessary medical treatment, the
16 circuit court of the county in which the person is located may direct the appointment of a special
17 guardian for the purposes of procuring, consenting to and giving authorization for the administration
18 of necessary medical treatment. The circuit court may not consider any petition filed in accordance
19 with this section unless it is accompanied by a supporting affidavit of a licensed physician.

20 (h) *Notice of petition.* -- So far as practicable, the parents, guardian or custodian of any person
21 for whose benefit medical treatment is sought shall be given notice of the petition for the

1 appointment of a special guardian under this section. Notice is not necessary if it would cause a
2 delay that would result in the death or irreparable harm to the person for whose benefit medical
3 treatment is sought. Notice may be given in a form and manner as may be necessary under the
4 circumstances.

5 (i) *Discharge of special guardian.* – Upon the termination of necessary medical treatment
6 to any person under this section, the circuit court order the discharge of the special guardian from
7 any further authority, responsibility or duty.

8 (j) *Immunity from civil liability.* -- No person appointed special guardian in accordance with
9 this article is civilly liable for any act done by virtue of the authority vested in him or her by order
10 of the circuit court.

11 **§49-4-302. Authorizing a family court judge to order custody of a child in emergency**
12 **situations; requirements; orders; investigative reports; notification required.**

13 (a) Notwithstanding the jurisdictional limitations contained in section two, article two-a,
14 chapter fifty-one of this code, family court judges are authorized to order the department to take
15 emergency custody of a child who is in the physical custody of a party to an action or proceeding
16 before the family court, if the family court judge finds that there is clear and convincing evidence
17 that:

18 (1) There exists an imminent danger to the physical well-being of the child as defined in
19 section two hundred one, article one of this chapter;

20 (2) The child is not the subject of a pending action before the circuit court alleging abuse and
21 neglect of the child; and

- 1 (3) There are no reasonable available alternatives to the emergency custody order.
- 2 (b) An order entered pursuant to subsection (a) of this section must include specific written
3 findings.
- 4 (c) A copy of the order issued pursuant to subsection (a) of this section shall be transmitted
5 forthwith to the department, the circuit court and the prosecuting attorney.
- 6 (d) Upon receipt of an order issued pursuant to subsection (a) of this section, the department
7 shall immediately respond and assist the family court judge in emergency placement of the child.
- 8 (e)(1) Upon receipt of an order issued pursuant to subsection (a) of this section, the circuit
9 court shall cause to be entered and served, an administrative order in the name of and regarding the
10 affected child, directing the department to submit, within ninety-six hours from the time the child
11 was taken into custody, an investigative report to both the circuit and family court.
- 12 (2) The investigative report shall include a statement of whether the department intends to
13 file a petition pursuant to section six hundred two of this article.
- 14 (f)(1) An order issued pursuant to subsection (a) of this section terminates by operation of
15 law upon expiration of ninety-six hours from the time the child is initially taken into protective
16 custody unless a petition is filed with the circuit court under section six hundred two of this article
17 within ninety-six hours from the time the child is initially taken into protective custody.
- 18 (2) The filing of a petition within ninety-six hours from the time the child is initially taken
19 into protective custody extends the emergency custody order issued pursuant to subsection (a) of this
20 section until a preliminary hearing is held before the circuit court, unless the circuit court orders
21 otherwise.

1 (g)(1) Any worker for the department assuming custody of a child pursuant to this section
2 shall immediately notify the parents, parent, grandparents, grandparent, guardian or custodian of the
3 child of the taking of the custody and the reasons therefor if the whereabouts of the parents, parent,
4 grandparents, grandparent, guardian or custodian are known or can be discovered with due diligence
5 and, if not, a notice and explanation shall be given to the child's closest relative if his or her
6 whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry
7 shall be made of relatives and neighbors and, if an appropriate relative or neighbor is willing to
8 assume custody of the child, the child will temporarily be placed in that person's custody.

9 (2) In the event no other reasonable alternative is available for temporary placement of a child
10 pursuant to subdivision (1) of this subsection, the child may be housed by the department in an
11 authorized child shelter facility.

12 **§49-4-303. Emergency removal by department before filing of petition; conditions; referee;**
13 **application for emergency custody; order.**

14 Prior to the filing of a petition, a child protective service worker may take the child or
15 children into his or her custody (also known as removing the child) without a court order when:

16 (1) In the presence of a child protective service worker a child or children are in an
17 emergency situation which constitutes an imminent danger to the physical well-being of the child
18 or children, as that phrase is defined in section two hundred one, article one of this chapter; and

19 (2) The worker has probable cause to believe that the child or children will suffer additional
20 child abuse or neglect or will be removed from the county before a petition can be filed and
21 temporary custody can be ordered.

1 After taking custody of the child or children prior to the filing of a petition, the worker shall
2 forthwith appear before a circuit judge or referee of the county where custody was taken and
3 immediately apply for an order. If no judge or referee is available, the worker shall appear before a
4 circuit judge or referee of an adjoining county, and immediately apply for an order. This order shall
5 ratify the emergency custody of the child pending the filing of a petition.

6 The circuit court of every county in the state shall appoint at least one of the magistrates of
7 the county to act as a referee. He or she serves at the will and pleasure of the appointing court, and
8 shall perform the functions prescribed for the position by this subsection.

9 The parents, guardians or custodians of the child or children may be present at the time and
10 place of application for an order ratifying custody. If at the time the child or children are taken into
11 custody by the worker he or she knows which judge or referee is to receive the application, the
12 worker shall so inform the parents, guardians or custodians.

13 The application for emergency custody may be on forms prescribed by the Supreme Court
14 of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from
15 which it may be determined that the probable cause described above in this subsection exists. Upon
16 the sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee
17 may order the emergency taking by the worker to be ratified. If appropriate under the circumstances,
18 the order may include authorization for an examination as provided in subsection (b), section six
19 hundred three of this article.

20 If a referee issues an order, the referee shall by telephonic communication have that order
21 orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall, on the next

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

6 PART IV. MULTIDISCIPLINARY TEAMS, CASE PLANS,
7 TRANSITION PLANS AND AFTERCARE PLANS.

8 **§49-4-401. Purpose; system to be a complement to existing programs.**

9 (a) This article:

10 (1) Provides a system for evaluation of and coordinated service delivery for children who
11 may be victims of abuse or neglect and children undergoing certain status offense and delinquency
12 proceedings;

13 (2) Establishes, as a complement to other programs of the Department of Health and Human
14 Resources, a multidisciplinary screening, advisory and planning system to assist courts in facilitating
15 permanency planning, following the initiation of judicial proceedings, to recommend alternatives
16 and to coordinate evaluations and in-community services; and

17 (3) Ensures that children are safe from abuse and neglect and to coordinate investigation of
18 alleged child abuse offenses and competent criminal prosecution of offenders to ensure that safety,
19 as determined appropriate by the prosecuting attorney.

20 (b) Nothing in this article precludes any multidisciplinary team from considering any case
21 upon the consent of the members of the team.

1 **§49-4-402. Multidisciplinary investigative teams; establishment; membership; procedures;**
2 **coordination among agencies; confidentiality.**

3 (a) The prosecuting attorney of each county shall establish a multidisciplinary investigative
4 team in that county. The multidisciplinary team shall be headed and directed by the prosecuting
5 attorney, or his or her designee, and includes as permanent members:

6 (1) The prosecuting attorney, or his or her designee;

7 (2) A local child protective services caseworker from the Department of Health and Human
8 Resources;

9 (3) A local law-enforcement officer employed by a law-enforcement agency in the county;

10 (4) A child advocacy center representative, where available;

11 (5) A health care provider with pediatric and child abuse expertise, where available;

12 (6) A mental health professional with pediatric and child abuse expertise, where available;

13 (7) An educator; and

14 (8) A representative from a licensed domestic violence program serving the county.

15 The Department of Health and Human Resources and any local law-enforcement agency or
16 agencies selected by the prosecuting attorney shall appoint their representatives to the team by
17 submitting a written designation of the team to the prosecuting attorney of each county within thirty
18 days of the prosecutor's request that the appointment be made. Within fifteen days of the
19 appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the
20 county is situated of the names of the representatives so appointed. Any other person or any other
21 appointee of an agency who may contribute to the team's efforts to assist a minor child as may be

1 determined by the permanent members of the team may also be appointed as a member of the team
2 by the prosecutor with notification to the chief judge.

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

7 (c) The investigative team shall be responsible for coordinating or cooperating in the initial
8 and ongoing investigation of all civil and criminal allegations pertinent to cases involving child
9 sexual assault, child sexual abuse, child abuse and neglect and shall make a recommendation to the
10 county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal
11 prosecution.

12 (d) State, county and local agencies shall provide the multidisciplinary investigative team
13 with any information requested in writing by the team as allowable by law or upon receipt of a
14 certified copy of the circuit court's order directing the agencies to release information in its
15 possession relating to the child. The team shall assure that all information received and developed
16 in connection with this article remains confidential. For purposes of this section, the term
17 "confidential" shall be construed in accordance with article five of this chapter.

18 **§49-4-403. Multidisciplinary treatment planning process; coordination; access to information.**

19 (a)(1) A multidisciplinary treatment planning process for cases initiated pursuant to part six
20 and part seven of article four, shall be established within each county of the state, either separately
21 or in conjunction with a contiguous county, by the secretary of the department with advice and

1 assistance from the prosecutor's advisory council as set forth in section four, article four, chapter
2 seven of this code. The Division of Juvenile Services shall establish a similar treatment planning
3 process for delinquency cases in which the juvenile has been committed to its custody, including
4 those cases in which the juvenile has been committed for examination and diagnosis.

5 (2) This section does not require a multidisciplinary team meeting to be held prior to
6 temporarily placing a child or juvenile out-of-home under exigent circumstances or upon a court
7 order placing a juvenile in a facility operated by the Division of Juvenile Services.

8 (b) The case manager in the Department of Health and Human Resources for the child, family
9 or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a
10 treatment team in each case when it is required pursuant to this article.

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

19 (2) Any person authorized by this chapter to convene a multidisciplinary team meeting may
20 seek and receive an order of the circuit court setting the meeting and directing attendance. Members
21 of the multidisciplinary team may participate in team meetings by telephone or video conferencing.

1 This subsection does not prevent the respective agencies from designating a person other than the
2 case manager as a facilitator for treatment team meetings. Written notice shall be provided to all
3 team members of the availability to participate by videoconferencing.

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

8 (d) The multidisciplinary treatment team shall be afforded access to information in the
9 possession of the Department of Health and Human Resources, Division of Juvenile Services,
10 law-enforcement agencies and other state, county and local agencies. Those agencies shall cooperate
11 in the sharing of information, as may be provided in article five or this chapter or any other relevant
12 provision of law. Any multidisciplinary team member who acquires confidential information may
13 not disclose the information except as permitted by this code or court rules.

14 **§49-4-404. Court review of service plan; hearing; required findings; order; team member's**
15 **objections.**

16 (a) In any case in which a multidisciplinary treatment team develops an individualized service
17 plan for a child or family pursuant to this article, the court shall review the proposed service plan to
18 determine if implementation of the plan is in the child's best interests. If the multidisciplinary team
19 cannot agree on a plan or if the court determines not to adopt the team's recommendations, it shall,
20 upon motion or *sua sponte*, schedule and hold within ten days of the determination, and prior to the
21 entry of an order placing the child in the custody of the department or in an out-of-home setting, a

1 hearing to consider evidence from the team as to its rationale for the proposed service plan. If, after
2 a hearing held pursuant to this section, the court does not adopt the teams's recommended service
3 plan, it shall make specific written findings as to why the team's recommended service plan was not
4 adopted.

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

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

15 **§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect;**
16 **team membership; duties; reports; admissions.**

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

1 development of that plan.

2 (b) In a case initiated pursuant to part six of this article, the treatment team consists of:

3 (1) The child or family's case manager in the Department of Health and Human Resources;

4 (2) The adult respondent or respondents;

5 (3) The child's parent or parents, guardians, any copetitioners, custodial relatives of the child,
6 foster or preadoptive parents;

7 (4) Any attorney representing an adult respondent or other member of the treatment team;

8 (5) The child's counsel or the guardian ad litem;

9 (6) The prosecuting attorney or his or her designee;

10 (7) A member of a child advocacy center when the child has been processed through the child
11 advocacy center program or programs or it is otherwise appropriate that a member of the child
12 advocacy center participate;

13 (8) Any court-appointed special advocate assigned to a case;

14 (9) Any other person entitled to notice and the right to be heard;

15 (10) An appropriate school official; and

16 (11) Any other person or agency representative who may assist in providing
17 recommendations for the particular needs of the child and family, including domestic violence
18 service providers.

19 The child may participate in multidisciplinary treatment team meetings if the child's
20 participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise
21 ordered by the court, a party whose parental rights have been terminated and his or her attorney may

1 not be given notice of a multidisciplinary treatment team meeting and does not have the right to
2 participate in any treatment team meeting.

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

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

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

20 **§49-4-406. Multidisciplinary treatment process for juvenile status offenders and delinquents;**
21 **requirements; custody; procedure; reports; cooperation; inadmissability of**

1 **certain statements.**

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

10 (b) When a juvenile is adjudicated as a delinquent or has been granted a preadjudicatory
11 community supervision period pursuant to section seven hundred eight of this article, the court,
12 either upon its own motion or motion of a party, may require the Department of Health and Human
13 Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a
14 standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's
15 mental and physical condition, maturity and education level, home and family environment,
16 rehabilitative needs and recommended service plan, which shall be provided in writing to the court
17 and team members. A referral to the Department of Health and Human Resources to convene a
18 multidisciplinary treatment team and to conduct an assessment shall be made when the court is
19 considering placing the juvenile in the department's custody or placing the juvenile out-of-home at
20 the department's expense pursuant to section seven hundred fourteen, of this article. In any
21 delinquency proceeding in which the court requires the Department of Health and Human Resources

1 to convene a multidisciplinary treatment team, the probation officer shall notify the department at
2 least fifteen working days before the court proceeding in order to allow the department sufficient
3 time to convene and develop an individualized service plan for the juvenile.

4 (c) When a juvenile has been adjudicated and committed to the custody of the Director of the
5 Division of Juvenile Services, including those cases in which the juvenile has been committed for
6 examination and diagnosis, the Division of Juvenile Services shall promptly convene a
7 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform
8 comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical
9 condition, maturity and education level, home and family environment, rehabilitative needs and
10 recommended service plan. Upon completion of the assessment, the treatment team shall prepare and
11 implement a comprehensive, individualized service plan for the juvenile, which will be provided in
12 writing to the court and team members. In cases where the juvenile is committed as a post-sentence
13 disposition to the custody of the Division of Juvenile Services, the plan shall be reviewed quarterly
14 by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated
15 by the Division of Juvenile Services without an active service plan for more than sixty days, the
16 director of the facility may call a multidisciplinary team meeting to review the case and discuss the
17 status of the service plan.

18 (d)(1) The rules of juvenile procedure govern the procedure for obtaining an assessment of
19 a juvenile, preparing an individualized service plan and submitting the plan and assessment to the
20 court.

21 (2) In juvenile proceedings conducted pursuant to part seven of this article, the treatment

1 team consists of:

2 (A) The juvenile;

3 (B) The juvenile's case manager in the Department of Health and Human Resources or the
4 Division of Juvenile Services;

5 (C) The juvenile's parent or parents, guardian or guardians or custodial relatives;

6 (D) The juvenile's attorney;

7 (E) Any attorney representing a member of the treatment team;

8 (F) The prosecuting attorney or his or her designee;

9 (G) An appropriate school official; and

10 (H) Any other person or agency representative who may assist in providing recommendations
11 for the particular needs of the juvenile and family, including domestic violence service providers.

12 In delinquency proceedings, the probation officer shall be a member of a treatment team. When
13 appropriate, the juvenile case manager in the Department of Health and Human Resources and the
14 Division of Juvenile Services shall cooperate in conducting multidisciplinary treatment team
15 meetings when it is in the juvenile's best interest.

16 (3) Prior to disposition, in each case in which a treatment planning team has been convened,
17 the team shall advise the court as to the types of services the team has determined are needed and
18 type of placement, if any, which will best serve the needs of the child. If the team determines that
19 an out-of-home placement will best serve the needs of the child, the team shall first consider
20 placement at facilities or programs located within the state. The team may only recommend
21 placement in an out-of-state facility if it concludes, after considering the best interests and overall

1 needs of the child, that there are no available and suitable in-state facilities which can satisfactorily
2 meet the specific needs of the child.

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

7 (5) In any case in which a juvenile has been placed out of his or her home except for a
8 temporary placement in a shelter or detention center, the multidisciplinary treatment team shall
9 cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan.
10 The rules of juvenile procedure and section four hundred nine of this article govern the development
11 of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the
12 after-care plan.

13 (6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant
14 to part VII of this article, in the multidisciplinary treatment planning process, his or her statements
15 may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or
16 false swearing.

17 **§49-4-407. Team directors; records; case logs.**

18 All persons directing any team created pursuant to this article shall maintain records of each
19 meeting indicating the name and position of persons attending each meeting and the number of cases
20 discussed at the meeting, including a designation of whether or not that case was previously
21 discussed by any multidisciplinary team. Further, all investigative teams shall maintain a log of all

1 cases to indicate the number of referrals to that team, whether or not a police report was filed with
2 the prosecuting attorney's office, whether or not a petition was sought pursuant to part six of this
3 article or whether or not a criminal complaint was issued and a case was criminally prosecuted. All
4 treatment teams shall maintain a log of all cases to indicate the basis for failure to review a case for
5 a period in excess of six months.

6 **§49-4-408. Unified child and family case plans; treatment teams; programs; agency**
7 **requirements.**

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

17 (b) The department shall convene a multidisciplinary treatment team, which shall develop
18 the case plan. Parents, guardians or custodians shall participate fully in the development of the case
19 plan, and the child shall also fully participate if sufficiently mature and the child's participation is
20 otherwise appropriate. The case plan may be modified from time to time to allow for flexibility in
21 goal development, and in each case the modifications shall be submitted to the court in writing.

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

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

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

15 (2) For the establishment and maintenance of centers, serving defined geographic areas,
16 staffed by multidisciplinary teams and community teams of personnel trained in the prevention,
17 identification and treatment of child abuse and neglect cases, to provide a broad range of services
18 related to child abuse and neglect, including direct support as well as providing advice and
19 consultation to individuals, agencies and organizations which request the services;

20 (3) For furnishing services of multidisciplinary teams and community teams, trained in the
21 prevention, identification and treatment of child abuse and neglect cases, on a consulting basis to

1 small communities where the services are not available;

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

6 (5) Assisting public agencies or nonprofit private organizations or combinations thereof in
7 making applications for grants from, or in entering into contracts with, the federal Secretary of the
8 Department of Health and Human Services for demonstration programs and projects designed to
9 identify, prevent and treat child abuse and neglect.

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

16 **§49-4-409. After care plans; contents; written comments; contacts; objections; courts.**

17 (a) Prior to the discharge of a child from any institution or facility to which the child was
18 committed pursuant to this chapter, the superintendent of the institution or facility shall call a
19 meeting of the multidisciplinary treatment team to which the child has been referred or, if no referral
20 has been made, convene a multidisciplinary treatment team for any child for which a
21 multidisciplinary treatment plan is required by this article and forward a copy of the child's proposed

1 after-care plan to the court which committed the child. A copy of the plan shall also be sent to: (1)
2 The child's parents or legal guardian; (2) the child's lawyer; (3) the child's probation officer or
3 community mental health center professional; (4) the prosecuting attorney of the county in which
4 the original commitment proceedings were held; and (5) the principal of the school which the child
5 will attend. The plan shall have a list of the names and addresses of these persons attached to it.

6 (b) The after-care plan shall contain a detailed description of the education, counseling and
7 treatment which the child received while at the institution or facility and it shall also propose a plan
8 for education, counseling and treatment for the child upon the child's discharge. The plan shall also
9 contain a description of any problems the child has, including the source of those problems, and it
10 shall propose a manner for addressing those problems upon discharge.

11 (c) Within twenty-one days of receiving the plan, the child's probation officer or community
12 mental health center professional shall submit written comments upon the plan to the court which
13 committed the child. Any other person who received a copy of the plan pursuant to subsection (a)
14 of this section may submit written comments upon the plan to the court which committed the child.
15 Any person who submits comments upon the plan shall send a copy of those comments to every
16 other person who received a copy of the plan.

17 (d) Within twenty-one days of receiving the plan, the child's probation officer or community
18 mental health center professional shall contact all persons, organizations and agencies which are to
19 be involved in executing the plan to determine whether they are capable of executing their
20 responsibilities under the plan and to further determine whether they are willing to execute their
21 responsibilities under the plan.

1 (e) If adverse comments or objections regarding the plan are submitted to the circuit court,
2 it shall, within forty-five days of receiving the plan, hold a hearing to consider the plan and the
3 adverse comments or objections. Any person, organization or agency which has responsibilities in
4 executing the plan, or their representatives, may be required to appear at the hearing unless they are
5 excused by the circuit court. Within five days of the hearing, the circuit court shall issue an order
6 which adopts the plan as submitted or as modified in response to any comments or objections.

7 (f) If no adverse comments or objections are submitted, a hearing need not be held. In that
8 case, the court shall consider the plan as submitted and shall, within forty-five days of receiving the
9 plan, issue an order which adopts the plan as submitted.

10 (g) Notwithstanding the provisions of subsections (e) and (f) of this section, the plan which
11 is adopted by the court shall be in the best interests of the child and shall also be in conformity with
12 West Virginia's interest in youths as embodied in this chapter.

13 (h) The court which committed the child shall appoint the child's probation officer or
14 community mental health center professional to act as supervisor of the plan. The supervisor shall
15 report the child's progress under the plan to the court every sixty days or until the court determines
16 that no report or no further care is necessary.

17 **§49-4-410. Other agencies of government required to cooperate.**

18 State, county and local agencies shall provide the multidisciplinary teams with any
19 information requested in writing by the team as allowable by law or upon receipt of a certified copy
20 of the circuit court's order directing the agencies to release information in its possession relating to
21 the child. The team shall assure that all information received and developed in connection with this

1 article remain confidential. For purposes of this section, the term “confidential” shall be construed
2 in accordance with article five of this chapter.

3 **§49-4-411. Law enforcement; prosecution; interference with performance of duties.**

4 No multidisciplinary team may take any action which, in the determination of the prosecuting
5 attorney or his or her assistant, impairs the ability of the prosecuting attorney, his or her assistant,
6 or any law-enforcement officer to perform his or her statutory duties.

7 **§49-4-412. Exemption from multidisciplinary team review before emergency out-of-home
8 placements.**

9 Notwithstanding any provision of this article to the contrary, a multidisciplinary team
10 meeting may not be required before temporary out-of-home placement of a child in an emergency
11 circumstance or for purposes of assessment as provided by this article. As soon a practicable after
12 the emergency circumstance, the mutidisciplinary treatment team shall convene to explore placement
13 options.

14 **PART V. DUTIES OF THE PROSECUTING ATTORNEY.**

15 **§49-4-501. Prosecuting attorney representation of the Department of Health and Human
16 Resources; conflict resolution.**

17 (a) The prosecuting attorney shall render to the Department of Health and Human Resources,
18 without additional compensation, the legal services as the department may require. This section shall
19 not be construed to prohibit the department from developing plans for cooperation with courts,
20 prosecuting attorneys, and other law-enforcement officials in a manner as to permit the state and its
21 citizens to obtain maximum fiscal benefits under federal laws, rules and regulations.

1 (b) Nothing in this code may be construed to limit the authority of a prosecuting attorney to
2 file an abuse or neglect petition, including the duties and responsibilities owed to its client the
3 Department of Health and Human Resources, in his or her fulfillment of the provisions of this article.

4 (c) Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the
5 Department of Health and Human Resources, and a dispute arises between the prosecuting attorney
6 and the department's representative because an action proposed by the other is believed to place the
7 child at imminent risk of abuse or serious neglect, either the prosecuting attorney or the department's
8 representative may contact the secretary of the department and the executive director of the West
9 Virginia Prosecuting Attorneys Institute for prompt mediation and resolution. The secretary may
10 designate either his or her general counsel or the director of social services to act as his or her
11 designee and the executive director may designate an objective prosecuting attorney as his or her
12 designee.

13 **§49-4-502. Prosecuting attorney to represent and cooperate with persons other than the**
14 **department in child abuse and neglect matters; duties.**

15 It is the duty of every prosecuting attorney to fully and promptly cooperate with persons
16 seeking to apply for relief, including co-petitioners with the department, under this article in all cases
17 of suspected child abuse and neglect; to promptly prepare applications and petitions for relief
18 requested by those persons, to investigate reported cases of suspected child abuse and neglect for
19 possible criminal activity; and to report at least annually to the grand jury regarding the discharge
20 of his or her duties with respect thereto.

21 **§49-4-503. Prosecuting attorney to represent petitioner in juvenile cases.**

1 The prosecuting attorney shall represent the petitioner in all proceedings under this article
2 before the court judge or magistrate having juvenile jurisdiction.

3 **§49-4-504. Prosecuting attorney duty to establish multidisciplinary investigative teams.**

4 The prosecuting attorney of each county shall establish a multidisciplinary investigative team
5 in that county, pursuant to section four hundred two of this article, and section five, article four of
6 chapter seven.

7 PART VI. PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.

8 **§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to
9 counsel; continuing legal education; findings; proceedings; procedure.**

10 (a) *Petitioner and venue.* -- If the department or a reputable person believes that a child is
11 neglected or abused, the department or the person may present a petition setting forth the facts to the
12 circuit court in the county in which the child resides, or if the petition is being brought by the
13 department, in the county in which the custodial respondent or other named party abuser resides, or
14 in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no
15 circumstance may a party file a petition in more than one county based on the same set of facts.

16 (b) *Contents of Petition.* -- The petition shall be verified by the oath of some credible person
17 having knowledge of the facts. The petition shall allege specific conduct including time and place,
18 how the conduct comes within the statutory definition of neglect or abuse with references thereto,
19 any supportive services provided by the department to remedy the alleged circumstances and the
20 relief sought.

21 (c) *Court action upon filing of petition.* -- Upon filing of the petition, the court shall set a

1 time and place for a hearing and shall appoint counsel for the child. When there is an order for
2 temporary custody pursuant to this article, the preliminary hearing shall be held within ten days of
3 the order continuing or transferring custody, unless a continuance for a reasonable time is granted
4 to a date certain, for good cause shown.

5 (d) *Department action upon filing of the petition.* -- At the time of the institution of any
6 proceeding under this article, the department shall provide supportive services in an effort to remedy
7 circumstances detrimental to a child.

8 (e) *Notice of hearing.* --

9 (1) The petition and notice of the hearing shall be served upon both parents and any other
10 custodian, giving to the parents or custodian at least five days' actual notice of a preliminary hearing
11 and at least ten days' notice of any other hearing.

12 (2) Notice shall be given to the department, any foster or preadoptive parent, and any relative
13 providing care for the child.

14 (3) In cases where personal service within West Virginia cannot be obtained after due
15 diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall
16 be mailed to the person by certified mail, addressee only, return receipt requested, to the last known
17 address of the person. If the person signs the certificate, service shall be complete and the certificate
18 shall be filed as proof of the service with the clerk of the circuit court.

19 (4) If service cannot be obtained by personal service or by certified mail, notice shall be by
20 publication as a Class II legal advertisement in compliance with article three, chapter fifty-nine of
21 this code.

1 (5) A notice of hearing shall specify the time and place of the hearing, the right to counsel
2 of the child and parents or other custodians at every stage of the proceedings and the fact that the
3 proceedings can result in the permanent termination of the parental rights.

4 (6) Failure to object to defects in the petition and notice may not be construed as a waiver.

5 (f) *Right to counsel.* --

6 (1) In any proceeding under this article, the child, his or her parents and his or her legally
7 established custodian or other persons standing in *loco parentis* to him or her has the right to be
8 represented by counsel at every stage of the proceedings and shall be informed by the court of their
9 right to be so represented and that if they cannot pay for the services of counsel, that counsel will be
10 appointed.

11 (2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other
12 persons standing in *loco parentis*, the representation may only continue after the first appearance if
13 the parent or other persons standing in *loco parentis* cannot pay for the services of counsel.

14 (3) Counsel for other parties shall only be appointed upon request for appointment of counsel.
15 If the requesting parties have not retained counsel and cannot pay for the services of counsel, the
16 court shall, by order entered of record, appoint an attorney or attorneys to represent the other party
17 or parties and so inform the parties.

18 (4) Under no circumstances may the same attorney represent both the child and the other
19 party or parties, nor may the same attorney represent both parents or custodians. However, one
20 attorney may represent both parents or custodians where both parents or guardians consent to this
21 representation after the attorney fully discloses to the client the possible conflict and where the

1 attorney assures the court that she or he is able to represent each client without impairing her or his
2 professional judgment; however, if more than one child from a family is involved in the proceeding,
3 one attorney may represent all the children.

4 (5) A parent who is a copetitioner is entitled to his or her own attorney. The court may allow
5 to each attorney so appointed a fee in the same amount which appointed counsel can receive in
6 felony cases.

7 (g) *Continuing education for counsel.* -- Any attorney representing a party under this article
8 shall receive a minimum of eight hours of continuing legal education training per reporting period
9 on child abuse and neglect procedure and practice. In addition to this requirement, any attorney
10 appointed to represent a child must first complete training on representation of children that is
11 approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of
12 Appeals shall develop procedures for approval and certification of training required under this
13 section. Where no attorney has completed the training required by this subsection, the court shall
14 appoint a competent attorney with demonstrated knowledge of child welfare law to represent the
15 parent or child. Any attorney appointed pursuant to this section shall perform all duties required of
16 an attorney licensed to practice law in the State of West Virginia.

17 (h) *Right to be heard.* -- In any proceeding pursuant to this article, the party or parties having
18 custodial or other parental rights or responsibilities to the child shall be afforded a meaningful
19 opportunity to be heard, including the opportunity to testify and to present and cross-examine
20 witnesses. Foster parents, preadoptive parents, and relative caregivers shall also have a meaningful
21 opportunity to be heard.

1 (i) *Findings of the court.* -- Where relevant, the court shall consider the efforts of the
2 department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the
3 court shall make a determination based upon the evidence and shall make findings of fact and
4 conclusions of law as to whether the child is abused or neglected and whether the respondent is
5 abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the
6 order of the court. The findings must be based upon conditions existing at the time of the filing of
7 the petition and proven by clear and convincing evidence.

8 (j) *Priority of proceedings.* -- Any petition filed and any proceeding held under this article
9 shall, to the extent practicable, be given priority over any other civil action before the court, except
10 proceedings under section three hundred nine, article twenty-seven, chapter forty-eight of this code
11 and actions in which trial is in progress. Any petition filed under this article shall be docketed
12 immediately upon filing. Any hearing to be held at the end of an improvement period and any other
13 hearing to be held during any proceedings under this article shall be held as nearly as practicable on
14 successive days and, with respect to the hearing to be held at the end of an improvement period, shall
15 be held as close in time as possible after the end of the improvement period and shall be held within
16 thirty days of the termination of the improvement period.

17 (k) *Procedural safeguards.* -- The petition may not be taken as confessed. A transcript or
18 recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules
19 of evidence shall apply. Following the court's determination, it shall be inquired of the parents or
20 custodians whether or not appeal is desired and the response transcribed. A negative response may
21 not be construed as a waiver. The evidence shall be transcribed and made available to the parties or

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

5 **§49-4-602. Petition to court when child believed neglected or abused; temporary care,**
6 **custody, and control of child at different stages of proceeding; temporary**
7 **care; orders; emergency removal; when reasonable efforts to preserve family**
8 **are unnecessary.**

9 (a) (1) *Temporary care, custody, and control upon filing of the petition.* -- Upon the filing
10 of a petition, the court may order that the child alleged to be an abused or neglected child be
11 delivered for not more than ten days into the care, custody, and control of the department or a
12 responsible person who is not the custodial parent or guardian of the child, if it finds that:

13 (A) There exists imminent danger to the physical well-being of the child; and

14 (B) There are no reasonably available alternatives to removal of the child, including, but not
15 limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's
16 present custody.

17 (2) Where the alleged abusing person, if known, is a member of a household, the court shall
18 not allow placement pursuant to this section of the child or children in the home unless the alleged
19 abusing person is or has been precluded from visiting or residing in the home by judicial order.

20 (3) In a case where there is more than one child in the home, or in the temporary care, custody
21 or control of the alleged offending parent, the petition shall so state. Notwithstanding the fact that

1 the allegations of abuse or neglect may pertain to less than all of those children, each child in the
2 home for whom relief is sought shall be made a party to the proceeding. Even though the acts of
3 abuse or neglect alleged in the petition were not directed against a specific child who is named in
4 the petition, the court shall order the removal of the child, pending final disposition, if it finds that
5 there exists imminent danger to the physical well-being of the child and a lack of reasonable
6 available alternatives to removal.

7 (4) The initial order directing custody shall contain an order appointing counsel and
8 scheduling the preliminary hearing, and upon its service shall require the immediate transfer of care,
9 custody, and control of the child or children to the department or a responsible relative, which may
10 include any parent, guardian, or other custodian. The court order shall state:

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

12 (B) Whether or not the department made reasonable efforts to preserve the family and prevent
13 the placement or that the emergency situation made those efforts unreasonable or impossible. The
14 order may also direct any party or the department to initiate or become involved in services to
15 facilitate reunification of the family.

16 (b) *Temporary care, custody and control at preliminary hearing.* -- Whether or not the court
17 orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged
18 in the petition demonstrate to the court that there exists imminent danger to the child, the court may
19 schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court
20 finds at the preliminary hearing that there are no alternatives less drastic than removal of the child
21 and that a hearing on the petition cannot be scheduled in the interim period, the court may order that

1 the child be delivered into the temporary care, custody, and control of the department or a
2 responsible person or agency found by the court to be a fit and proper person for the temporary care
3 of the child for a period not exceeding sixty days. The court order shall state:

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

6 (2) Whether or not the department made reasonable efforts to preserve the family and to
7 prevent the child's removal from his or her home;

8 (3) Whether or not the department made reasonable efforts to preserve the family and to
9 prevent the placement or that the emergency situation made those efforts unreasonable or impossible;

10 (4) Whether or not the department made reasonable accommodations in accordance with the
11 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, to parents with disabilities in
12 order to allow them meaningful access to reunification and family preservation services; and

13 (5) What efforts should be made by the department, if any, to facilitate the child's return
14 home. If the court grants an improvement period as provided in section six hundred ten of this
15 article, the sixty-day limit upon temporary custody is waived.

16 (c) *Emergency removal by department during pendency of case.* -- Regardless of whether
17 the court has previously granted the department care and custody of a child, if the department takes
18 physical custody of a child during the pendency of a child abuse and neglect case (also known as
19 removing the child) due to a change in circumstances and without a court order issued at the time
20 of the removal, the department must immediately notify the court and a hearing shall take place
21 within ten days to determine if there is imminent danger to the physical well-being of the child, and

1 there is no reasonably available alternative to removal of the child. The court findings and order
2 shall be consistent with subsections (a) and (b) of this section.

3 (d) *Situations when reasonable efforts to preserve the family are not required.* -- For
4 purposes of the court's consideration of temporary custody pursuant to subsection (a), (b), or (c) of
5 this section, the department is not required to make reasonable efforts to preserve the family if the
6 court determines:

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

11 (2) The parent has:

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

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

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

20 (D) Committed unlawful or malicious wounding that results in serious bodily injury to the
21 child, the child's other parent, guardian or custodian, to another child of the parent or any other child

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

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

5 (F) Has been required by state or federal law to register with a sex offender registry, and the
6 court has determined in consideration of the nature and circumstances surrounding the prior charges
7 against that parent, that the child's interests would not be promoted by a preservation of the family;
8 or

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

10 **§49-4-603. Medical and mental examinations; limitation of evidence; probable cause;**
11 **testimony; judge or referee.**

12 (a)(1) At any time during proceedings under this article the court may, upon its own motion
13 or upon motion of the child or other parties, order the child or other parties to be examined by a
14 physician, psychologist or psychiatrist, and may require testimony from the expert, subject to
15 cross-examination and the rules of evidence.

16 (2) The court may not terminate parental or custodial rights of a party solely because the party
17 refuses to submit to the examination, nor may the court hold a party in contempt for refusing to
18 submit to an examination.

19 (3) The physician, psychologist or psychiatrist shall be allowed to testify as to the conclusions
20 reached from hospital, medical, psychological or laboratory records provided the same are produced
21 at the hearing.

1 (4) If the child, parent or custodian is indigent, the witnesses shall be compensated out of the
2 Treasury of the State, upon certificate of the court wherein the case is pending.

3 (5) No evidence acquired as a result of an examination of the parent or any other person
4 having custody of the child may be used against the person in any subsequent criminal proceedings
5 against the person.

6 (b) (1) If a person with authority to file a petition under this article shall have probable cause
7 to believe that evidence exists that a child has been abused or neglected and that the evidence may
8 be found by a medical examination, the person may apply to a judge or juvenile referee for an order
9 to take the child into custody for delivery to a physician or hospital for examination.

10 (2) The application may be on forms prescribed by the Supreme Court of Appeals or prepared
11 by the prosecuting attorney or the applicant, and shall set forth facts from which it may be
12 determined that probable cause exists for the belief.

13 (3) Upon sworn testimony or other evidence as the judge or referee deems sufficient, the
14 judge or referee may order any law-enforcement officer to take the child into custody and deliver the
15 child to a physician or hospital for examination.

16 (4) If a referee issues an order the referee shall by telephonic communication have such order
17 orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall, on the next
18 judicial day, enter an order of confirmation.

19 (5) Any child protection worker and the child's parents, guardians or custodians may
20 accompany the officer for examination.

21 (6) After the examination the officer may return the child to the custody of his or her parent,

1 guardian or custodian, retain custody of the child or deliver custody to the state department until the
2 end of the next judicial day, at which time the child shall be returned to the custody of his or her
3 parent, guardian or custodian unless a petition has been filed and custody of the child has been
4 transferred to the department under section six hundred two of this article.

5 **§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be**
6 **considered; reunification; orders; alternative dispositions.**

7 (a) *Child and family case plans.* -- Following a determination pursuant to section six hundred
8 two of this article wherein the court finds a child to be abused or neglected, the department shall file
9 with the court a copy of the child's case plan, including the permanency plan for the child. The term
10 "case plan" means a written document that includes, where applicable, the requirements of the family
11 case plan as provided in section four hundred eight of this article and that also includes, at a
12 minimum, the following:

13 (1) A description of the type of home or institution in which the child is to be placed,
14 including a discussion of the appropriateness of the placement and how the agency which is
15 responsible for the child plans to assure that the child receives proper care and that services are
16 provided to the parents, child, and foster parents in order to improve the conditions that made the
17 child unsafe in the care of his or her parent(s), including any reasonable accommodations in
18 accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, to parents
19 with disabilities in order to allow them meaningful access to reunification and family preservation
20 services;

21 (2) A plan to facilitate the return of the child to his or her own home or the concurrent

1 permanent placement of the child; and address the needs of the child while in relative or foster care,
2 including a discussion of the appropriateness of the services that have been provided to the child.

3 The term "permanency plan" refers to that part of the case plan which is designed to achieve
4 a permanent home for the child in the least restrictive setting available. The plan must document
5 efforts to ensure that the child is returned home within approximate time lines for reunification as
6 set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should
7 be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it
8 possible for a child to return to the care of his or her parent(s) safely. If reunification is not the
9 permanency plan for the child, the plan must state why reunification is not appropriate and detail the
10 alternative, concurrent permanent placement plans for the child to include approximate time lines
11 for when the placement is expected to become a permanent placement. This case plan shall serve as
12 the family case plan for parents of abused or neglected children. Copies of the child's case plan shall
13 be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days
14 prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the
15 petitioner and respondents an opportunity to be heard.

16 (b) *Disposition decisions.* -- The court shall give precedence to dispositions in the following
17 sequence:

18 (1) Dismiss the petition;

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

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

1 (4) Order terms of supervision calculated to assist the child and any abusing parent or
2 battered parent or parents or custodian which prescribe the manner of supervision and care of the
3 child and which are within the ability of any parent or parents or custodian to perform;

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

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

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

13 (C) Whether the department has made reasonable accommodations in accordance with the
14 Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, to parents with disabilities in
15 order to allow them meaningful access to reunification and family preservation services;

16 (D) What efforts were made or that the emergency situation made those efforts unreasonable
17 or impossible; and

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

- 1 (i) Be considered for legal guardianship;
- 2 (ii) Be considered for permanent placement with a fit and willing relative; or
- 3 (iii) Be placed in another planned permanent living arrangement, but only in cases where the
- 4 child has attained 16 years of age and the department has documented to the circuit court a
- 5 compelling reason for determining that it would not be in the best interests of the child to follow one
- 6 of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services
- 7 to meet the special needs of the child. Whenever the court transfers custody of a youth to the
- 8 department, an appropriate order of financial support by the parents or guardians shall be entered in
- 9 accordance with part eight of this article; and
- 10 (6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or
- 11 abuse can be substantially corrected in the near future and, when necessary for the welfare of the
- 12 child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing
- 13 parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one,
- 14 or, if not, to either the permanent guardianship of the department or a licensed child welfare agency.
- 15 The court may award sole custody of the child to a nonabusing battered parent. If the court shall so
- 16 find, then in fixing its dispositional order the court shall consider the following factors:
- 17 (A) The child's need for continuity of care and caretakers;
- 18 (B) The amount of time required for the child to be integrated into a stable and permanent
- 19 home environment; and
- 20 (C) Other factors as the court considers necessary and proper. Notwithstanding any other
- 21 provision of this article, the court shall give consideration to the wishes of a child fourteen years of

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

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

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

8 (iii) Whether or not the department made reasonable efforts, with the child's health and safety
9 being the paramount concern, to preserve the family, or some portion thereof, and to prevent the
10 placement or to eliminate the need for removing the child from the child's home and to make it
11 possible for the child to safely return home, or that the emergency situation made those efforts
12 unreasonable or impossible; and

13 (iv) Whether or not the department made reasonable efforts to preserve and reunify the
14 family, or some portion thereof, including a description of what efforts were made or that those
15 efforts were unreasonable due to specific circumstances.

16 (7) For purposes of the court's consideration of the disposition custody of a child pursuant
17 to this subsection, the department is not required to make reasonable efforts to preserve the family
18 if the court determines:

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

1 abuse;

2 (B) The parent has:

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

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

9 (iii) Attempted or conspired to commit murder or voluntary manslaughter or been an
10 accessory before or after the fact to either crime;

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

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

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

18 (D) A parent has been required by state or federal law to register with a sex offender registry,
19 and the court has determined in consideration of the nature and circumstances surrounding the prior
20 charges against that parent, that the child's interests would not be promoted by a preservation of the
21 family.

1 (c) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can
2 be substantially corrected" means that, based upon the evidence before the court, the abusing adult
3 or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their
4 own or with help. Those conditions exist in the following circumstances, which are not exclusive:

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

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

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

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

18 (5) The abusing parent or parents have repeatedly or seriously injured the child physically
19 or emotionally, or have sexually abused or sexually exploited the child, and the degree of family
20 stress and the potential for further abuse and neglect are so great as to preclude the use of resources
21 to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their

1 responsibilities to the child;

2 (6) The battered parent's parenting skills have been seriously impaired and the person has
3 willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable
4 treatment plan or has not adequately responded to or followed through with the recommended and
5 appropriate treatment plan.

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

13 **§49-4-605. When department efforts to terminate parental rights are required.**

14 (a) Except as provided in subsection (b) of this section, the department shall file or join in
15 a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

16 (1) If a child has been in foster care for fifteen of the most recent twenty-two months as
17 determined by the earlier of the date of the first judicial finding that the child is subjected to abuse
18 or neglect or the date which is sixty days after the child is removed from the home;

19 (2) If a court has determined the child is abandoned, tortured, sexually abused, or chronically
20 abused; or

21 (3) If a court has determined the parent has committed murder or voluntary manslaughter of

1 another of his or her children, another child in the household, or the other parent of his or her
2 children; has attempted or conspired to commit murder or voluntary manslaughter or has been an
3 accessory before or after the fact of either crime; has committed unlawful or malicious wounding
4 resulting in serious bodily injury to the child or to another of his or her children, another child in the
5 household, or to the other parent of his or her children; or the parental rights of the parent to another
6 child have been terminated involuntarily.

7 (b) The department may determine not to file a petition to terminate parental rights when:

8 (1) At the option of the department, the child has been placed permanently with a relative by
9 court order;

10 (2) The department has documented in the case plan made available for court review a
11 compelling reason, including, but not limited to, the child's age and preference regarding termination
12 or the child's placement in custody of the department based on any proceedings initiated under part
13 seven of this article, that filing the petition would not be in the best interests of the child; or

14 (3) The department has not provided, when reasonable efforts to return a child to the family
15 are required, the services to the child's family as the department deems necessary for the safe return
16 of the child to the home.

17 **§49-4-606. Modification of dispositional orders; hearings; treatment team; unadopted**
18 **children.**

19 (a) Upon motion of a child, a child's parent or custodian or the department alleging a change
20 of circumstances requiring a different disposition, the court shall conduct a hearing pursuant to
21 section six hundred four of this article and may modify a dispositional order if the court finds by

1 clear and convincing evidence a material change of circumstances and that the modification is in the
2 child's best interests. A dispositional order may not be modified after the child has been adopted,
3 except as provided in subsections (b) and (c) of this section. Adequate and timely notice of any
4 motion for modification shall be given to the child's counsel, counsel for the child's parent or
5 custodian, the department and any person entitled to notice and the right to be heard. The circuit
6 court of origin has exclusive jurisdiction over placement of the child, and the placement may not be
7 disrupted or delayed by any administrative process of the department.

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

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

20 **§49-4-607. Consensual termination of parental rights.**

21 An agreement of a natural parent in termination of parental rights are valid if made by a duly

1 acknowledged writing, and entered into under circumstances free from duress and fraud. Where
2 during the pendency of an abuse and neglect proceeding, a parent offers voluntarily relinquish of his
3 or her parental rights, and the relinquishment is accepted by the circuit court, the relinquishment
4 may, without further evidence, be used as the basis of an order of adjudication of abuse and neglect
5 by that parent of his or her children.

6 **§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placements;**
7 **findings; notice; permanent placement review.**

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

13 (b) *Permanency hearing every twelve months until permanency is achieved.* -- If, twelve
14 months after receipt by the department or its authorized agent of physical care, custody, and control
15 of a child either by a court-ordered placement or by a voluntary agreement, the department has not
16 placed a child in an adoptive home; placed the child with a natural parent, placed the child in legal
17 guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a
18 permanency hearing. The department shall file a progress report with the court detailing the efforts
19 that have been made to place the child in a permanent home and copies of the child's case plan,
20 including the permanency plan as defined in section two hundred one, article one, and section six
21 hundred four, article four of this chapter. Copies of the report shall be sent to the parties and all

1 persons entitled to notice and the right to be heard. The court shall schedule a hearing, giving notice
2 and the right to be present to the child's attorney; the child; the child's parents; the child's guardians;
3 the child's foster parents; any preadoptive parent or any relative providing care for the child; any
4 person entitled to notice and the right to be heard; and other persons as the court may, in its
5 discretion, direct. The child's presence may be waived by the child's attorney at the request of the
6 child or if the child is younger than twelve years and would suffer emotional harm. The purpose of
7 the hearing is to review the child's case, to determine whether and under what conditions the child's
8 commitment to the department shall continue, to determine what efforts are necessary to provide the
9 child with a permanent home, and to determine if the department has made reasonable efforts to
10 finalize the permanency plan. The court shall conduct another permanency hearing within twelve
11 months thereafter for each child who remains in the care, custody, and control of the department until
12 the child is placed in an adoptive home, returned to his or her parents, placed in legal guardianship,
13 or permanently placed with a fit and willing relative.

14 (c) *Transitional planning for older children.* -- In the case of a child who has attained sixteen
15 years of age, the court shall determine the services needed to assist the child to make the transition
16 from foster care to independent living. The child's case plan should specify services aimed at
17 transitioning the child into adulthood. When a child turns seventeen, or as soon as a child aged
18 seventeen comes into a case, the department must immediately provide the child with assistance and
19 support in developing a transition plan that is personalized at the direction of the child. The plan
20 must include specific options on housing, health insurance, education, local opportunities for
21 mentors, continuing support services, work force support, and employment services, and the plan

1 should be as detailed as the child may elect. In addition to these requirements, when a child with
2 special needs turns seventeen, or as soon as a child aged seventeen with special needs comes into
3 a case, he or she is entitled to the appointment of a department adult services worker to the
4 multidisciplinary treatment team and coordination between the multidisciplinary treatment team and
5 other transition planning teams, such as special education individualized education planning (IEP)
6 teams.

7 (d) *Out-of-state placements.* – In any case in which the court decides to order the child placed
8 in an out-of-state facility or program it shall set forth in the order directing the placement the reasons
9 why the child was not placed in an in-state facility or program. If the child is to be placed with a
10 relative or other responsible person out of state, the court shall use judicial leadership to help
11 expedite the process under the Interstate Compact for the Placement of Children provided in part
12 one, article seven of this chapter and the Uniform Child Custody Jurisdiction and Enforcement Act
13 provided in article twenty, chapter forty-eight of this code.

14 (e) *Findings in order.* – At the conclusion of the hearing the court shall, in accordance with
15 the best interests of the child, enter an order containing all the appropriate findings. The court order
16 shall state:

17 (1) Whether or not the department made reasonable efforts to preserve the family and to
18 prevent out-of-home placement or that the specific situation made the effort unreasonable;

19 (2) Whether or not the department made reasonable efforts to finalize the permanency plan
20 and concurrent plan for the child;

21 (3) The appropriateness of the child's current placement, including its distance from the

1 child's home and whether or not it is the least restrictive one (most family-like one) available;

2 (4) The appropriateness of the current educational setting and the proximity to the school in
3 which the child is enrolled at the time of placement;

4 (5) Services required to meet the child's needs and achieve permanency; and

5 (6) In addition, in the case of any child for whom another planned permanent living
6 arrangement is the permanency plan, the court shall (A) inquire of the child about the desired
7 permanency outcome for the child; (B) make a judicial determination explaining why, as of the date
8 of the hearing, another planned permanent living arrangement is the best permanency plan for the
9 child; and, (C) provide in the court order compelling reasons why it continues to not be in the best
10 interest of the child to (i) return home, (ii) be placed for adoption, (iii) be placed with a legal
11 guardian, or (iv) be placed with a fit and willing relative.

12 (f) The department shall annually report to the court the current status of the placements of
13 children in the care, custody and control of the state department who have not been adopted.

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

20 (h) The department shall give actual notice, in writing, to the court, the child, the child's
21 attorney, the parents and the parents' attorney at least forty-eight hours prior to the move if this is a

1 planned move, or within forty-eight hours of the next business day after the move if the child is in
2 imminent danger in the child's current placement, except where the notification would endanger the
3 child or the foster family. A multidisciplinary treatment team shall convene as soon as practicable
4 after notice to explore placement options. This requirement is not waived by placement of the child
5 in a home or other residence maintained by a private provider. No notice may be provided pursuant
6 to this provision to any parent or parent's attorney whose parental rights have been terminated
7 pursuant to this article.

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

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

13 **§49-4-609. Conviction for offenses against children.**

14 In any case where a person is convicted of an offense against a child described in section
15 twelve, article eight, chapter sixty-one of this code or articles eight-b or eight-d of that chapter and
16 the person has custodial, visitation or other parental rights to the child who is the victim of the
17 offense or to any child who resides in the same household as the victim, the court shall, at the time
18 of sentencing, find that the person is an abusing parent within the meaning of this chapter as to the
19 child victim, and may find that the person is an abusing parent as to any child who resides in the
20 same household as the victim, and the court shall take further steps as are required by this article.

21 **§49-4-610. Improvement periods in cases of child neglect or abuse; findings; orders;**

1 **extensions; hearings; time limits.**

2 In any proceeding brought pursuant to this article, the court may grant any respondent an
3 improvement period in accord with this article. During the period, the court may require temporary
4 custody with a responsible person which has been found to be a fit and proper person for the
5 temporary custody of the child or children or the state department or other agency during the
6 improvement period. An order granting an improvement period shall require the department to
7 prepare and submit to the court a family case plan in accordance with section four hundred eight, of
8 this article. The types of improvement periods are as follows:

9 (1) *Preadjudicatory improvement period.* -- A court may grant a respondent an improvement
10 period of a period not to exceed three months prior to making a finding that a child is abused or
11 neglected pursuant to section six hundred one of this article only when:

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

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

16 (C) In the order granting the improvement period, the court:

17 (i) Orders that a hearing be held to review the matter within sixty days of the granting of the
18 improvement period; or

19 (ii) Orders that a hearing be held to review the matter within ninety days of the granting of
20 the improvement period and that the department submit a report as to the respondents progress in
21 the improvement period within sixty days of the order granting the improvement period; and

1 (D) The order granting the improvement period requires the department to prepare and
2 submit to the court an individualized family case plan in accordance with section four hundred eight
3 of this article;

4 (2) *Post-adjudicatory improvement period.* -- After finding that a child is an abused or
5 neglected child pursuant to section six hundred one of this article, a court may grant a respondent
6 an improvement period of a period not to exceed six months when:

7 (A) The respondent files a written motion requesting the improvement period;

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

11 (C) In the order granting the improvement period, the court:

12 (i) orders that a hearing be held to review the matter within thirty days of the granting of the
13 improvement period; or

14 (ii) orders that a hearing be held to review the matter within ninety days of the granting of
15 the improvement period and that the department submit a report as to the respondent's progress in
16 the improvement period within sixty days of the order granting the improvement period;

17 (D) Since the initiation of the proceeding, the respondent has not previously been granted any
18 improvement period or the respondent demonstrates that since the initial improvement period, the
19 respondent has experienced a substantial change in circumstances. Further, the respondent shall
20 demonstrate that due to that change in circumstances the respondent is likely to fully participate in
21 a further improvement period; and

1 (E) The order granting the improvement period requires the department to prepare and submit
2 to the court an individualized family case plan in accordance with section four hundred eight of this
3 article.

4 (3) *Post-dispositional improvement period.* – The court may grant an improvement period
5 not to exceed six months as a disposition pursuant to section six hundred four of this article when:

6 (A) The respondent moves in writing for the improvement period;

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

10 (C) In the order granting the improvement period, the court:

11 (i) Orders that a hearing be held to review the matter within sixty days of the granting of the
12 improvement period; or

13 (ii) Orders that a hearing be held to review the matter within ninety days of the granting of
14 the improvement period and that the department submit a report as to the respondent's progress in
15 the improvement period within sixty days of the order granting the improvement period;

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

21 (E) The order granting the improvement period shall require the department to prepare and

1 submit to the court an individualized family case plan in accordance with section four hundred eight
2 of this article.

3 (4) *Responsibilities of the respondent receiving improvement period.* --

4 (A) When any improvement period is granted to a respondent pursuant to this section, the
5 respondent shall be responsible for the initiation and completion of all terms of the improvement
6 period. The court may order the state department to pay expenses associated with the services
7 provided during the improvement period when the respondent has demonstrated that he or she is
8 unable to bear the expenses.

9 (B) When any improvement period is granted to a respondent pursuant to this section, the
10 respondent shall execute a release of all medical information regarding that respondent, including,
11 but not limited to, information provided by mental health and substance abuse professionals and
12 facilities. The release shall be accepted by a professional or facility regardless of whether the release
13 conforms to any standard required by that facility.

14 (5) *Responsibilities of the department during improvement period.* -- When any respondent
15 is granted an improvement period pursuant to this article, the department shall monitor the progress
16 of the person in the improvement period. This section may not be construed to prohibit a court from
17 ordering a respondent to participate in services designed to reunify a family or to relieve the
18 department of any duty to make reasonable efforts to reunify a family required by state or federal
19 law.

20 (6) *Extension of improvement period.* -- A court may extend any improvement period granted
21 pursuant to subdivision (2) or (3) of this section for a period not to exceed three months when the

1 court finds that the respondent has substantially complied with the terms of the improvement period;
2 that the continuation of the improvement period will not substantially impair the ability of the
3 department to permanently place the child; and that the extension is otherwise consistent with the
4 best interest of the child.

5 (7) *Termination of improvement period.* -- Upon the motion by any party, the court shall
6 terminate any improvement period granted pursuant to this section when the court finds that
7 respondent has failed to fully participate in the terms of the improvement period or has satisfied the
8 terms of the improvement period to correct any behavior alleged in the petition or amended petition
9 to make his or her child unsafe.

10 (8) *Hearings on improvement period.* --

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

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

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

1 extend the time limits contained in this paragraph.

2 PART VII. JUVENILE PROCEEDINGS.

3 **§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts;**
4 **constitutional guarantees; requirements; hearings; right to counsel;**
5 **opportunity to be heard; evidence and transcripts.**

6 (a) The circuit court has original jurisdiction of proceedings brought under this article. A
7 person under the age of eighteen years who appears before the circuit court in proceedings under this
8 article is a ward of the court and protected accordingly.

9 (b) If during a criminal proceeding in any court it is ascertained or appears that the defendant
10 is under the age of nineteen years and was under the age of eighteen years at the time of the alleged
11 offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The
12 circuit court shall assume jurisdiction of the case in the same manner as cases which are originally
13 instituted in the circuit court by petition.

14 (c) Notwithstanding any other provision of this article, magistrate courts have concurrent
15 juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a
16 violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter
17 sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any violation of
18 chapter twenty of this code. Juveniles are liable for punishment for violations of these laws in the
19 same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of
20 incarceration for the violation of these laws.

21 (d) Notwithstanding any other provision of this article, municipal courts have concurrent

1 juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating
2 traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance
3 regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or
4 nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter
5 sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use
6 of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal
7 courts may impose the same punishment for these violations as a circuit court exercising its juvenile
8 jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a
9 sentence of incarceration for the violation of these laws.

10 (e) A juvenile may be brought before the circuit court for proceedings under this article only
11 by the following means:

12 (1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or
13 a juvenile delinquent; or

14 (2) By certification or transfer to the juvenile jurisdiction of the circuit court from the
15 criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or
16 municipal court in West Virginia.

17 (f)(1) If a juvenile commits an act which would be a crime if committed by an adult, and the
18 juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the
19 juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the
20 same power over that person that it had before he or she became an adult, and has the power to
21 sentence that person to a term of incarceration. Any term of incarceration may not exceed six

1 months. This authority does not preclude the court from exercising criminal jurisdiction over that
2 person if he or she violates the law after becoming an adult or if the proceedings have been
3 transferred to the court's criminal jurisdiction pursuant to section seven hundred four of this article.

4 (2) If a juvenile is adjudicated as a status offender because he or she is habitually absent from
5 school without good cause, the jurisdiction of the court which adjudged the juvenile a status offender
6 continues until either the juvenile becomes twenty-one years of age, completes high school,
7 completes a high school equivalent or other education plan approved by the court, or the court
8 otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the court
9 is extended pursuant to this subdivision, the court has the same power over that person that it had
10 before he or she became an adult. No person so adjudicated who has attained the age of nineteen
11 may be ordered to attend school in a regular, nonalternative setting.

12 (g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an
13 adult and be afforded the protection guaranteed by Article III of the West Virginia Constitution.

14 (h) A juvenile has the right to be effectively represented by counsel at all stages of
15 proceedings under this article, including participation in multidisciplinary team meetings, until the
16 child is no longer under the jurisdiction of the court. If the juvenile or the juvenile's parent or
17 custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall
18 appoint an attorney, who shall be paid in accordance with article twenty-one, chapter twenty-nine
19 of this code.

20 (i)(1) In all proceedings under this article, the juvenile will be afforded a meaningful
21 opportunity to be heard. This includes the opportunity to testify and to present and cross-examine

1 witnesses. The general public shall be excluded from all proceedings under this article except that
2 persons whose presence is requested by the parties and other persons whom the circuit court
3 determines have a legitimate interest in the proceedings may attend.

4 (2) In cases in which a juvenile is accused of committing what would be a felony if the
5 juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile
6 proceedings, at the discretion of the presiding judicial officer.

7 (3) In any case in which the alleged victim is a juvenile, he or she may be accompanied by
8 his or her parents or representative, at the discretion of the presiding judicial officer.

9 (j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults
10 in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this
11 chapter.

12 (k) At all adjudicatory hearings held under this article, the rules of evidence applicable in
13 criminal cases apply, including the rule against written reports based upon hearsay.

14 (l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained
15 fourteen years of age to law-enforcement officials or while in custody are not admissible unless those
16 statements were made in the presence of the juvenile's counsel. Except for res gestae, extrajudicial
17 statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen
18 years of age to law-enforcement officers or while in custody, are not admissible unless made in the
19 presence of the juvenile's counsel or made in the presence of, and with the consent of, the juvenile's
20 parent or custodian, and the parent or custodian has been fully informed regarding the juvenile's right
21 to a prompt detention hearing, the juvenile's right to counsel, including appointed counsel if the

1 juvenile cannot afford counsel, and the juvenile's privilege against self-incrimination.

2 (m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional
3 hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall
4 make findings of fact and conclusions of law, both of which shall appear on the record. The court
5 reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks
6 review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor
7 the juvenile's parents or custodian have the ability to pay for the transcript.

8 **§49-4-702. Prepetition interventions; court referrals; probation officers; giving of counsel.**

9 (a) Before a juvenile petition is formally filed with the court, the court may refer the matter
10 to a state department worker or probation officer for preliminary inquiry to determine whether the
11 matter can be resolved informally without the formal filing of a petition with the court.

12 (b) The court at any time, or the department or other official upon a request from a parent,
13 guardian or custodian, may, before proceedings under this article are formally instituted by the filing
14 of a petition with the court, refer a juvenile alleged to be delinquent or a status offender to a
15 counselor at the department or a community mental health center, or other professional counselor
16 in the community. In the event the juvenile refuses to respond to this referral, the department may
17 serve a notice by first class mail or personal service of process upon the juvenile, setting forth the
18 facts and stating that a noncustodial order will be sought from the court directing the juvenile to
19 submit to counseling. The notice shall set forth the time and place for the hearing on the matter. The
20 court after a hearing may direct the juvenile to participate in a noncustodial period of counseling that
21 may not exceed six months. Upon recommendation of the department or request by the juvenile's

1 parent, custodian or guardian, the court may allow or require the parent, custodian or guardian to
2 participate in this noncustodial counseling. No information obtained as the result of this counseling
3 is admissible in a subsequent proceeding under this article.

4 (c) Before a petition is formally filed with the court, the probation officer or other officer of
5 the court designated by it, subject to its direction, may give counsel and advice to the parties with
6 a view to an informal adjustment period if it appears:

7 (1) The admitted facts bring the case within the jurisdiction of the court;

8 (2) Counsel and advice without an adjudication would be in the best interest of the public and
9 the juvenile; and

10 (3) The juvenile and his or her parents, guardian or other custodian consent thereto with
11 knowledge that consent is not obligatory.

12 (d) The giving of counsel and advice pursuant to this section may not continue longer than
13 six months from the day it is commenced unless extended by the court for an additional period not
14 to exceed six months.

15 **§49-4-703. Juvenile drug courts; hearing officers.**

16 Juvenile drug courts shall be designed and operated consistent with the developmental and
17 rehabilitative needs of juveniles as defined in this article. The Supreme Court shall provide uniform
18 referral, procedure and order forms that shall be used in juvenile drug courts. The Supreme Court
19 is further authorized to appoint appropriate hearing officers in those jurisdictions which choose to
20 operate a juvenile drug court. Hearing officers for juvenile drug courts shall be limited to current or
21 senior status circuit court judges or family court judges.

1 **§49-4-704. Institution of proceedings by petition; notice to juvenile and parents; preliminary**
2 **hearings; subpoena.**

3 (a)(1) A petition alleging that a juvenile is a status offender or a juvenile delinquent may be
4 filed by a person who has knowledge of or information concerning the facts alleged. The petition
5 shall be verified by the petitioner, shall set forth the name and address of the juvenile's parents,
6 guardians or custodians, if known to the petitioner, and shall be filed in the circuit court in the county
7 where the alleged status offense or act of delinquency occurred. However, a proceeding under this
8 chapter may be removed, for good cause shown, in accordance with section one, article nine, chapter
9 fifty-six of this code. The petition shall contain specific allegations of the conduct and facts upon
10 which the petition is based, including the approximate time and place of the alleged conduct; a
11 statement of the right to have counsel appointed and consult with counsel at every stage of the
12 proceedings; and the relief sought.

13 (2) Upon the filing of the petition, the court shall set a time and place for a preliminary
14 hearing and may appoint counsel. A copy of the petition and summons may be served upon the
15 respondent juvenile by first class mail or personal service of process. If a juvenile does not appear
16 in response to a summons served by mail, no further proceeding may be held until the juvenile is
17 served a copy of the petition and summons by personal service of process. If a juvenile fails to
18 appear in response to a summons served in person upon him or her, an order of arrest may be issued
19 by the court for that reason alone.

20 (b) The parents, guardians or custodians shall be named in the petition as respondents and
21 shall be served with notice of the proceedings in the same manner as provided in subsection (a) of

1 this section for service upon the juvenile and required to appear with the juvenile at the time and
2 place set for the proceedings unless the respondent cannot be found after diligent search. If a
3 respondent cannot be found after diligent search, the court may proceed without further requirement
4 of notice. However, the court may order service by first class mail to the last known address of the
5 respondent. The respondent shall be afforded fifteen days after the date of mailing to appear or
6 answer.

7 (c) The court or referee may order the issuance of a subpoena against the person having
8 custody and control of the juvenile ordering him or her to bring the juvenile before the court.

9 (d) When any case of a juvenile charged with the commission of a crime is certified or
10 transferred to the circuit court, the court shall forthwith cause the juvenile and his or her parents,
11 guardians or custodians to be served with a petition as provided in subsections (a) and (b) of this
12 section. In the event the juvenile is in custody, the petition shall be served upon the juvenile within
13 ninety-six hours of the time custody began and if the petition is not served within that time, the
14 juvenile shall be released forthwith.

15 (e) The clerk of the court shall notify, within two judicial days, the local office of the
16 Department of Health and Human Resources of all proceedings under this article, which is
17 responsible for convening and directing the multidisciplinary treatment planning process in
18 accordance with section four hundred six of this article. In status offense or delinquency cases where
19 a case manager has not been assigned, the juvenile probation officer is responsible for notifying the
20 local office of the Department of Health and Human Services which will assign a case manager who
21 will initiate assessment and be responsible for convening and directing the multidisciplinary

1 treatment planning process.

2 (f) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant
3 to section four hundred three, article twenty-seven, chapter forty-eight of this code in which the
4 petition for the emergency protective order is filed by or on behalf of the juvenile's parent, guardian
5 or custodian or other person with whom the juvenile resides and that results in the issuance of an
6 emergency protective order naming a juvenile as the respondent, shall be treated as a petition
7 authorized by this section, alleging the juvenile is a juvenile delinquent. However, the magistrate
8 court shall notify the prosecuting attorney in the county where the emergency protective order is
9 issued within twenty-four hours of the issuance of the emergency protective order and the
10 prosecuting attorney may file an amended verified petition to comply with subsection (a) of this
11 section within two judicial days.

12 **§49-4-705. Taking a juvenile into custody; requirements; existing conditions; detention**
13 **centers; medical aid.**

14 (a) In proceedings formally instituted by the filing of a juvenile petition, the circuit court or
15 a magistrate may issue an order directing that a juvenile be taken into custody before adjudication
16 only upon a showing of probable cause to believe that one of the following conditions exists: (1) The
17 petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health,
18 safety and welfare of the juvenile demand custody; (3) the juvenile is a fugitive from a lawful
19 custody or commitment order of a juvenile court; or (4) the juvenile is alleged to be a juvenile
20 delinquent with a record of willful failure to appear at juvenile proceedings and custody is necessary
21 to assure his or her presence before the court. A detention hearing pursuant to section seven hundred

1 six of this article shall be held by the judge or magistrate authorized to conduct the hearings without
2 unnecessary delay and in no event may any delay exceed the next day.

3 (b) Absent a court order, a juvenile may be taken into custody by a law-enforcement official
4 only if one of the following conditions exists:

5 (1) Grounds exist for the arrest of an adult in identical circumstances;

6 (2) Emergency conditions exist which, in the judgment of the officer, pose imminent danger
7 to the health, safety and welfare of the juvenile;

8 (3) The official has reasonable grounds to believe that the juvenile has left the care of his or
9 her parents, guardian or custodian without the consent of the person and the health, safety and
10 welfare of the juvenile is endangered;

11 (4) The juvenile is a fugitive from a lawful custody or commitment order of a juvenile court;

12 (5) The official has reasonable grounds to believe the juvenile to have been driving a motor
13 vehicle with any amount of alcohol in his or her blood; or

14 (6) The juvenile is the named respondent in an emergency domestic violence protective order
15 issued pursuant to section four hundred three, article twenty-seven, chapter forty-eight of this code
16 and the individual filing the petition for the emergency protective order is the juvenile's parent,
17 guardian or custodian or other person with whom the juvenile resides.

18 (c) Upon taking a juvenile into custody, with or without a court order, the official shall:

19 (1) Immediately notify the juvenile's parent, guardian, custodian or, if the parent, guardian
20 or custodian cannot be located, a close relative;

21 (2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

1 (A) Circumstances present an immediate threat of serious bodily harm to the juvenile if
2 released;

3 (B) No responsible adult can be found into whose custody the juvenile can be delivered. Each
4 day the juvenile is detained, a written record must be made of all attempts to locate a responsible
5 adult; or

6 (C) The juvenile has been taken into custody for an alleged act of delinquency for which
7 secure detention is permissible.

8 (3) If the juvenile is an alleged status offender or has been taken into custody pursuant to
9 subdivision (6), subsection (b) of this section, immediately notify the Department of Health and
10 Human Resources and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this
11 subsection exist and the requirements therein are met, the official may detain the juvenile, but only
12 in a nonsecure or staff-secure facility;

13 (4) Take the juvenile without unnecessary delay before a judge of the circuit court for a
14 detention hearing pursuant to section seven hundred six of this article. If a circuit court judge is not
15 available in the county, the official shall take the juvenile without unnecessary delay before any
16 magistrate available in the county for the sole purpose of conducting the detention hearing. In no
17 event may any delay in presenting the juvenile for a detention hearing exceed the next day after he
18 or she is taken into custody.

19 (d) In the event that a juvenile is delivered into the custody of a sheriff or director of a
20 detention facility, the sheriff or director shall immediately notify the sheriff or director shall
21 immediately provide to every juvenile who is delivered into his or her custody a written statement

1 explaining the juvenile's right to a prompt detention hearing, his or her right to counsel, including
2 appointed counsel if he or she cannot afford counsel, and his or her privilege against
3 self-incrimination. In all cases when a juvenile is delivered into a sheriff's or detention center
4 director's custody, that official shall release the juvenile to his or her parent, guardian or custodian
5 by the end of the next day unless the juvenile has been placed in detention after a hearing conducted
6 pursuant to section seven hundred six of this article.

7 (e) The law-enforcement agency that takes a juvenile into custody or places a juvenile under
8 arrest is responsible for the juvenile's initial transportation to a juvenile detention center or other
9 Division of Juvenile Services' residential facility.

10 (f) Notwithstanding any other provision of this code, a juvenile detention center, or other
11 Division of Juvenile Services' residential facility, is not required to accept a juvenile if the juvenile
12 appears to be in need of medical attention of a degree necessitating treatment by a physician. If a
13 juvenile is refused pursuant to this subsection, the juvenile detention center, or other Division of
14 Juvenile Services' residential facility, may not subsequently accept the juvenile for detention until
15 the arresting or transporting officer provides the juvenile detention center, or other Division of
16 Juvenile Services' residential facility, with a written clearance from a licensed physician reflecting
17 that the juvenile has been examined and, if necessary, treated and which states that in the physician's
18 medical opinion the juvenile can be safely confined in the juvenile detention center or other Division
19 of Juvenile Services' residential facility.

20 **§49-4-706. Detention hearing; rights of juvenile; notification; counsel; hearings.**

21 (a) The circuit court judge or magistrate shall inform the juvenile of his or her right to remain

1 silent, that any statement may be used against him or her and of his or her right to counsel, and no
2 interrogation may be made without the presence of a parent or counsel. If the juvenile or his or her
3 parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as
4 practicable. The circuit court judge or magistrate shall hear testimony concerning the circumstances
5 for taking the juvenile into custody and the possible need for detention. The sole mandatory issue
6 at the detention hearing is whether the juvenile should be detained pending further court proceedings.
7 The court shall, if the health, safety and welfare of the juvenile will not be endangered thereby,
8 release the juvenile on recognizance to his or her parents, custodians or an appropriate agency;
9 however, if warranted, the court may require bail, except that bail may be denied in any case where
10 bail could be denied if the accused were an adult. The court shall:

11 (1) Immediately notify the juvenile's parent, guardian or custodian or, if the parent, guardian
12 or custodian cannot be located, a close relative;

13 (2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

14 (A) Circumstances present an immediate threat of serious bodily harm to the juvenile if
15 released;

16 (B) No responsible adult can be found into whose custody the juvenile can be delivered.

17 However, each day the juvenile is detained, a written record must be made of all attempts to locate
18 a responsible adult; or

19 (C) The juvenile is charged with an act of delinquency for which secure detention is
20 permissible; and

21 (3) If the juvenile is an alleged status offender, immediately notify the Department of Health

1 and Human Resources, and, if the circumstances of either paragraph (A) or (B), subdivision (2) of
2 this subsection exist and the requirements therein are met, the court may order the juvenile detained,
3 but only in a nonsecure or staff-secure facility. Any juvenile detained pursuant to this subdivision
4 shall be placed in the legal custody of the Department of Health and Human Resources pending
5 further proceedings by the court.

6 (b) The circuit court judge or magistrate may, in conjunction with the detention hearing,
7 conduct a preliminary hearing pursuant to section seven hundred and four of this article if all the
8 parties are prepared to proceed and the juvenile has counsel during the hearing.

9 **49-4-707. Review of order following detention hearing.**

10 Upon the application of any person in interest or on his or her own motion, a circuit court
11 judge may modify or vacate any order entered in his or her court after a detention hearing and enter
12 the order as to detention, or release from detention, as he or she deems just and proper.

13 **§49-4-708. Preliminary hearing; counsel; custody; court requirements; preadjudicatory**
14 **community supervision period.**

15 (a) Following the filing of a juvenile petition, unless a preliminary hearing has previously
16 been held in conjunction with a detention hearing with respect to the same charge contained in the
17 petition, the circuit court judge or magistrate shall hold a preliminary hearing. In the event that the
18 juvenile is being detained, the hearing shall be held within ten days of the time the juvenile is placed
19 in detention unless good cause is shown for a continuance. If no preliminary hearing is held within
20 ten days of the time the juvenile is placed in detention, the juvenile shall be released on recognizance
21 unless the hearing has been continued for good cause. If the judge is in another county in the circuit,

1 the hearing may be conducted in that other county or by video conferencing. Written notice shall
2 be provided to all parties of the availability to participate by videoconferencing. The preliminary
3 hearing may be waived by the juvenile, upon advice of counsel. At the hearing, the circuit court
4 judge or magistrate shall:

5 (1) If the juvenile is not represented by counsel, inform the juvenile and his or her parents,
6 guardian or custodian or any other person standing in loco parentis to him or her of the juvenile's
7 right to be represented at all stages of proceedings under this article and the right to have counsel
8 appointed;

9 (2) Appoint counsel by order entered of record, if counsel has not already been retained, or
10 appointed. Counsel must represent the child until he or she is no longer under the jurisdiction of the
11 court;

12 (3) Determine after hearing if there is probable cause to believe that the juvenile is a status
13 offender or a juvenile delinquent. If probable cause is not found, the juvenile, if in detention, shall
14 be released and the proceedings dismissed. If probable cause is found, the case shall proceed to
15 adjudication. At this hearing or as soon thereafter as is practicable, the date for the adjudicatory
16 hearing shall be set to give the juvenile and the juvenile's parents and attorney at least ten days'
17 notice unless notice is waived by all parties;

18 (4) In lieu of placing the juvenile in a detention facility, the court may place the juvenile in
19 the temporary legal and/or physical custody of the department. If the juvenile is detained, the
20 detention may not continue longer than thirty days without commencement of the adjudicatory
21 hearing unless good cause for a continuance is shown by either party or, if a jury trial is demanded,

1 no longer than the next regular term of the court. A juvenile who is alleged to be a status offender
2 may not be placed in a secure detention facility; and

3 (5) Inform the juvenile of the right to demand a jury trial.

4 (b) The juvenile may move to be allowed a preadjudicatory community supervision period
5 not to exceed one year. If the court is satisfied that the best interest of the juvenile is likely to be
6 served by a preadjudicatory community supervision period, the court may delay the adjudicatory
7 hearing and allow a preadjudicatory community supervision period upon terms calculated to serve
8 the rehabilitative needs of the juvenile. At the conclusion of the preadjudicatory community
9 supervision period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise,
10 the court shall proceed to the adjudicatory stage. A motion for a pre-adjudicatory community
11 supervision period, may not be construed as an admission or be used as evidence. Preadjudicatory
12 community supervision periods authorized by this subsection may be, in the court's discretion, either
13 custodial or noncustodial.

14 **§49-4-709. Right to jury trial for juveniles; inapplicability.**

15 (a) In a proceeding under this article, the juvenile, the juvenile's counsel or the juvenile's
16 parent or guardian may demand, or the judge on his or her own motion may order a jury trial on any
17 question of fact, in which the juvenile is accused of any act or acts of delinquency which, if
18 committed by an adult would expose the adult to incarceration.

19 (b) A juvenile who is charged with a status offense or other offense where incarceration is
20 not a possibility due either to the statutory penalty or where the court rules pretrial that a sentence
21 of incarceration will not be imposed upon adjudication is not entitled to a trial by jury.

1 (c) This section is inapplicable to proceedings held pursuant to section one hundred seventeen
2 of this article.

3 (d) Juries consist of twelve members.

4 **§49-4-710. Waiver and transfer of jurisdiction.**

5 (a) Upon written motion of the prosecuting attorney filed at least eight days prior to the
6 adjudicatory hearing and with reasonable notice to the juvenile, his or her counsel, and his or her
7 parents, guardians or custodians, the court shall conduct a hearing to determine if juvenile
8 jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of
9 the court. Any motion filed in accordance with this section is to state, with particularity, the grounds
10 for the requested transfer, including the grounds relied upon as set forth in subsection (d), (e), (f) or
11 (g) of this section, and the burden is upon the state to establish the grounds by clear and convincing
12 evidence. Any hearing held under this section is to be held within seven days of the filing of the
13 motion for transfer unless it is continued for good cause.

14 (b) No inquiry relative to admission or denial of the allegations of the charge or the demand
15 for jury trial may be made by or before the court until the court has determined whether the
16 proceeding is to be transferred to criminal jurisdiction.

17 (c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a juvenile who
18 has attained the age of fourteen years makes a demand on the record to be transferred to the criminal
19 jurisdiction of the court. The case may then be referred to magistrate or circuit court for further
20 proceedings, subject to the court's jurisdiction.

21 (d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable

1 cause to believe that:

2 (1) The juvenile is at least fourteen years of age and has committed the crime of treason under
3 section one, article one, chapter sixty-one of this code; the crime of murder under sections one, two
4 and three, article two of that chapter; the crime of robbery involving the use or presenting of firearms
5 or other deadly weapons under section twelve, article two of that chapter; the crime of kidnapping
6 under section fourteen-a of article two of that chapter; the crime of first degree arson under section
7 one, article three of that chapter; or the crime of sexual assault in the first degree under section three,
8 article eight-b of that chapter;

9 (2) The juvenile is at least fourteen years of age and has committed an offense of violence
10 to the person which would be a felony if the juvenile was an adult. However, the juvenile has been
11 previously adjudged delinquent for the commission of an offense of violence to the person which
12 would be a felony if the juvenile was an adult; or

13 (3) The juvenile is at least fourteen years of age and has committed an offense which would
14 be a felony if the juvenile was an adult. However, the juvenile has been twice previously adjudged
15 delinquent for the commission of an offense which would be a felony if the juvenile was an adult.

16 (e) The court may transfer a juvenile proceeding to criminal jurisdiction if there is probable
17 cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (1),
18 subsection (d) of this section, but who is younger than fourteen years of age.

19 (f) The court may, upon consideration of the juvenile's mental and physical condition,
20 maturity, emotional attitude, home or family environment, school experience and similar personal
21 factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe

1 that the juvenile would otherwise satisfy the provisions of subdivision (2) or (3), subsection (d) of
2 this section, but who is younger than fourteen years of age.

3 (g) The court may, upon consideration of the juvenile's mental and physical condition,
4 maturity, emotional attitude, home or family environment, school experience and similar personal
5 factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe
6 that:

7 (1) The juvenile, who is at least fourteen years of age, has committed an offense of violence
8 to a person which would be a felony if the juvenile was an adult;

9 (2) The juvenile, who is at least fourteen years of age, has committed an offense which would
10 be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged
11 delinquent for the commission of a crime which would be a felony if the juvenile was an adult;

12 (3) The juvenile, who is at least fourteen years of age, used or presented a firearm or other
13 deadly weapon during the commission of a felony; or

14 (4) The juvenile has committed a violation of section four hundred one, article four, chapter
15 sixty-a of this code which would be a felony if the juvenile was an adult involving the manufacture,
16 delivery or possession with the intent to deliver a narcotic drug. For purposes of this subdivision, the
17 term narcotic drug has the same definition as that set forth in section one hundred one, article one
18 of that chapter;

19 (5) The juvenile has committed the crime of second degree arson as defined in section two,
20 article three, chapter sixty-one of this code involving setting fire to or burning a public building or
21 church. For purposes of this subdivision, the term public building means a building or structure of

1 any nature owned, leased or occupied by this state, a political subdivision of this state or a county
2 board of education and used at the time of the alleged offense for public purposes. For purposes of
3 this subdivision, the term church means a building or structure of any nature owned, leased or
4 occupied by a church, religious sect, society or denomination and used at the time of the alleged
5 offense for religious worship or other religious or benevolent purpose, or as a residence of a minister
6 or other member of clergy.

7 (h) For purposes of this section, the term offense of violence means an offense which
8 involves the use or threatened use of physical force against a person.

9 (i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal
10 jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its
11 decision is based or shall incorporate findings of fact and conclusions of law in its order directing
12 transfer.

13 (j) A juvenile who has been transferred to criminal jurisdiction pursuant to subsection (e),
14 (f) or (g) of this section, by an order of transfer, has the right to either directly appeal an order of
15 transfer to the supreme court of appeals or to appeal the order of transfer following a conviction of
16 the offense of transfer. If the juvenile exercises the right to a direct appeal from an order of transfer,
17 the notice of intent to appeal and a request for transcript is to be filed within ten days from the date
18 of the entry of any order of transfer, and the petition for appeal is to be presented to the Supreme
19 Court of Appeals within forty-five days from the entry of the order of transfer. Article five, chapter
20 fifty-eight of this code pertaining to the appeals of judgments in civil actions applies to appeals under
21 this chapter except as modified in this section. The court may, within forty-five days of the entry of

1 the order of transfer, by appropriate order, extend and reextend the period in which to file the petition
2 for appeal for additional time, not to exceed a total extension of sixty days, as in the court's opinion
3 may be necessary for preparation of the transcript. However, the request for a transcript was made
4 by the party seeking appeal within ten days of entry of the order of transfer. In the event any notice
5 of intent to appeal and request for transcript be timely filed, proceedings in criminal court are to be
6 stayed upon motion of the defendant pending final action of the Supreme Court of Appeals.

7 **§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial**
8 **disposition of status offenders; court orders.**

9 At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or
10 she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand mute, in
11 which event the court shall enter a general denial of all allegations in the petition.

12 (1) If the respondent juvenile admits the allegations of the petition, the court shall consider
13 the admission to be proof of the allegations if the court finds: (1) The respondent fully understands
14 all of his or her rights under this article; (2) the respondent voluntarily, intelligently and knowingly
15 admits all facts requisite for an adjudication; and (3) the respondent in his or her admission has not
16 set forth facts which constitute a defense to the allegations.

17 (2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial
18 motions and the court or jury shall proceed to hear evidence.

19 (3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are
20 sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition
21 pursuant to section seven hundred four of this article.

1 (4) If the allegations in a petition alleging that the juvenile is a status offender are admitted
2 or sustained by clear and convincing proof, the court shall refer the juvenile to the Department of
3 Health and Human Resources for services, pursuant to section seven hundred twelve of this article
4 and order the department to report back to the court with regard to the juvenile's progress at least
5 every ninety days or until the court, upon motion or sua sponte, orders further disposition under
6 section seven hundred four of this article or dismisses the case from its docket. In a judicial circuit
7 operating its own truancy program, a circuit judge may in lieu of referring truant juveniles to the
8 department, order that the juveniles be supervised by his or her probation office.

9 (5) If the allegations in a petition are not sustained by proof as provided in subsections (3)
10 and (4) of this section, the petition shall be dismissed and the juvenile shall be discharged if he or
11 she is in custody.

12 (6) Findings of fact and conclusions of law addressed to all allegations in the petition shall
13 be stated on the record or reduced to writing and filed with the record or incorporated into the order
14 of the court.

15 **§49-4-712. Intervention and services by the department pursuant to initial disposition for**
16 **status offenders; service plan; enforcement; further disposition; detention;**
17 **out-of-home placement; department custody; least restrictive alternative;**
18 **appeal.**

19 (a) The services provided by the department for juveniles adjudicated as status offenders shall
20 be consistent with part ten, article two of this chapter and shall be designed to develop skills and
21 supports within families and to resolve problems related to the juveniles or conflicts within their

1 families. Services may include, but are not limited to, referral of juveniles and parents, guardians or
2 custodians and other family members to services for psychiatric or other medical care, or
3 psychological, welfare, legal, educational or other social services, as appropriate to the needs of the
4 juvenile and his or her family.

5 (b) If the child or family of the child fails to comply with the service plan, the department
6 may petition the circuit court:

7 (1) For a valid court order, as defined in section two hundred seven, article one of this
8 chapter, to enforce compliance with a service plan or to restrain actions that interfere with or defeat
9 a service plan; or

10 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure
11 setting, and/or to place a juvenile in custody of the department.

12 (c) In ordering any further disposition under this section, the court is not limited to the relief
13 sought in the department's petition and reasonable efforts made to prevent removal of the juvenile
14 from his or her home or as an alternative to place the juvenile in community-based facilities which
15 are the least restrictive alternatives appropriate to the needs of the juvenile and the community.

16 (d) The disposition of the juvenile may not be affected by the fact that the juvenile demanded
17 a trial by jury or made a plea of denial. Any order providing disposition other than mandatory referral
18 to the department for services is subject to appeal to the Supreme Court of Appeals.

19 (e) Following any further disposition by the court, the court shall inquire of the juvenile
20 whether or not appeal is desired and the response shall be transcribed; a negative response may not
21 be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available

1 to the juvenile or his or her counsel, if it is requested for purposes of further proceedings. A judge
2 may grant a stay of execution pending further proceedings.

3 **§49-4-713. Graduated penalties for juvenile alcohol consumption; fines; community service;**
4 **revocation of driver's license.**

5 (a) Notwithstanding any provision of this article to the contrary, in addition to any other
6 penalty available to the court, any child who is adjudicated to have consumed alcoholic liquor or
7 nonintoxicating beer as defined in section five, article one, chapter sixty of this code, shall:

8 (1) Upon a first adjudication, he or she shall be ordered to perform community service for
9 not more than eight hours or fined not more than \$25, or both performing community service and
10 fined.

11 (2) Upon a second adjudication, he or she shall be ordered to perform community service for
12 not more than sixteen hours or fined not more than \$50, or both performing community service and
13 fined.

14 (3) Upon a third or subsequent adjudication, he or she shall be ordered to perform not more
15 than twenty-four hours of community service or fined not more than \$100, or both performing
16 community service and fined.

17 (b) In addition to the penalties set forth in subsection (a) of this section and notwithstanding
18 the provisions of subdivision (4), subsection (a), section seven hundred fifteen of this article, any
19 child adjudicated a second time for consumption of alcoholic liquor or nonintoxicating beer shall
20 have his or her license to operate a motor vehicle suspended for a definite term of not less than five
21 nor more than ninety days. Any child adjudicated a third or subsequent time for consumption of an

1 alcoholic liquor or nonintoxicating beer shall have his or her license to operate a motor vehicle
2 suspended until he or she attains the age of eighteen years.

3 **§49-4-714. Disposition of juvenile delinquents; investigation; proceedings; court discretion;**
4 **orders; appeal.**

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

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

16 (1) Dismiss the petition;

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

19 (3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the
20 juvenile under the supervision of a probation officer of the court or of the court of the county where
21 the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody

1 of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the
2 juvenile's activities under terms which are reasonable and within the child's ability to perform,
3 including participation in the litter control program established pursuant to section three, article
4 fifteen-a, chapter twenty-two of this code or other appropriate programs of community service;

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

15 (5)(A) Upon a finding that the best interests of the juvenile or the welfare of the public
16 require it, and upon an adjudication of delinquency the court may commit the juvenile to the custody
17 of the Director of the Division of Juvenile Services for placement in a juvenile services facility for
18 the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider
19 alternative sentencing arrangements.

20 (B) Notwithstanding any provision of this code to the contrary, in the event that the court
21 determines that it is in the juvenile's best interests or required by the public welfare to place the

1 juvenile in the custody of the Division of Juvenile Services, the court shall provide the Division of
2 Juvenile Services with access to all relevant court orders and records involving the underlying
3 offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and
4 presentencing reports and evaluations, and provide the division with access to school records,
5 psychological reports and evaluations, medical reports and evaluations or any other records as may
6 be in the court's possession as would enable the Division of Juvenile Services to better assess and
7 determine the appropriate counseling, education and placement needs for the juvenile offender.

8 (C) Commitments may not exceed the maximum term for which an adult could have been
9 sentenced for the same offense and any maximum allowable sentence to be served in a juvenile
10 correctional facility may take into account any time served by the juvenile in a detention center
11 pending adjudication, disposition or transfer. The order shall state that continuation in the home is
12 contrary to the best interests of the juvenile and why; and whether or not the state department made
13 a reasonable effort to prevent the placement or that the emergency situation made those efforts
14 unreasonable or impossible; or

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

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

4 (d) The disposition of the juvenile may not be affected by the fact that the juvenile demanded
5 a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the Supreme
6 Court of Appeals.

7 (e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and
8 the response shall be transcribed; a negative response may not be construed as a waiver. The
9 evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her
10 counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of
11 execution pending further proceedings.

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

16 **§49-4-715. Authority of the courts to impose additional penalties; public service projects;**
17 **ineligible to operate a motor vehicle; restitution.**

18 (a) In addition to the methods of disposition provided in section seven hundred fourteen of
19 this article, the court may enter an order imposing one or more of the following penalties, conditions
20 and limitations:

21 (1) Impose a fine not to exceed \$100 upon the child;

1 (2) Require the child to make restitution or reparation to the aggrieved party or parties for
2 actual damages or loss caused by the offense for which the child was found to be delinquent, or if
3 the child does not make full restitution, require the custodial parent or parents, as defined in section
4 two, article seven-a, chapter fifty-five, of the child to make partial or full restitution to the victim to
5 the extent the child fails to make full restitution;

6 (3) Require the child to participate in a public service project under the conditions as the
7 court prescribes, including participation in the litter control program established pursuant to the
8 authority of section three, article fifteen-a, chapter twenty-two of this code; and

9 (4) When the child is fifteen years of age or younger and has been adjudged delinquent, the
10 court may order that the child is not eligible to be issued a junior probationary operator's license or
11 when the child is between the ages of sixteen and eighteen years and has been adjudged delinquent,
12 the court may order that the child is not eligible to operate a motor vehicle in this state, and any
13 junior or probationary operator's license shall be surrendered to the court. The child's driving
14 privileges shall be suspended for a period not to exceed two years, and the clerk of the court shall
15 notify the Commissioner of the Division of Motor Vehicles of the order.

16 (b) Nothing may limit the discretion of the court in disposing of a juvenile case. The juvenile
17 may not be denied probation or any other disposition pursuant to this article because the juvenile is
18 financially unable to pay a fine or make restitution or reparation. All penalties, conditions and
19 limitations imposed under this section shall be based upon a consideration by the court of the
20 seriousness of the offense, the child's ability to pay and a program of rehabilitation consistent with
21 the best interests of the child.

1 (c) Notwithstanding any other provisions of this code to the contrary, in the event a child
2 charged with delinquency under this chapter is transferred to adult jurisdiction and there convicted,
3 the court may nevertheless, in lieu of sentencing the person as an adult, make its disposition in
4 accordance with this section.

5 **§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation;**
6 **requirements; fees.**

7 (a) Notwithstanding any provision of this article to the contrary, any county or municipality
8 may choose to institute a teen court program in accordance with this section.

9 (b) An juvenile may be given the option of proceeding in a teen court program as an
10 alternative to the filing of a formal proceeding pursuant to section seven hundred four or section
11 seven hundred fourteen of this article if:

12 (1) The juvenile is alleged to have committed a status offense or an act of delinquency that
13 would be a misdemeanor if committed by an adult;

14 (2) The juvenile is alleged to have violated a municipal ordinance over which municipal court
15 and state court have concurrent jurisdiction; or

16 (3) The juvenile is otherwise subject to the provisions of this article.

17 (c) If the circuit court or municipal court finds that the offender is a suitable candidate for the
18 teen court program, it may extend the option to enter the program as an alternative procedure. A
19 juvenile may not enter the teen court program unless he or she and his or her parent or guardian
20 consent to participating in the program.

21 (d) Any juvenile who does not successfully cooperate in, and complete, the teen court

1 program and any disposition imposed during the juvenile's participation shall be returned to the
2 circuit court for further disposition as provided by section seven hundred and twelve or seven
3 hundred fourteen of this article, as the case may be or returned to the municipal court for further
4 disposition for cases originating in municipal court consistent with any applicable ordinance.

5 (e) The following provisions apply to all teen court programs:

6 (1) The judge for each teen court proceeding shall be an acting or retired circuit court judge
7 or an active member of the West Virginia State Bar, who serves on a voluntary basis.

8 (2) Any juvenile who selects the teen court program as an alternative disposition shall agree
9 to serve thereafter on at least two occasions as a teen court juror.

10 (3) Volunteer students from grades seven through twelve of the schools within the county
11 shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for
12 each proceeding.

13 (4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform
14 sixteen to forty hours of community service, the duration and type of which shall be determined by
15 the teen court jury from a standard list of available community service programs provided by the
16 county juvenile probation system and a standard list of alternative consequences that are consistent
17 with the purposes of this article. The performance of the juvenile shall be monitored by the county
18 juvenile probation system for cases originating in the circuit court's jurisdiction, or municipal teen
19 court coordinator or other designee for cases originating in the municipal court's jurisdiction. The
20 juvenile shall also perform at least two sessions of teen court jury service and, if considered
21 appropriate by the circuit court judge or teen court judge, participate in an education program.

1 Nothing in this section may be construed so as to deny availability of the services provided under
2 section seven hundred and twelve of this article to juveniles who are otherwise eligible for the
3 service.

4 (f) The rules for administration, procedure and admission of evidence shall be determined
5 by the chief circuit judge or teen court judge, but in no case may the court require a juvenile to admit
6 the allegation against him or her as a prerequisite to participation in the teen court program. A copy
7 of these rules shall be provided to every teen court participant.

8 (g) Each county or municipality that operates, or wishes to operate, a teen court program as
9 provided in this section is hereby authorized to adopt a mandatory fee of up to \$5 to be assessed as
10 provided in this subsection. Municipal courts may assess a fee pursuant to this section upon
11 authorization by the city council of the municipality. Assessments collected by the clerk of the court
12 pursuant to this subsection shall be deposited into an account specifically for the operation and
13 administration of a teen court program. The clerk of the court of conviction shall collect the fees
14 established in this subsection and shall remit the fees to the teen court program.

15 (h) Any mandatory fee established by a county commission or city council in accordance with
16 this subsection shall be paid by the defendant on a judgment of guilty or a plea of nolo contendere
17 for each violation committed in the county or municipality of any felony, misdemeanor or any local
18 ordinance, including traffic violations and moving violations but excluding municipal parking
19 ordinances. Municipalities operating teen courts are authorized to use fees assessed in municipal
20 court pursuant to this subsection for operation of a teen court in their municipality

21 **§49-4-717. Sexting educational diversion program; requirements.**

1 (a) Before a juvenile petition is filed for activity proscribed by article eight-a or eight-c,
2 chapter sixty-one of this code, or after probable cause has been found to believe a juvenile has
3 committed a violation thereof, but before an adjudicatory hearing on the petition, the court or a
4 prosecuting attorney may direct or allow a minor who engaged in the activity to participate in an
5 educational diversion program which meets the requirements of subsection (b) of this section. The
6 prosecutor or court may refer the minor to the educational diversion program, as part of a prepetition
7 intervention pursuant to section seven hundred two of this article.

8 (b) The West Virginia Supreme Court of Appeals may develop an educational diversion
9 program for minors who are accused of activity proscribed by article eight-a or eight-c, chapter
10 sixty-one of this code. As a part of any specialized educational diversion program so developed, the
11 following issues and topics should be included:

12 (1) The legal consequences of and penalties for sharing sexually suggestive or explicit
13 materials, including applicable federal and state statutes;

14 (2) The nonlegal consequences of sharing sexually suggestive or explicit materials including,
15 but not limited to, the effect on relationships, loss of educational and employment opportunities, and
16 being barred or removed from school programs and extracurricular activities;

17 (3) How the unique characteristics of cyberspace and the Internet, including searchability,
18 replicability and an infinite audience, can produce long-term and unforeseen consequences for
19 sharing sexually suggestive or explicit materials; and

20 (4) The connection between bullying and cyber-bullying and minors sharing sexually
21 suggestive or explicit materials.

1 (c) Once a specialized educational diversion program is established by the West Virginia
2 Supreme Court of Appeals consistent with this section, the minor's successful completion of the
3 educational diversion program shall be duly considered by the prosecutor or the court in their
4 respective decisions to either abstain from filing the juvenile petition or to dismiss the juvenile
5 petition, as follows:

6 (1) If the minor has not previously been judicially determined to be delinquent, and the
7 minor's activities represent a first offense for a violation of section three-b, article eight-c, chapter
8 sixty-one of this code, the minor is not subject to the requirements of that section, as long as he or
9 she successfully completes the educational diversion program; and

10 (2) If the minor commits a second or subsequent violation of article eight-a or eight-c, chapter
11 sixty-one of this code, the minor's successful completion of the educational diversion program may
12 be considered as a factor to be considered by the prosecutor and court in deciding to not file a
13 petition or to dismiss a petition, upon successful completion of an improvement plan established by
14 the court.

15 **§49-4-718. Modification of dispositional orders; motions; hearings.**

16 (a) A dispositional order of the court may be modified:

17 (1) Upon the motion of the probation officer, a department official, the director of the
18 division of juvenile services or prosecuting attorney; or

19 (2) Upon the request of the child or a child's parent or custodian who alleges a change of
20 circumstances relating to disposition of the child.

21 (b) Upon a motion or request, the court shall conduct a review proceeding, except that if the

1 last dispositional order was within the previous six months the court may deny a request for review.
2 Notice in writing of a review proceeding shall be given to the child, the child's parent or custodian
3 and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the
4 performance of the child, the child's parent or custodian, the child's social worker and other persons
5 providing assistance to the child or child's family. If the motion or request for review of disposition
6 is based upon an alleged violation of a court order, the court may modify the dispositional order to
7 a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the
8 absence of proof, the court may decline to modify the dispositional order or may modify the order
9 to one of the less restrictive alternatives set forth in section seven hundred twelve of this article. A
10 juvenile may not be required to seek a modification order as provided in this section in order to
11 exercise his or her right to seek release by habeas corpus.

12 (c) In a hearing for modification of a dispositional order, or in any other dispositional hearing,
13 the court shall consider the best interests of the child and the welfare of the public.

14 **§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties;**
15 **powers.**

16 (a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in
17 accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile
18 probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may
19 not be related by blood or marriage to the appointing judge.

20 (2) The salary for juvenile probation officers and clerical assistants shall be determined and
21 fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation

1 officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules.
2 The county commission of each county shall provide adequate office facilities for juvenile probation
3 officers and their staff. All equipment and supplies required by juvenile probation officers and their
4 staff shall be provided by the Supreme Court of Appeals.

5 (3) A juvenile probation officer may not be considered a law-enforcement official under this
6 chapter.

7 (b) The clerk of a court shall notify, if practicable, the chief probation officer of the county,
8 or his or her designee, when a juvenile is brought before the court or judge for proceedings under
9 this article. When notified, or if the probation officer otherwise obtains knowledge of fact, he or she
10 or one of his or her assistants shall:

11 (1) Make investigation of the case; and

12 (2) Furnish information and assistance that the court or judge may require.

13 **§49-4-720. Prohibition on committing juveniles to adult facilities; copy provided to juvenile.**

14 (a) No juvenile, including one who has been transferred to criminal jurisdiction of the court,
15 shall be detained or confined in any institution in which he or she has contact with or comes within
16 sight or sound of any adult persons incarcerated because they have been convicted of a crime or are
17 awaiting trial on criminal charges or with the security staff (including management) or direct-care
18 staff of a jail or locked facility for adults.

19 (b) No child who has been convicted of an offense under the adult jurisdiction of the circuit
20 court shall be held in custody in a correctional facility of this state. The Division of Juvenile Services
21 shall be responsible for notifying the sentencing court within forty-five days of the child's eighteenth

1 birthday that the child will be turning eighteen years of age. Within ten days of the child's eighteenth
2 birthday, the court shall transfer the offender to an adult correctional facility or to any other
3 disposition the court deems appropriate for adult offenders. Notwithstanding any other provision
4 of this code to the contrary, prior to the transfer the child shall be returned to the sentencing court
5 for the purpose of reconsideration and modification of the imposed sentence, which shall be based
6 upon a review of all records and relevant information relating to the child's rehabilitation since his
7 or her conviction under the adult jurisdiction of the court.

8 **§49-4-721. Rules governing juvenile facilities; rights of juveniles.**

9 (a) The Director of the Division of Juvenile Services within the Department of Military
10 Affairs and Public Safety shall propose legislative rules for promulgation in accordance with article
11 three, chapter twenty-nine-a of this code, outlining policies and procedures governing the operation
12 of those correctional, detention, predispositional detention centers and other facilities wherein
13 juveniles may be housed. These policies and procedures shall include, but are not limited to,
14 standards of cleanliness, temperature and lighting; availability of medical and dental care; provision
15 of food, furnishings, clothing and toilet articles; supervision; procedures for enforcing rules of
16 conduct consistent with due process of law; and visitation privileges. A juvenile in custody or
17 detention has, at a minimum, the following rights, and the policies prescribed ensuring that:

18 (1) A juvenile may not be punished by physical force, deprivation of nutritious meals,
19 deprivation of family visits or imposition of solitary confinement;

20 (2) A juvenile shall be afforded an opportunity to participate in physical exercise each day;

21 (3) Except for sleeping hours, a juvenile in a state facility may not be locked alone in a room

1 unless that juvenile is not amenable to reasonable direction and control;

2 (4) A juvenile shall be provided with his or her own clothing or individualized clothing
3 which is clean and supplied by the facility, and shall also be afforded daily access to showers;

4 (5) A juvenile shall be afforded constant access to writing materials and may send mail
5 without limitation, censorship or prior reading, and may receive mail without prior reading, except
6 that mail may be opened in the juvenile's presence, without being read, to inspect for contraband;

7 (6) A juvenile may make and receive regular local phone calls without charge and long
8 distance calls to his or her family without charge at least once a week, and receive visitors daily and
9 on a regular basis;

10 (7) A juvenile shall be afforded immediate access to medical care as needed;

11 (8) A juvenile in a juvenile detention facility or juvenile corrections facility shall be provided
12 access to education, including teaching, educational materials and books;

13 (9) A juvenile shall be afforded reasonable access to an attorney upon request; and

14 (10) A juvenile shall be afforded a grievance procedure, including an appeal mechanism.

15 (b) Upon admission to a detention facility or juvenile corrections facility, a juvenile shall be
16 furnished with a copy of the rights provided him or her by virtue of this section and as further
17 prescribed by rules proposed and promulgated pursuant to this section.

18 **§49-4-722. Conviction for offense while in custody.**

19 (a) Notwithstanding any other provision of law to the contrary, any person who is eighteen
20 years of age or older who is convicted as an adult of an offense that he or she committed while in
21 the custody of the Division of Juvenile Services and who is therefor sentenced to a regional jail or

1 state correctional facility for the offense may not be returned to the custody of the division upon the
2 completion of his or her adult sentence until a hearing is held before the court which committed the
3 person to the custody of the Division of Juvenile Services at which hearing the division may present
4 any objections it may have to return the person to its custody. If the division does object and the
5 court overrules the division's objections, it shall make specific written findings as to its rationale for
6 overruling the objections.

7 (b) No person who is eighteen years of age or older who is convicted as an adult of a felony
8 crime of violence against the person while in the custody of the Division of Juvenile Services be
9 returned to the custody of the Division of Juvenile Services upon completion of his or her adult
10 sentence.

11 **§49-4-723. Discrimination prohibited; penalties; damages.**

12 (a) No individual, firm, corporation or other entity may discriminate against any person in
13 any manner due to that person's prior involvement in a proceeding under this article if that person's
14 records have been expunged pursuant to this article. This includes, but is not limited to,
15 discrimination relating to employment, housing, education, obtaining credit, and contractual rights.

16 (b) Any person who willfully violates this section is guilty of a misdemeanor and, upon
17 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months, or
18 both fined and confined. Additionally, a person who violates this section is liable to the person who
19 has been discriminated against for damages in the amount of \$300 or the actual amount of damages,
20 whichever is greater.

21 PART VIII. SUPPORT AND SUPPORT ORDERS.

1 **§49-4-801. Support of a child removed from home pursuant to this chapter; order**
2 **requirements.**

3 (a) It is the intent of the Legislature that to the extent practicable, this article should
4 encourage and require a child's parents to meet the obligation of providing that child with adequate
5 food, shelter, clothing, education, and health and child care.

6 (b) This article shall be construed to be consistent with articles one, eleven, twelve, thirteen,
7 fourteen, fifteen, sixteen, eighteen, nineteen and twenty four of chapter forty-eight of this code, and
8 those articles apply to actions pursuant to this chapter unless expressly stated otherwise.

9 (c) When a child is removed from his or her home pursuant to this chapter, the court shall
10 issue a support order payable by the child's mother. If the child's legal father has been determined,
11 the court shall issue a child support order payable by the legal father. If no legal father has been
12 determined, the court shall issue an order establishing paternity prior to or simultaneously with
13 establishing a support order payable by the child's legal father. Copies of the orders shall be provided
14 to the Department of Health and Human Resources, Bureau of Child Support Enforcement.

15 (d) The order establishing a child support obligation must use the Guidelines for Child
16 Support Awards that are set forth in article thirteen, chapter forty-eight of this code.

17 (e) In addition to the reasons for deviation listed in section seven hundred two, article
18 thirteen, chapter forty-eight of this code, deviation from the child support guidelines is appropriate
19 when the court finds that:

20 (1) It may assist the parent in successful completion of an improvement period;

21 (2) It may be in the best interest of the minor child to issue a zero child support order; and/or

1 (3) The parent temporarily or permanently has no gross income as defined in section two
2 hundred twenty eight, article one, chapter forty-eight of this code.

3 **§49-4-802. General provisions for support orders; contempt.**

4 (a) Any pre-existing support order from any other court or administrative agency with
5 authority to issue a support order shall remain in full force and effect until a superseding order is
6 issued.

7 (b) If a child is returned to the physical custody of a parent, that parent is not responsible for
8 paying child support for the duration of time that parent has physical custody of the child without
9 the necessity of entry of another court order terminating that parent's child support obligation.

10 (c) If the action is dismissed for failure to prove the allegations of abuse or neglect, any
11 support provision issued pursuant to this chapter are void ab initio. Any adjudication of paternity
12 shall remain in full force and effect.

13 (d) The support obligation shall automatically continue beyond the termination of the payor's
14 parental rights, unless the support obligation is explicitly ended in an order.

15 **§49-4-803. Enforcement of support orders.**

16 (a) Support orders may be enforced through any manner provided in chapters thirty-eight and
17 forty-eight of this code.

18 (b) An action for contempt for nonpayment of support may be brought by the Department of
19 Health and Human Resources, Bureau for Children and Families or Bureau for Child Support
20 Enforcement; the child's physical custodian; the child's guardian ad litem; or the prosecuting
21 attorney.

1 PART IX. CONTRIBUTING TO THE DELINQUENCY OF A CHILD.

2 **§49-4-901. Contributing to delinquency or neglect of a child; penalties; payment of medical**
3 **costs; proof; court discretion; other payments; suspended sentence;**
4 **maintenance and care; temporary custody.**

5 (a) A person who by any act or omission contributes to, encourages or tends to cause the
6 delinquency or neglect of any child, including, but not limited to, aiding or encouraging the child to
7 habitually or continually refuse to respond, without just cause, to the lawful supervision of the child's
8 parents, guardian or custodian or to be habitually absent from school without just cause, is guilty of
9 a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500,
10 or confined in jail for a period not exceeding one year, or both fined and confined.

11 (b) In addition to any penalty provided under this section and any restitution which may be
12 ordered by the court under article eleven-a, chapter sixty-one of this code, the court may order any
13 person convicted under this section to pay all or any portion of the cost of medical, psychological
14 or psychiatric treatment of the child resulting from the act or acts for which the person is convicted,
15 whether or not the child is considered to have sustained bodily injury.

16 (c) This section does not apply to any parent, guardian or custodian who fails or refuses, or
17 allows another person to fail or refuse, to supply a child under the care, custody or control of the
18 parent, guardian or custodian with necessary medical care, when medical care conflicts with the
19 tenets and practices of a recognized religious denomination or order of which parent, guardian or
20 custodian is an adherent or member.

21 (d) In finding a person guilty of contributing to the delinquency of a child, it is not necessary

1 to prove that the child has actually become delinquent, if it appears from the evidence that the
2 accused is guilty of conduct or of an act of neglect or omission of duty on his or her part toward the
3 child which would tend to bring about or to encourage the delinquency.

4 (e) A court or judge, upon convictions as are imposed in accordance with this chapter, may:

5 (1) Suspend the sentence of a person found guilty of contributing to the delinquency of a
6 child;

7 (2) Stay or postpone the enforcement of execution of sentence; or

8 (3) Release the person from custody.

9 (f) If the sentence of the person found guilty is suspended, the court or judge may make it a
10 condition of suspending sentence that the person pay for whatever treatment and care may be
11 required for the welfare of the child, and for its support and maintenance while in the custody of the
12 department, person, or institution, and any other expense that may have resulted from, or be
13 necessary because of, the act or acts of the person found guilty.

14 (g) The conditions upon which the sentence of a person found guilty of contributing to the
15 delinquency, or to the neglect of any child, may be suspended, may include the furnishing of a good
16 and sufficient bond to the State of West Virginia in the penal sum as the court shall determine, not
17 exceeding \$1,000, conditioned upon:

18 (1) Furnishing whatever treatment and care may be required for the welfare of the child;

19 (2) Doing whatever may be calculated to secure obedience to the law or to remove the cause
20 of delinquency, or neglect; and

21 (3) Payment of the amount as the court may order, not exceeding \$20 per month, for the

1 support, care, and maintenance of the child to whose delinquency the person contributed. The sum
2 shall be expended under the order of the court or judge for the purposes enumerated.

3 (h)(1) The penalty of a bond given upon suspension of sentence which becomes forfeited is
4 recoverable without separate suit. The court or judge may cause citation or summons to issue to the
5 principal and surety, requiring that they appear at a time named by the court or judge, not less than
6 ten nor more than twenty days from the issuance of the summons, and show cause why judgment
7 should not be entered for the penalty of the bond and execution issued against the property of the
8 principal and of the surety. Upon failure to appear, or failure to show sufficient cause, the court shall
9 enter judgment in behalf of the State of West Virginia against the principal and surety in an amount
10 not to exceed the penalty of the bond plus costs.

11 (2) Any money collected or paid upon an execution, or upon the bond, shall be deposited with
12 the clerk of the court in which the bond was given. The money shall be applied first to the payment
13 of all court costs and then to the treatment, care, or maintenance of the child for whose delinquency
14 conviction was had. If any money so collected is not required for these purposes, it shall be paid
15 within one year into the State Treasury.

16 (i) If it appear to the satisfaction of the court or judge at any time while a suspension of
17 sentence or stay of execution remains in effect, that the sentence ought to be enforced, the court or
18 judge may enforce the sentence. A jail sentence shall commence from the date upon which the
19 sentence is so ordered to be enforced.

20 (j) If the conditions of suspension are complied with, the sentence shall remain suspended,
21 subject to enforcement upon the violation of any of the conditions imposed. Upon a failure to

1 comply with any of the conditions imposed, the sentence shall be enforced and any bond given to
2 insure the performance of the conditions shall be forfeited.

3 (k) A sentence may not be suspended, or final judgment or execution stayed, for a period
4 exceeding two years. At the end of two years from the time of imposition of sentence or sooner in
5 the discretion of the court or judge, the defendant shall be finally released and discharged.

6 (l) Where a person is found guilty of contributing to the delinquency of a child, the court or
7 judge may place the child in the temporary custody of the department or of some responsible person
8 or approved institution.

9 **§49-4-902. Custody of child by convicted person.**

10 If the guilty person had custody of the child prior to conviction, the court or judge may, on
11 suspending sentence, permit the child to remain in the custody of the person, and make it a condition
12 of suspending sentence that the person provides whatever treatment and care may be required for the
13 welfare of the child, and shall do whatever may be calculated to secure obedience to the law or to
14 remove the cause of the delinquency.

15 **§49-4-903. Interference with disposition of child punishable as contempt of court.**

16 A person who interferes with the direction of disposition of a child in accordance with an
17 order of the court or judge made in pursuance of this chapter, or with the department, or a probation
18 or other officer of the court in carrying out the directions of the court or judge under an order, is
19 subject to punishment as for contempt of court.

20 **§49-4-904. Enticing child from custody; penalties.**

21 A person who personally or by agent entices or forcibly removes a child from a custody in

1 which the child was placed under this chapter is guilty of a misdemeanor and, upon conviction shall
2 be fined not more than \$100, or confined in jail not more than six months, or fined and confined.

3 **ARTICLE 5. RECORD KEEPING AND DATABASE.**

4 **§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.**

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

10 (b) Notwithstanding the provisions of subsection (a) of this section or any other provision
11 of this code to the contrary, records concerning a child or juvenile, except adoption records and
12 records disclosing the identity of a person making a complaint of child abuse or neglect may be made
13 available:

14 (1) Where otherwise authorized by this chapter;

15 (2) To:

16 (A) The child;

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

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

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

20 or

21 (4) Pursuant to an order of a court of record. However, the court shall review the record or

1 records for relevancy and materiality to the issues in the proceeding and safety, and may issue an
2 order to limit the examination and use of the records or any part thereof.

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

7 (1) Federal, state or local government entities, or any agent of those entities, including
8 law-enforcement agencies and prosecuting attorneys, having a need for that information in order to
9 carry out its responsibilities under law to protect children from abuse and neglect;

10 (2) The child fatality review team;

11 (3) Child abuse citizen review panels;

12 (4) Multidisciplinary investigative and treatment teams; or

13 (5) A grand jury, circuit court or family court, upon a finding that information in the records
14 is necessary for the determination of an issue before the grand jury, circuit court or family court.

15 (d) In the event of a child fatality or near fatality due to child abuse and neglect, information
16 relating to a fatality or near fatality shall be made public by the Department of Health and Human
17 Resources and to the entities described in subsection (c) of this section, all under the circumstances
18 described in that subsection. However, information released by the Department of Health and Human
19 Resources pursuant to this subsection may not include the identity of a person reporting or making
20 a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any
21 medical condition of the child which is certified by the attending physician to be life threatening.

1 (e) Except in juvenile proceedings which are transferred to criminal proceedings,
2 law-enforcement records and files concerning a child or juvenile shall be kept separate from the
3 records and files of adults and not included within the court files. Law-enforcement records and files
4 concerning a child or juvenile shall only be open to inspection pursuant to section one hundred three
5 of this article.

6 (f) Any person who willfully violates this section is guilty of a misdemeanor and, upon
7 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months,
8 or both fined and confined. A person convicted of violating this section is also liable for damages
9 in the amount of \$300 or actual damages, whichever is greater.

10 (g) Notwithstanding the provisions of this section, or any other provision of this code to the
11 contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious
12 crime shall be made available to the public;

13 (h)(1) Notwithstanding the provisions of this section, or any other provision of this code to
14 the contrary, the Division of Juvenile Services may provide access to and the confidential use of a
15 treatment plan, court records or other records of a juvenile to an agency in another state which:

16 (A) Performs the same functions in that state that are performed by the Division of Juvenile
17 Services in this state;

18 (B) Has a reciprocal agreement with this state; and

19 (C) Has legal custody of the juvenile.

20 (2) A record which is shared under this subsection may only provide information which is
21 relevant to the supervision, care, custody and treatment of the juvenile.

1 (3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with
2 other states and to propose rules for legislative approval in accordance with article three, chapter
3 twenty-nine-a of this code to implement this subsection.

4 (4) Other than the authorization explicitly given in this subsection, this subsection may not
5 be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

6 **§49-5-102. Preservation of records.**

7 The proceedings, records, reports, case histories, and all other papers or documents of or
8 received by the state department in the administration of this chapter shall be filed of record and
9 preserved.

10 **§49-5-103. Confidentiality of juvenile records; permissible disclosures; conditions; penalties;**
11 **damages.**

12 (a) Any findings or orders of the court in a juvenile proceeding shall be known as the
13 “juvenile record” and shall be maintained by the clerk of the court.

14 (b) Records of a juvenile proceeding conducted under this chapter are not public records and
15 shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

16 (c) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile's
17 records shall automatically be disclosed to certain school officials, subject to the following terms and
18 conditions:

19 (1) Only the records of certain juveniles shall be disclosed. These include, and are limited
20 to, cases in which:

21 (A) The juvenile has been charged with an offense which:

- 1 (i) Involves violence against another person;
- 2 (ii) Involves possession of a dangerous or deadly weapon; or
- 3 (iii) Involves possession or delivery of a controlled substance as that term is defined in
- 4 section one hundred one, article one, chapter sixty-a of this code; and

5 (B) The juvenile's case has proceeded to a point where one or more of the following has
6 occurred:

7 (i) A circuit court judge or magistrate has determined that there is probable cause to believe
8 that the juvenile committed the offense as charged;

9 (ii) A circuit court judge or magistrate has placed the juvenile on probation for the offense;

10 (iii) A circuit court judge or magistrate has placed the juvenile into an pre-adjudicatory
11 community supervision period in accordance with section seven hundred eight, article four of this
12 chapter; or

13 (iv) Some other type of disposition has been made of the case other than dismissal.

14 (2) The circuit court for each judicial circuit in West Virginia shall designate one person to
15 supervise the disclosure of juvenile records to certain school officials;

16 (3) If the juvenile attends a West Virginia public school, the person designated by the circuit
17 court shall automatically disclose all records of the juvenile's case to the county superintendent of
18 schools in the county in which the juvenile attends school and to the principal of the school which
19 the juvenile attends, subject to the following:

20 (A) At a minimum, the records shall disclose the following information:

21 (i) Copies of the arrest report;

1 (ii) Copies of all investigations;

2 (iii) Copies of any psychological test results and any mental health records;

3 (iv) Copies of any evaluation reports for probation or facility placement; and

4 (v) Any other material that would alert the school to potential danger that the juvenile may
5 pose to himself, herself or others;

6 (B) The disclosure of the juvenile's psychological test results and any mental health records
7 may only be made in accordance with subdivision (14) of this subsection;

8 (C) If the disclosure of any record to be automatically disclosed under this section is
9 restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996, PL
10 104-191, and any amendments and regulations under the act, the person designated by the circuit
11 court shall provide the superintendent and principal any notice of the existence of the record that is
12 permissible under the act and, if applicable, any action that is required to obtain the record; and

13 (D) When multiple disclosures are required by this subsection, the person designated by the
14 circuit court is required to disclose only material in the juvenile record that had not previously been
15 disclosed to the county superintendent and the principal of the school which the juvenile attends.

16 (4) If the juvenile attends a private school in West Virginia, the person designated by the
17 circuit court shall determine the identity of the highest ranking person at that school and shall
18 automatically disclose all records of a juvenile's case to that person.

19 (5) If the juvenile does not attend school at the time the juvenile's case is pending, the person
20 designated by the circuit court may not transmit the juvenile's records to any school. However, the
21 person designated by the circuit court shall transmit the juvenile's records to any school in West

1 Virginia which the juvenile subsequently attends.

2 (6) The person designated by the circuit court may not automatically transmit juvenile records
3 to a school which is not located in West Virginia. Instead, the person designated by the circuit court
4 shall contact the out-of-state school, inform it that juvenile records exist and make an inquiry
5 regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person
6 designated by the circuit court shall consult with the circuit judge who presided over the case to
7 determine whether the juvenile records should be disclosed to the out-of-state school. The circuit
8 judge has discretion in determining whether to disclose the juvenile records and shall consider
9 whether the other state's law regarding disclosure provides for sufficient confidentiality of juvenile
10 records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed,
11 they shall be disclosed in accordance with subdivision (7) of this subsection.

12 (7) The person designated by the circuit court shall transmit the juvenile's records to the
13 appropriate school official under cover of a letter emphasizing the confidentiality of those records
14 and directing the official to consult this section of the code. A copy of this section of the code shall
15 be transmitted with the juvenile's records and cover letter.

16 (8) Juvenile records are absolutely confidential by the school official to whom they are
17 transmitted, and nothing contained within the juvenile's records may be noted on the juvenile's
18 permanent educational record. The juvenile records are to be maintained in a secure location and are
19 not to be copied under any circumstances. However, the principal of a school to whom the records
20 are transmitted shall have the duty to disclose the contents of those records to any teacher who
21 teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in

1 which the subject juvenile is regularly transported to or from school, except that the disclosure of
2 the juvenile's psychological test results and any mental health records may only be made in
3 accordance with subdivision (14) of this subsection. Furthermore, any school official to whom the
4 juvenile's records are transmitted may disclose the contents of those records to any adult within the
5 school system who, in the discretion of the school official, has the need to be aware of the contents
6 of those records.

7 (9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's
8 records, the appropriate official at that school shall seal the records and return them to the circuit
9 court which sent them to that school. If the juvenile has changed schools for any reason, the former
10 school shall inform the circuit court of the name and location of the new school which the juvenile
11 attends or will be attending. If the new school is located within West Virginia, the person designated
12 by the circuit court shall forward the juvenile's records to the juvenile's new school in the same
13 manner as provided in subdivision (7) of this subsection. If the new school is not located within West
14 Virginia, the person designated by the circuit court shall handle the juvenile records in accordance
15 with subdivision (6) of this subsection.

16 If the juvenile has been found not guilty of an offense for which records were previously
17 forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit court may
18 not forward those records to the juvenile's new school. However, this does not affect records related
19 to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be
20 attending another school, the circuit court shall retain the juvenile's records and handle them as
21 otherwise provided in this article.

1 (10) Under no circumstances may one school transmit a juvenile's records to another school.

2 (11) Under no circumstances may juvenile records be automatically transmitted to a college,
3 university or other post-secondary school.

4 (12) No one may suffer any penalty, civil or criminal, for accidentally or negligently
5 attributing certain juvenile records to the wrong person. However, that person has the affirmative
6 duty to promptly correct any mistake that he or she has made in disclosing juvenile records when the
7 mistake is brought to his or her attention. A person who intentionally attributes false information to
8 a certain person shall be subjected to both criminal and civil penalties in accordance with subsection
9 (e) of this section.

10 (13) If a circuit court judge or magistrate has determined that there is probable cause to
11 believe that a juvenile has committed an offense but there has been no final adjudication of the
12 charge, the records which are transmitted by the circuit court shall be accompanied by a notice which
13 clearly states in bold print that there has been no determination of delinquency and that our legal
14 system requires a presumption of innocence.

15 (14) The county superintendent shall designate the school psychologist or psychologists to
16 receive the juvenile's psychological test results and any mental health records. The psychologist
17 designated shall review the juvenile's psychological test results and any mental health records and,
18 in the psychologist's professional judgment, may disclose to the principal of the school that the
19 juvenile attends and other school employees who would have a need to know the psychological test
20 results, mental health records and any behavior that may trigger violence or other disruptive behavior
21 by the juvenile. Other school employees include, but are not limited to, any teacher who teaches a

1 class in which the subject juvenile is enrolled and the regular driver of a school bus in which the
2 subject juvenile is regularly transported to or from school.

3 (c) Notwithstanding the provisions of subsection (a) of this section, juvenile records may be
4 disclosed, subject to the following terms and conditions:

5 (1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant
6 to subsection (c) or (d), section seven hundred ten, article four of this chapter, the juvenile records
7 are open to public inspection.

8 (2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant
9 to subsection (e), (f) or (g), section seven hundred ten, article four of this chapter, the juvenile
10 records are open to public inspection only if the juvenile fails to file a timely appeal of the transfer
11 order, or the Supreme Court of Appeals refuses to hear or denies an appeal which has been timely
12 filed.

13 (3) If a juvenile is fourteen years of age or older and a court has determined there is a
14 probable cause to believe the juvenile committed an offense set forth in subsection (g), section seven
15 hundred ten of article four of this chapter, but the case is not transferred to criminal jurisdiction, the
16 juvenile records are open to public inspection pending trial only if the juvenile is released on bond
17 and no longer detained or adjudicated delinquent of the offense.

18 (4) If a juvenile is younger than fourteen years of age and a court has determined there is
19 probable cause to believe that the juvenile committed the crime of murder under section one, two
20 or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree
21 under section three, article eight-b of chapter sixty-one, but the case is not transferred to criminal

1 jurisdiction, the juvenile records are open to public inspection pending trial only if the juvenile is
2 released on bond and no longer detained or adjudicated delinquent of the offense.

3 (5) Upon a written petition and pursuant to a written order, the circuit court may permit
4 disclosure of juvenile records to:

5 (A) A court, in this state or another state, which has juvenile jurisdiction and has the juvenile
6 before it in a juvenile proceeding;

7 (B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile
8 which requests records for the purpose of a presentence report or disposition proceeding;

9 (C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

10 (D) The officials of a public institution to which the juvenile is committed if they require
11 those records for transfer, parole or discharge; or

12 (E) A person who is conducting research. However, juvenile records may be disclosed for
13 research purposes only upon the condition that information which would identify the subject juvenile
14 or the juvenile's family may not be disclosed.

15 (6) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or
16 copies made available, to a probation officer upon his or her request. Any probation officer may
17 access relevant juvenile case information contained in any electronic database maintained by or for
18 the Supreme Court of Appeals and share it with any other probation officer.

19 (7) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or
20 copies made available, in response to any lawfully issued subpoena from a federal court or federal
21 agency.

1 (d) Any records open to public inspection pursuant to this section are subject to the same
2 requirements governing the disclosure of adult criminal records.

3 (e) Any person who willfully violates this section is guilty of a misdemeanor and, upon
4 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months, or
5 both fined and confined. A person who violates this section is also liable for damages in the amount
6 of \$300 or actual damages, whichever is greater.

7 **§49-5-104. Confidentiality of juvenile records for children who become of age while a ward
8 of the state or who have been transferred to adult criminal jurisdiction;
9 separate and secure location; penalties; damages.**

10 (a) One year after the juvenile's eighteenth birthday, or one year after personal or juvenile
11 jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under
12 this chapter, including, but not limited to, law-enforcement files and records, may be kept in a
13 separate secure confidential place and the records may not be inspected except by order of the circuit
14 court.

15 (b) The records of a juvenile proceeding in which a juvenile was transferred to criminal
16 jurisdiction pursuant to section seven hundred ten, article four of this chapter shall be kept in a
17 separate secure confidential place and the records may not be inspected except by order of the circuit
18 court if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense
19 upon which the waiver or order of transfer was based, or if the offense upon which the waiver or
20 order of transfer was based is subsequently dismissed.

21 (c) To keep the confidentiality of juvenile records, they shall be returned to the circuit court

1 in which the case was pending and be kept in a separate confidential file. The records shall be
2 physically marked to show that they are to remain confidential and shall be securely kept and filed
3 in a manner so that no one can have access to determine the identity of the juvenile, except upon
4 order of the circuit court.

5 (d) Marking the juvenile records to show they are to remain confidential has the legal effect
6 of extinguishing the offense as if it never occurred.

7 (e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court
8 pursuant to subdivision (1), subsection (d), section seven hundred ten, article four of this chapter may
9 not be marked and kept as confidential.

10 (f) Any person who willfully violates this section is guilty of a misdemeanor and, upon
11 conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than six
12 months, or both so fined and confined, and is liable for damages in the amount of \$300 or actual
13 damages, whichever is greater.

14 **§49-5-105. Juvenile justice database; individual records confidential.**

15 The West Virginia Supreme Court of Appeals is responsible for collecting, compiling and
16 disseminating information in the juvenile justice database. Notwithstanding any other provision of
17 this code to the contrary, the court shall grant the Division of Justice and Community Services access
18 to confidential juvenile records for the limited purpose of the collection and analysis of statistical
19 data. However, the division shall keep the records confidential and not publish any information that
20 would identify any individual juvenile.

21 **ARTICLE 6. MISSING CHILDREN INFORMATION ACT.**

1 **§49-6-101. Clearinghouse function; State Police requirements; rule-making.**

2 (a) The Missing Children Information Clearinghouse is established under the West Virginia
3 State Police. The State Police:

4 (1) Shall provide for the administration of the clearinghouse; and

5 (2) May promulgate rules in accordance with article three, chapter twenty-nine-a of this code
6 to carry out the provisions of this article.

7 (b) The clearinghouse is a central repository of information on missing children and shall be
8 used by all law-enforcement agencies in this state.

9 (c) The clearinghouse shall:

10 (1) Establish a system of intrastate communication of information relating to missing
11 children;

12 (2) Provide a centralized file for the exchange of information on missing children and
13 unidentified bodies of children within the state;

14 (3) Communicate with the National Crime Information Center for the exchange of
15 information on missing children suspected of interstate travel;

16 (4) Collect, process, maintain and disseminate accurate and complete information on missing
17 children;

18 (5) Provide a statewide toll-free telephone line for the reporting of missing children and for
19 receiving information on missing children;

20 (6) Disseminate to custodians, law-enforcement agencies, the state Department of Education,
21 the Bureau for Children and Families and the general public information that explains how to prevent

1 child abduction and what to do if a child becomes missing;

2 (7) Compile statistics relating to the incidence of missing children within the state;

3 (8) Provide training materials and technical assistance to law-enforcement agencies and
4 social services agencies pertaining to missing children; and

5 (9) Establish a media protocol for disseminating information pertaining to missing children.

6 (d) The clearinghouse shall print and distribute posters, flyers and other forms of information
7 containing descriptions of missing children.

8 (e) The State Police may accept public or private grants, gifts and donations to assist in
9 carrying out the provisions of this article.

10 **§49-6-102. State Department of Education; missing children program; rule-making.**

11 (a) The State Department of Education shall develop and administer a program for the
12 location of missing children who may be enrolled in the West Virginia school system, including
13 private schools, and for the reporting of children who may be missing or who may be unlawfully
14 removed from schools.

15 (b) The program shall include the use of information received from the clearinghouse and
16 shall be coordinated with the operations of the clearinghouse.

17 (c) The State Board of Education may promulgate rules in accordance with article three,
18 chapter twenty-nine-a of this code for the operation of the program and shall require the participation
19 of all school districts and state-accredited private schools in this state.

20 **§49-6-103. Information to clearinghouse.**

21 Every law-enforcement agency in West Virginia shall provide to the clearinghouse any

1 information the law-enforcement agency has that would assist in locating or identifying a missing
2 child.

3 **§49-6-104. Custodian request for information.**

4 (a) Upon written request made to a law-enforcement agency by the custodian of a missing
5 child, the law-enforcement agency shall request from the clearinghouse information concerning the
6 child that may aid the custodian in locating or identifying the child.

7 (b) A law-enforcement agency to which a request has been made pursuant to subsection (a)
8 of this section shall report to the custodian on the results of its inquiry within fourteen calendar days
9 after the day the written request is received by the law-enforcement agency.

10 **§49-6-105. Missing child report forms; where filed.**

11 (a) The clearinghouse shall distribute missing child report forms to law-enforcement agencies
12 in the state.

13 (b) A missing child report may be made to a law-enforcement agency in person or by
14 telephone or other indirect method of communication and the person taking the report may enter the
15 information on the form for the reporter. A missing child report form may be completed by the
16 reporter and delivered to a law-enforcement office.

17 (c) A copy of the missing child report form shall be filed with the clearinghouse.

18 **§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.**

19 (a) A law-enforcement agency, upon receiving a missing child report, shall:

20 (1) Immediately start an investigation to determine the present location of the child if it
21 determines that the child is in danger; and

1 (2) Enter the name of the missing child into the clearinghouse and the national crime
2 information center missing person file if the child meets the center's criteria, with all available
3 identifying features, including dental records, fingerprints, other physical characteristics and a
4 description of the clothing worn when the missing child was last seen.

5 (b) Information not immediately available shall be obtained as soon as possible by the
6 law-enforcement agency and entered into the clearinghouse and the national crime information center
7 file as a supplement to the original entry.

8 (c) All West Virginia law-enforcement agencies shall enter information about all unidentified
9 bodies of children found in their jurisdiction into the clearinghouse and the national crime
10 information center unidentified person file, including all available identifying features of the body
11 and a description of the clothing found on the body. If an information entry into the national crime
12 information center file results in an automatic entry of the information into the clearinghouse,
13 the law-enforcement agency is not required to make a direct entry of that information into the
14 clearinghouse.

15 **§49-6-107. Release of dental records; cause shown; immunity.**

16 (a) At the time a missing child report is made, the law-enforcement agency to which the
17 missing child report is given may, when feasible and appropriate, provide a dental record release
18 form to the parent, custodian, health care surrogate or other legal entity authorized to release the
19 dental records of the missing child. The law-enforcement agency shall endorse the dental record
20 release form with a notation that a missing child report has been made in compliance with this
21 article. When the dental record release form is properly completed by the parent, custodian, health

1 care surrogate or other legal entity authorized to release the dental records of the missing child and
2 contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release
3 dental records relating to the missing child to the law-enforcement agency.

4 (b) A circuit court judge may for good cause shown authorize the release of dental records
5 of a missing child to a law-enforcement agency.

6 (c) A law-enforcement agency which receives dental records under subsection (a) or (b) of
7 this section shall send the dental records to the clearinghouse.

8 (d) A dentist or physician who releases dental records to a person presenting a proper release
9 executed or ordered pursuant to this section is immune from civil liability or criminal prosecution
10 for the release of the dental records.

11 **§49-6-108. Cross-checking and matching.**

12 (a) The clearinghouse shall, in accordance with national crime information center policies
13 and procedures, cross-check and attempt to match unidentified bodies with descriptions of missing
14 children. When the clearinghouse discovers a possible match between an unidentified body and a
15 missing child description, the clearinghouse shall notify the appropriate law-enforcement agencies.

16 (b) A law-enforcement agency that receives notice of a possible match shall make
17 arrangements for positive identification. If a positive identification is made, the law-enforcement
18 agency shall complete and close the investigation with notification to the clearinghouse.

19 **§49-6-109. Interagency cooperation.**

20 (a) State agencies and public and private schools shall cooperate with a law-enforcement
21 agency that is investigating a missing child report and shall furnish any information, including

1 confidential information, that will assist the law-enforcement agency in completing the investigation.

2 (b) Information provided by a state agency or a public or private school may not be released
3 to any person outside the law-enforcement agency or the clearinghouse, except as provided by rules
4 of the West Virginia State Police.

5 **§49-6-110. Confidentiality of records; rule-making; requirements.**

6 (a) The State Police shall promulgate rules according to article three, chapter twenty-nine-a
7 of this code to provide for the classification of information and records as confidential that:

8 (1) Are otherwise confidential under state or federal law or rules promulgated pursuant to
9 state or federal law;

10 (2) Are related to the investigation by a law-enforcement agency of a missing child or an
11 unidentified body, if the State Police, in consultation with the law-enforcement agency, determines
12 that release of the information would be deleterious to the investigation;

13 (3) Are records or notations that the clearinghouse maintains for internal use in matters
14 relating to missing children and unidentified bodies and the State Police determines that release of
15 the internal documents might interfere with an investigation by a law-enforcement agency in West
16 Virginia or any other jurisdiction; or

17 (4) Are records or information that the State Police determines might interfere with an
18 investigation or otherwise harm a child or custodian.

19 (b) The rules may provide for the sharing of confidential information with the custodian of
20 the missing child.

21 **§49-6-111. Attorney general to require compliance.**

1 The Attorney General shall require each law-enforcement agency to comply with the
2 provisions of the Missing Children Information Act and may seek writs of mandamus or other
3 appropriate remedies to enforce this article.

4 **§49-6-112. Agencies to receive report; law-enforcement agency requirements.**

5 (a) Upon completion of the missing child report the law-enforcement agency shall
6 immediately forward the contents of the report to the missing children information clearinghouse and
7 the national crime information center's missing person file. However, if an information entry into
8 the national crime information center file results in an automatic entry of the information into the
9 clearinghouse, the law-enforcement agency is not required to make a direct entry of that information
10 into the clearinghouse.

11 (b) Within fifteen days after completion of the report, if the child is less than thirteen years
12 of age the law-enforcement agency may, when appropriate, forward the contents of the report to the
13 last:

14 (1) Child care center or child care home in which the child was enrolled; or

15 (2) School the child attended in West Virginia, if any.

16 (c) A law-enforcement agency involved in the investigation of a missing child shall:

17 (1) Update the initial report filed by the agency that received notification of the missing child
18 upon the discovery of new information concerning the investigation;

19 (2) Forward the updated report to the appropriate agencies and organizations;

20 (3) Search the national crime information center's wanted person file for reports of arrest
21 warrants issued for persons who allegedly abducted or unlawfully retained children and compare

1 these reports to the missing child's national crime information center's missing person file; and

2 (4) Notify all law-enforcement agencies involved in the investigation, the missing children
3 information clearinghouse, and the national crime information center when the missing child is
4 located.

5 **§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses;**
6 **appointment, duties and compensation of director; annual reports.**

7 (a) The Clearinghouse Advisory Council is continued as a body corporate and politic,
8 constituting a public corporation and government instrumentality. The council shall consist of
9 eleven members, who are knowledgeable about and interested in issues relating to missing or
10 exploited children, as follows:

11 (1) Six members to be appointed by the Governor, with the advice and consent of the Senate,
12 with not more than four belonging to the same political party, three being from different
13 congressional districts of the state and, as nearly as possible, providing broad state geographical
14 distribution of members of the council, and at least one representing a nonprofit organization
15 involved with preventing the abduction, runaway or exploitation of children or locating missing
16 children;

17 (2) The Secretary of the Department of Health and Human Resources or his or her designee;

18 (3) The Superintendent of the West Virginia State Police or his or her designee;

19 (4) The State Superintendent of Schools or his or her designee;

20 (5) The Director of the Criminal Justice and Highway Safety Division or his or her designee;

21 and

1 (6) The Commissioner of the Bureau for Children and Families or his or her designee.

2 (b) The Governor shall appoint the six council members for staggered terms. The terms of
3 the members first taking office on or after the effective date of this legislation shall expire as
4 designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any
5 appointed member whose term is expired shall serve until a successor has been duly appointed and
6 qualified. Any person appointed to fill a vacancy may serve only for the unexpired term. A member
7 is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the
8 same manner as the original appointment was made.

9 (c) Members of the council are not entitled to compensation for services performed as
10 members but are entitled to reimbursement for all reasonable and necessary expenses actually
11 incurred in the performance of their duties in a manner consistent with the guidelines of the Travel
12 Management Office of the Department of Administration.

13 (d) A majority of serving members constitutes a quorum for the purpose of conducting
14 business. The chair of the council shall be designated by the Governor from among the appointed
15 council members who represent nonprofit organizations involved with preventing the abduction,
16 runaway or exploitation of children or locating missing children. The term of the chair shall run
17 concurrently with his or her term of office as a member of the council. The council shall conduct
18 all meetings in accordance with the open governmental meetings law pursuant to article nine-a,
19 chapter six of this code.

20 (e) The employee of the West Virginia State Police who is primarily responsible for the
21 clearinghouse established by section one hundred and one of this article shall serve as the executive

1 director of the council. He or she shall receive no additional compensation for service as the
2 executive director of the council but shall be reimbursed for any reasonable and necessary expenses
3 actually incurred in the performance of his or her duties as executive director in a manner consistent
4 with the guidelines of the travel management office of the Department of Administration.

5 (f) The expenses of council members and the executive director shall be reimbursed from
6 funds provided by foundation grants, in-kind contributions or funds obtained pursuant to subsection
7 (b), section one hundred fifteen of this article.

8 (g) The executive director shall provide or obtain information necessary to support the
9 administrative work of the council and, to that end, may contract with one or more nonprofit
10 organizations or state agencies for research and administrative support.

11 (h) The executive director of the council shall be available to the Governor and to the
12 Speaker of the House of Delegates and the President of the Senate to analyze and comment upon
13 proposed legislation and rules which relate to or materially affect missing or exploited children.

14 (i) The council shall prepare and publish an annual report of its activities and
15 accomplishments and submit it to the Governor and to the Joint Committee on Government and
16 Finance on or before December 15 of each year.

17 **§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan**
18 **required to be provided to the Legislature.**

19 The council shall prepare a comprehensive strategic plan and recommendation of programs
20 in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation,
21 or any thereof, of children to locate missing children; advise the West Virginia State Police

1 regarding operation of the clearinghouse and its other responsibilities under this article; and
2 cooperate with and coordinate the efforts of state agencies and private organizations involved with
3 issues relating to missing or exploited children. The council may seek public and private grants,
4 contracts, matching funds and procurement arrangements from the state and federal government,
5 private industry and other agencies in furtherance of its mission and programs. An initial
6 comprehensive strategic plan that will support and foster efforts to prevent the abduction, runaway
7 and exploitation of children and to locate missing children shall be developed and provided to the
8 Governor, the Speaker of the House of Delegates and the President of the Senate no later than July
9 1, 2015, and shall include, but not be limited to, the following:

10 (1) Findings and determinations regarding the extent of the problem in this state related to:

11 (A) Abducted children; (B) runaway children; and (C) exploited children;

12 (2) Findings and determinations identifying the systems, both public and private, existing in
13 the state to prevent the abduction, runaway or exploitation of children and to locate missing children
14 and assessing the strengths and weaknesses of those systems and the clearinghouse;

15 (3) The inclusion of exploited children within the functions of the clearinghouse. For
16 purposes of this article, an exploited child is a person under the age of eighteen years who has been:

17 (A) Used in the production of pornography; (B) subjected to sexual exploitation or sexual offenses
18 under article eight-b, chapter sixty-one of this code; or (C) employed or exhibited in any injurious,
19 immoral or dangerous business or occupation in violation of sections five through eight, article eight,
20 chapter sixty-one of this code;

21 (4) Recommendations of legislative changes required to improve the effectiveness of the

1 clearinghouse and other efforts to prevent abduction, runaway or exploitation of children and to
2 locate missing children. Those recommendations shall consider the following:

3 (A) Interaction of the clearinghouse with child custody proceedings;

4 (B) Involvement of hospitals, child care centers and other private agencies in efforts to
5 prevent child abduction, runaway or exploitation and to locate missing children;

6 (C) Publication of a directory of and periodic reports regarding missing children;

7 (D) Required reporting by public and private agencies and penalties for failure to report and
8 false reporting;

9 (E) Removal of names from the list of missing children;

10 (F) Creating of an advocate for missing and exploited children;

11 (G) State funding for the clearinghouse and efforts to prevent the abduction, runaway and
12 exploitation of children and to locate missing children;

13 (H) Mandated involvement of state agencies, such as publication of information regarding
14 missing children in existing state publications and coordination with the state registrar of vital
15 statistics under section twelve, article five, chapter sixteen of this code; and

16 (I) Expanded requirement for boards of education to notify the clearinghouse in addition to
17 local law-enforcement agencies under section five-c, article two, chapter eighteen of this code or if
18 a birth certificate or school record received appears to be inaccurate or fraudulent and to receive
19 clearinghouse approval before releasing records;

20 (5) Methods that will coordinate and engender collaborative efforts among organizations
21 throughout the state, whether public or private, involved with missing or exploited children;

1 (6) Plans for the use of technology in the clearinghouse and other efforts related to missing
2 or exploited children;

3 (7) Compliance of the clearinghouse, state law and all rules promulgated pursuant thereto
4 with applicable federal law so as to enhance opportunities for receiving federal grants;

5 (8) Consultation with the State Board of Education and other agencies responsible for
6 promulgating rules under this article;

7 (9) Possible methods for identifying missing children prior to enrollment in a public or
8 nonpublic school;

9 (10) The feasibility and effectiveness of utilizing the federal parent locator service in locating
10 missing children; and

11 (11) Programs for voluntary fingerprinting.

12 **§49-6-115. Public-private partnerships; funding.**

13 (a) In furtherance of its mission, the clearinghouse council is authorized to enter into
14 contracts or joint venture agreements with federal and state agencies; with nonprofit corporations
15 organized pursuant to the corporate laws of this state or other jurisdictions that are qualified under
16 Section 501(c)(3) of the Internal Revenue Code; and with other organizations that conduct research,
17 make grants, improve educational programs and work for the prevention of missing or exploited
18 children and to locate missing children. All contracts and joint venture agreements must be
19 approved by a majority vote of the council. The council may also enter into contractual agreements
20 for consideration or recompense to it even though the entities are funded from sources other than the
21 state. Members of the council are not prohibited from sitting on the boards of directors of any

1 contracting private nonprofit corporation, foundation or firm. However, members of the council are
2 not exempt from chapter six-b of this code.

3 (b) The council shall solicit and is authorized to receive and accept gifts or grants from
4 private foundations, corporations, individuals, devises and bequests or from other lawful sources.
5 The funds shall be paid into a special account in the State Treasury for the use and benefit of the
6 council.

7 **ARTICLE 7. INTERSTATE COOPERATION.**

8 PART I. INTERSTATE COMPACT

9 ON THE PLACEMENT OF CHILDREN.

10 **§49-7-101. Adoption of compact.**

11 The interstate compact on the placement of children is hereby enacted into law and entered
12 into with all other jurisdictions legally joining therein in form substantially as follows:

13 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

14 ARTICLE I.

15 PURPOSE AND POLICY.

16 It is the purpose and policy of the party states to cooperate with each other in the interstate
17 placement of children to the end that:

18 (a) Each child requiring placement shall receive the maximum opportunity to be placed in
19 a suitable environment and with persons or institutions having appropriate qualifications and
20 facilities to provide a necessary and desirable degree and type of care.

21 (b) The appropriate authorities in a state where a child is to be placed may have full

1 opportunity to ascertain the circumstances of the proposed placement, thereby promoting full
2 compliance with applicable requirements for the protection of the child.

3 (c) The proper authorities of the state from which the placement is made may obtain the most
4 complete information on the basis of which to evaluate a projected placement before it is made.

5 (d) Appropriate jurisdictional arrangements for the care of children will be promoted.

6 ARTICLE II.

7 DEFINITIONS.

8 As used in this compact:

9 (a) "Child" means a person who, by reason of minority is legally subject to parental,
10 guardianship or similar control.

11 (b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a
12 party state, or officer or employee thereof; a court of a party state; a person, corporation, association,
13 charitable agency or other entity which sends, brings, or causes to be sent or brought any child to
14 another party state.

15 (c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent
16 or brought, whether by public authorities or private persons or agencies, and whether for placement
17 with state or local public authorities or for placement with private agencies or persons.

18 (d) "Placement" means the arrangement for the care of a child in a family free home or
19 boarding home or in a child-caring agency or institution but does not include any institution caring
20 for the mentally ill, mentally defective or epileptic or any institution primarily educational in
21 character, and any hospital or other medical facility.

1 ARTICLE III.

2 CONDITIONS FOR REPLACEMENT.

3 (a) No sending agency shall send, bring, or cause to be sent or brought into any other party
4 state any child for placement in foster care or as a preliminary to a possible adoption unless the
5 sending agency shall comply with each and every requirement set forth in this article and with the
6 applicable laws of the receiving state governing the placement of children therein.

7 (b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state
8 for placement in foster care or as a preliminary to a possible adoption, the sending agency shall
9 furnish the appropriate public authorities in the receiving state written notice of the intention to send,
10 bring, or place the child in the receiving state. The notice shall contain:

11 (1) The name, date and place of birth of the child.

12 (2) The identity and address or addresses of the parents or legal guardian.

13 (3) The name and address of the person, agency or institution to or with which the sending
14 agency proposes to send, bring, or place the child.

15 (4) A full statement of the reasons for the proposed action and evidence of the authority
16 pursuant to which the placement is proposed to be made.

17 (c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant
18 to paragraph (b) of this article may request of the sending agency, or any other appropriate officer
19 or agency of or in the sending agency's state, and shall be entitled to receive therefrom, the
20 supporting or additional information as it may deem necessary under the circumstances to carry out
21 the purpose and policy of this compact.

1 (d) The child shall not be sent, brought, or caused to be sent or brought into the receiving
2 state until the appropriate public authorities in the receiving state shall notify the sending agency,
3 in writing, to the effect that the proposed placement does not appear to be contrary to the interests
4 of the child.

5 ARTICLE IV.

6 PENALTY FOR ILLEGAL PLACEMENT.

7 The sending, bringing, or causing to be sent or brought into any receiving state of a child in
8 violation of the terms of this compact shall constitute a violation of the laws respecting the
9 placement of children of both the state in which the sending agency is located or from which it sends
10 or brings the child and of the receiving state. A violation may be punished or subjected to penalty
11 in either jurisdiction in accordance with its laws. In addition to liability for any punishment or
12 penalty, a violation shall constitute full and sufficient grounds for the suspension or revocation of
13 any license, permit, or other legal authorization held by the sending agency which empowers or
14 allows it to place, or care for children.

15 ARTICLE V.

16 RETENTION OF JURISDICTION.

17 (a) The sending agency shall retain jurisdiction over the child sufficient to determine all
18 matters in relation to the custody, supervision, care, treatment and disposition of the child which it
19 would have had if the child had remained in the sending agency's state, until the child is adopted,
20 reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate
21 authority in the receiving state. The jurisdiction shall also include the power to effect or cause the

1 return of the child or its transfer to another location and custody pursuant to law. The sending
2 agency shall continue to have financial responsibility for support and maintenance of the child during
3 the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a
4 receiving state sufficient to deal with an act of delinquency or crime committed therein.

5 (b) When the sending agency is a public agency, it may enter into an agreement with an
6 authorized public or private agency in the receiving state providing for the performance of one or
7 more services in respect of the case by the latter as agent for the sending agency.

8 (c) Nothing in this compact shall be construed to prevent a private charitable agency
9 authorized to place children in the receiving state from performing services or acting as agent in that
10 state for a private charitable agency of the sending state; nor to prevent the agency in the receiving
11 state from discharging financial responsibility for the support and maintenance of a child who has
12 been placed on behalf of the sending agency without relieving the responsibility set forth in
13 paragraph (a) hereof.

14 ARTICLE VI.

15 INSTITUTIONAL CARE OF DELINQUENT CHILDREN.

16 A child adjudicated delinquent may be placed in an institution in another party jurisdiction
17 pursuant to this compact but no placement shall be made unless the child is given a court hearing on
18 notice to the parent or guardian with opportunity to be heard, prior to his or her being sent to the
19 other party jurisdiction for institutional care and the court finds that:

- 20 1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- 21 2. Institutional care in the other jurisdiction is in the best interest of the child and will not

1 produce undue hardship.

2 ARTICLE VII.

3 COMPACT ADMINISTRATOR.

4 The executive head of each jurisdiction party to this compact shall designate an officer who
5 shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting
6 jointly with like officers of other party jurisdictions, shall have power to promulgate rules and
7 regulations to carry out more effectively the terms and provisions of this compact.

8 ARTICLE VIII.

9 LIMITATIONS.

10 This compact shall not apply to:

11 (a) The sending or bringing of a child into a receiving state by his or her parent, stepparent,
12 grandparent, adult brother or sister, adult uncle or aunt, or his or her guardian and leaving the child
13 with a relative or nonagency guardian in the receiving state.

14 (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other
15 interstate compact to which both the state from which the child is sent or brought and the receiving
16 state are party, or to any other agreement between the states which has the force of law.

17 ARTICLE IX.

18 ENACTMENT AND WITHDRAWAL.

19 This compact shall be open to joinder by any state, territory or possession of the United
20 States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of
21 Congress, the government of Canada or any province thereof. It shall become effective with respect

1 to those jurisdictions when that other jurisdiction has enacted the same into law. Withdrawal from
2 this compact shall be by the enactment of a statute repealing the same, but shall not take effect until
3 two years after the effective date of the statute and until written notice of the withdrawal has been
4 given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a
5 party state shall not affect the rights, duties and obligations under this compact of any sending agency
6 therein with respect to a placement made prior to the effective date of withdrawal.

7 ARTICLE X.

8 CONSTRUCTION.

9 The provisions of this compact shall be liberally construed to effectuate the purposes thereof.
10 The provisions of this compact shall be severable and if any phrase, clause, sentence or provision
11 of this compact is declared to be contrary to the Constitution of any party state or of the United States
12 or the applicability thereof to any government, agency, person or circumstance is held invalid, the
13 validity of the remainder of this compact and the applicability thereof to any government, agency,
14 person or circumstance shall not be affected thereby. If this compact shall be held contrary to the
15 Constitution of any state party thereto, the compact shall remain in full force and effect as to the
16 remaining states and in full force and effect as to the state affected as to all severable matters.

17 **§49-7-102. Definitions; implementation.**

18 (a) Financial responsibility for any child placed pursuant to the provisions of the Interstate
19 Compact on the Placement of Children shall be determined in accordance with the provisions of
20 Article V thereof in the first instance. However, in the event of partial or complete default of
21 performance thereunder, section one hundred one, article two of this chapter may be invoked.

1 (b) The "appropriate public authorities" as used in Article III of the Interstate Compact on
2 the Placement of Children shall, with reference to this state, mean the Department of Health and
3 Human Resources and the agency shall receive and act with reference to notices required by Article
4 III.

5 (c) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of
6 Children, the phrase "appropriate authority in the receiving state" with reference to this state shall
7 mean the Department of Health and Human Resources.

8 (d) The officers and agencies of this state and its subdivisions having authority to place
9 children are hereby empowered to enter into agreements with appropriate officers or agencies of or
10 in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the
11 Placement of Children. An agreement which contains a financial commitment or imposes a financial
12 obligation on this state or subdivision or agency thereof is not binding unless it has the approval in
13 writing of the Auditor in the case of the state and of the chief local fiscal officer in the case of a
14 subdivision of the state.

15 (e) Any requirements for visitation, inspection or supervision of children, homes, institutions
16 or other agencies in another party state which may apply under sections one hundred eight and one
17 hundred eleven, article two of this chapter shall be deemed to be met if performed pursuant to an
18 agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as
19 contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

20 (f) Section one hundred nine, article two of this chapter does not apply to placements made
21 pursuant to the Interstate Compact on the Placement of Children.

1 (g) Any court having jurisdiction to place delinquent children may place a child in an
2 institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement
3 of Children and shall retain jurisdiction as provided in Article V thereof.

4 (h) As used in Article VII of the interstate compact on the placement of children, the term
5 "executive head" means the Governor. The Governor is hereby authorized to appoint a compact
6 administrator in accordance with the terms of that Article VII.

7 PART II. INTERSTATE ADOPTION ASSISTANCE COMPACT.

8 **§49-7-201. Interstate adoption assistance compact; findings and purpose.**

9 (a) The Legislature finds that:

10 (1) Finding adoptive families for children, for whom state assistance is desirable pursuant
11 to section one hundred twelve, article four, of this chapter and assuring the protection of the interests
12 of the children affected during the entire assistance period, require special measures when the
13 adoptive parents move to other states or are residents of another state; and

14 (2) Provision of medical and other necessary services for children, with state assistance,
15 encounters special difficulties when the provision of services takes place in other states.

16 (b) The purposes of sections two hundred one through two hundred four of this article are
17 to:

18 (1) Authorize the Department of Health and Human Resources to enter into interstate
19 agreements with agencies of other states for the protection of children on behalf of whom adoption
20 assistance is being provided by the Department of Health and Human Resources; and

21 (2) Provide procedures for interstate children's adoption assistance payments, including

1 medical payments.

2 **§49-7-202. Interstate adoption assistance compacts authorized; definitions.**

3 (a) The Department of Health and Human Resources is authorized to develop, participate in
4 the development of, negotiate and enter into one or more interstate compacts on behalf of this state
5 with other states to implement one or more of the purposes set forth in sections two hundred one
6 through two hundred four of this article. When so entered into, and for so long as it shall remain in
7 force, the compact shall have the force and effect of law.

8 (b) For the purposes of sections two hundred one through two hundred four of this article,
9 the term "state" means a state of the United States, the District of Columbia, the Commonwealth of
10 Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a
11 Territory or Possession of or administered by the United States.

12 (c) For the purposes of sections two hundred one through two hundred four of this article,
13 the term "adoption assistance state" means the state that is signatory to an adoption assistance
14 agreement in a particular case.

15 (d) For the purposes of sections two hundred one through two hundred four of this article,
16 the term "residence state" means the state of which the child is a resident by virtue of the residence
17 of the adoptive parents.

18 **§49-7-203. Interstate adoption assistance compact; contents of compact.**

19 A compact entered into pursuant to the authority conferred by sections two hundred one
20 through two hundred four of this article shall have the following content:

21 (1) A provision making it available to joinder by all states.

1 (2) A provision or provisions for withdrawal from the compact upon written notice to the
2 parties, but with a period of one year between the date of the notice and the effective date of the
3 withdrawal.

4 (3) A requirement that the protections afforded by or pursuant to the compact continue in
5 force for the duration of the adoption assistance and be applicable to all children and their adoptive
6 parents who on the effective date of the withdrawal are receiving adoption assistance from a party
7 state other than the one in which they are resident and have their principal place of abode.

8 (4) A requirement that each instance of adoption assistance to which the compact applies be
9 covered by an adoption assistance agreement in writing between the adoptive parents and the state
10 department which undertakes to provide the adoption assistance, and further, that the agreement be
11 expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state
12 agency providing the adoption assistance.

13 (5) Other provisions as may be appropriate to implement the proper administration of the
14 compact.

15 **§49-7-204. Medical assistance for children with special needs; rule-making; penalties.**

16 (a) A child with special needs resident in this state who is the subject of an adoption
17 assistance agreement with another state shall be entitled to receive a medical assistance identification
18 from this state upon the filing in the Division of Human Services of a certified copy of the adoption
19 assistance agreement obtained from the adoption assistance state. In accordance with regulations
20 of the Department of Health and Human Resources the adoptive parents shall be required at least
21 annually to show that the agreement is still in force or has been renewed.

1 (b) The Department of Health and Human Resources shall consider the holder of a medical
2 assistance identification pursuant to this section as any other holder of a medical assistance
3 identification under the laws of this state and shall process and make payment on claims on account
4 of the holder in the same manner and pursuant to the same conditions and procedures as for other
5 recipients of medical assistance.

6 (c) The Department of Health and Human Resources shall provide coverage and benefits for
7 a child who is in another state and who is covered by an adoption assistance agreement made by the
8 Department of Health and Human Resources for the coverage or benefits, if any, not provided by the
9 residence state. To this end, the adoptive parents acting for the child may submit evidence of
10 payment for services or benefit amounts not payable in the residence state and shall be reimbursed
11 therefor. However, there may be no reimbursement for services or benefit amounts covered under
12 any insurance or other third party medical contract or arrangement held by the child or the adoptive
13 parents. The Department of Health and Human Resources shall propose rules in accordance with
14 article three, chapter twenty-nine-a of this code that are necessary to effectuate the requirements and
15 purposes of this section. The additional coverages and benefit amounts provided pursuant to this
16 section shall be for services to the cost of which there is no federal contribution, or which, if
17 federally aided, are not provided by the residence state. Among other things, the regulations shall
18 include procedures to be followed in obtaining prior approvals for services in those instances where
19 required for the assistance.

20 (d) Any person who submits a claim for payment or reimbursement for services or benefits
21 pursuant to this section or the making of any statement in connection therewith, which claim of

1 statement the maker knows or should know to be false, misleading or fraudulent is guilty of a felony
2 and, upon conviction, shall be fined not more than \$10,000, or incarcerated in a correctional facility
3 not more than two years, or both fined and incarcerated.

4 (e) This section applies only to medical assistance for children under adoption assistance
5 agreements from states that have entered into a compact with this state under which the other state
6 provides medical assistance to children with special needs under adoption assistance agreements
7 made by this state. All other children entitled to medical assistance pursuant to adoption assistance
8 agreements entered into by this state shall be eligible to receive it in accordance with the laws and
9 procedures applicable thereto.

10 PART III. INTERSTATE COMPACT FOR JUVENILES.

11 §49-7-301. Execution of interstate compact for juveniles.

12 The Governor of this state is authorized and directed to execute a compact on behalf of the
13 State of West Virginia with any state or states of the United States legally joining therein, and
14 substantially as follows:

15 INTERSTATE COMPACT FOR JUVENILES

16 ARTICLE I.

17 PURPOSE.

18 (a) The compacting states to this interstate compact recognize that each state is responsible
19 for the proper supervision or return of juveniles, delinquents and status offenders who are on
20 probation or parole and who have absconded, escaped or run away from supervision and control and
21 in so doing have endangered their own safety and the safety of others. The compacting states also

1 recognize that each state is responsible for the safe return of juveniles who have run away from home
2 and in doing so have left their state of residence. The compacting states also recognize that
3 Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and
4 encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

5 (b) It is the purpose of this compact, through means of joint and cooperative action among
6 the compacting states:

7 (1) To ensure that the adjudicated juveniles and status offenders subject to this compact are
8 provided adequate supervision and services in the receiving state as ordered by the adjudicating
9 judge or parole authority in the sending state;

10 (2) To ensure that the public safety interests of the citizens, including the victims of juvenile
11 offenders, in both the sending and receiving states are adequately protected;

12 (3) To return juveniles who have run away, absconded or escaped from supervision or control
13 or have been accused of an offense to the state requesting their return;

14 (4) To make contracts for the cooperative institutionalization in public facilities in member
15 states for delinquent youth needing special services;

16 (5) To provide for the effective tracking and supervision of juveniles;

17 (6) To equitably allocate the costs, benefits and obligations of the compacting states;

18 (7) To establish procedures to manage the movement between states of juvenile offenders
19 released to the community under the jurisdiction of courts, juvenile departments, or any other
20 criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

21 (8) To ensure immediate notice to jurisdictions where defined offenders are authorized to

1 travel or to relocate across state lines;

2 (9) To establish procedures to resolve pending charges (detainers) against juvenile offenders
3 prior to transfer or release to the community under the terms of this compact;

4 (10) To establish a system of uniform data collection on information pertaining to juveniles
5 subject to this compact that allows access by authorized juvenile justice and criminal justice officials,
6 and regular reporting of compact activities to heads of state executive, judicial, and legislative
7 branches and juvenile and criminal justice administrators;

8 (11) To monitor compliance with rules governing interstate movement of juveniles and
9 initiate interventions to address and correct noncompliance;

10 (12) To coordinate training and education regarding the regulation of interstate movement
11 of juveniles for officials involved in the activity; and

12 (13) To coordinate the implementation and operation of the compact with the interstate
13 compact for the placement of children, the interstate compact for adult offender supervision and
14 other compacts affecting juveniles, particularly in those cases where concurrent or overlapping
15 supervision issues arise.

16 (c) It is the policy of the compacting states that the activities conducted by the interstate
17 commission created herein are the formation of public policies and therefore are public business.
18 Furthermore, the compacting states shall cooperate and observe their individual and collective duties
19 and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this
20 compact. The provisions of this compact shall be reasonably and liberally construed to accomplish
21 the purposes and policies of the compact.

1 ARTICLE II.

2 DEFINITIONS.

3 As used in this compact, unless the context clearly requires a different construction:

4 (a) "Bylaws" means those bylaws established by the interstate commission for its governance,
5 or for directing or controlling its actions or conduct.

6 (b) "Compact administrator" means the individual in each compacting state appointed
7 pursuant to the terms of this compact, responsible for the administration and management of the
8 state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted
9 by the interstate commission and policies adopted by the state council under this compact.

10 (c) "Compacting state" means any state which has enacted the enabling legislation for this
11 compact.

12 (d) "Commissioner" means the voting representative of each compacting state appointed
13 pursuant to Article III of this compact.

14 (e) "Court" means any court having jurisdiction over delinquent, neglected, or dependent
15 children.

16 (f) "Deputy compact administrator" means the individual, if any, in each compacting state
17 appointed to act on behalf of a compact administrator pursuant to the terms of this compact
18 responsible for the administration and management of the state's supervision and transfer of juveniles
19 subject to the terms of this compact, the rules adopted by the interstate commission and policies
20 adopted by the state council under this compact.

21 (g) "Interstate commission" means the interstate commission for juveniles created by Article

1 III of this compact.

2 (h) "Juvenile" means any person defined as a juvenile in any member state or by the rules of
3 the interstate commission, including:

4 (1) Accused delinquent – a person charged with an offense that, if committed by an adult,
5 would be a criminal offense; (2) Adjudicated delinquent – a person found to have committed an
6 offense that, if committed by an adult, would be a criminal offense;

7 (3) Accused status offender – a person charged with an offense that would not be a criminal
8 offense if committed by an adult;

9 (4) Adjudicated status offender - a person found to have committed an offense that would
10 not be a criminal offense if committed by an adult; and

11 (i) Nonoffender – a person in need of supervision who has not been accused or adjudicated
12 a status offender or delinquent.

13 (j) "Noncompacting state" means any state which has not enacted the enabling legislation for
14 this compact.

15 (k) "Probation or parole" means any kind of supervision or conditional release of juveniles
16 authorized under the laws of the compacting states.

17 (l) "Rule" means a written statement by the interstate commission promulgated pursuant to
18 Article VI of this compact that is of general applicability, implements, interprets or prescribes a
19 policy or provision of the compact, or an organizational, procedural, or practice requirement of the
20 commission, and has the force and effect of statutory law in a compacting state, and includes the
21 amendment, repeal, or suspension of an existing rule.

1 (m) "State" means a state of the United States, the District of Columbia (or its designee), the
2 Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern
3 Marianas Islands.

4 ARTICLE III.

5 INTERSTATE COMMISSION FOR JUVENILES.

6 (a) The compacting states hereby create the "Interstate Commission for Juveniles." The
7 commission shall be a body corporate and joint agency of the compacting states. The commission
8 shall have all the responsibilities, powers and duties set forth herein, and the additional powers as
9 may be conferred upon it by subsequent action of the respective Legislatures of the compacting states
10 in accordance with the terms of this compact.

11 (b) The interstate commission shall consist of commissioners appointed by the appropriate
12 appointing authority in each state pursuant to the rules and requirements of each compacting state
13 and in consultation with the state council for interstate juvenile supervision created hereunder. The
14 commissioner shall be the compact administrator, deputy compact administrator or designee from
15 that state who shall serve on the interstate commission in the capacity under or pursuant to the
16 applicable law of the compacting state.

17 (c) In addition to the commissioners who are the voting representatives of each state, the
18 interstate commission shall include individuals who are not commissioners, but who are members
19 of interested organizations. The noncommissioner members must include a member of the national
20 organizations of Governors, legislators, state chief justices, attorneys general, interstate compact for
21 adult offender supervision, interstate compact for the placement of children, juvenile justice and

1 juvenile corrections officials, and crime victims. All noncommissioner members of the interstate
2 commission shall be ex officio (nonvoting) members. The interstate commission may provide in its
3 bylaws for the additional ex officio (nonvoting) members, including members of other national
4 organizations, in such numbers as shall be determined by the commission.

5 (d) Each compacting state represented at any meeting of the commission is entitled to one
6 vote. A majority of the compacting states shall constitute a quorum for the transaction of business,
7 unless a larger quorum is required by the bylaws of the interstate commission.

8 (e) The commission shall meet at least once each calendar year. The chairperson may call
9 additional meetings and, upon the request of a simple majority of the compacting states, shall call
10 additional meetings. Public notice shall be given of all meetings and meetings shall be open to the
11 public.

12 (f) The interstate commission shall establish an executive committee, which shall include
13 commission officers, members, and others as determined by the bylaws. The executive committee
14 shall have the power to act on behalf of the interstate commission during periods when the interstate
15 commission is not in session, with the exception of rule making and/or amendment to the compact.
16 The executive committee shall oversee the day-to-day activities of the administration of the compact
17 managed by an executive director and interstate commission staff; administers enforcement and
18 compliance with the provisions of the compact, its bylaws and rules, and performs other duties as
19 directed by the interstate commission or set forth in the bylaws.

20 (g) Each member of the interstate commission shall have the right and power to cast a vote
21 to which that compacting state is entitled and to participate in the business and affairs of the

1 interstate commission. A member shall vote in person and shall not delegate a vote to another
2 compacting state. However, a commissioner, in consultation with the state council, shall appoint
3 another authorized representative, in the absence of the commissioner from that state, to cast a vote
4 on behalf of the compacting state at a specified meeting. The bylaws may provide for members'
5 participation in meetings by telephone or other means of telecommunication or electronic
6 communication.

7 (h) The interstate commission's bylaws shall establish conditions and procedures under
8 which the interstate commission shall make its information and official records available to the
9 public for inspection or copying. The interstate commission may exempt from disclosure any
10 information or official records to the extent they would adversely affect personal privacy rights or
11 proprietary interests.

12 (i) Public notice shall be given of all meetings and all meetings shall be open to the public,
13 except as set forth in the rules or as otherwise provided in the compact. The interstate commission
14 and any of its committees may close a meeting to the public where it determines by two-thirds vote
15 that an open meeting would be likely to:

16 (1) Relate solely to the interstate commission's internal personnel practices and procedures;

17 (2) Disclose matters specifically exempted from disclosure by statute;

18 (3) Disclose trade secrets or commercial or financial information which is privileged or
19 confidential;

20 (4) Involve accusing any person of a crime, or formally censuring any person;

21 (5) Disclose information of a personal nature where disclosure would constitute a clearly

1 unwarranted invasion of personal privacy;

2 (6) Disclose investigative records compiled for law-enforcement purposes;

3 (7) Disclose information contained in or related to examination, operating or condition
4 reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a
5 regulated person or entity for the purpose of regulation or supervision of the person or entity;

6 (8) Disclose information, the premature disclosure of which would significantly endanger the
7 stability of a regulated person or entity; or

8 (9) Specifically relate to the interstate commission's issuance of a subpoena, or its
9 participation in a civil action or other legal proceeding.

10 (j) For every meeting closed pursuant to subsection (i) of this section, the interstate
11 commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may
12 be closed to the public, and shall reference each relevant exemptive provision. The interstate
13 commission shall keep minutes which shall fully and clearly describe all matters discussed in any
14 meeting and shall provide a full and accurate summary of any actions taken, and the reasons
15 therefore, including a description of each of the views expressed on any item and the record of any
16 roll call vote (reflected in the vote of each member on the question). All documents considered in
17 connection with any action shall be identified in the minutes.

18 (k) The interstate commission shall collect standardized data concerning the interstate
19 movement of juveniles as directed through its rules which shall specify the data to be collected, the
20 means of collection and data exchange and reporting requirements. The methods of data collection,
21 exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and

1 coordinate its information functions with the appropriate repository of records.

2 ARTICLE IV.

3 POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

4 The interstate commission shall have the following powers and duties:

5 (a) To provide for dispute resolution among compacting states.

6 (b) To promulgate rules to effect the purposes and obligations as enumerated in this compact,
7 which shall have the force and effect of statutory law and shall be binding in the compacting states
8 to the extent and in the manner provided in this compact.

9 (c) To oversee, supervise and coordinate the interstate movement of juveniles subject to the
10 terms of this compact and any bylaws adopted and rules promulgated by the interstate commission.

11 (d) To enforce compliance with the compact provisions, the rules promulgated by the
12 interstate commission, and the bylaws, using all necessary and proper means, including, but not
13 limited to, the use of judicial process.

14 (e) To establish and maintain offices which shall be located within one or more of the
15 compacting states.

16 (f) To purchase and maintain insurance and bonds.

17 (g) To borrow, accept, hire or contract for services of personnel.

18 (h) To establish and appoint committees and hire staff which it deems necessary for the
19 carrying out of its functions including, but not limited to, an executive committee as required by
20 Article III which shall have the power to act on behalf of the interstate commission in carrying out
21 its powers and duties hereunder.

1 (i) To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their
2 compensation, define their duties and determine their qualifications.

3 (j) To establish the interstate commission's personnel policies and programs relating to, inter
4 alia, conflicts of interest, rates of compensation, and qualifications of personnel.

5 (k) To accept any and all donations and grants of money, equipment, supplies, materials, and
6 services, and to receive, utilize, and dispose of it.

7 (l) To lease, purchase, accept contributions or donations of, or otherwise to own, hold,
8 improve or use any property, real, personal, or mixed.

9 (m) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
10 property, real, personal or mixed.

11 (n) To establish a budget and make expenditures and levy dues as provided in Article VIII
12 of this compact.

13 (o) To sue and be sued.

14 (p) To adopt a seal and bylaws governing the management and operation of the interstate
15 commission.

16 (q) To perform functions as may be necessary or appropriate to achieve the purposes of this
17 compact.

18 (r) To report annually to the Legislatures, Governors, judiciary, and state councils of the
19 compacting states concerning the activities of the interstate commission during the preceding year.
20 Reports shall also include any recommendations that may have been adopted by the interstate
21 commission.

1 (s) To coordinate education, training and public awareness regarding the interstate movement
2 of juveniles for officials involved in the activity.

3 (t) To establish uniform standards of the reporting, collecting and exchanging of data.

4 (u) The interstate commission shall maintain its corporate books and records in accordance
5 with the bylaws.

6 ARTICLE V.

7 ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

8 Section A. Bylaws.

9 (a) The interstate commission shall, by a majority of the members present and voting, within
10 twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as
11 may be necessary or appropriate to carry out the purposes of the compact, including, but not limited
12 to:

13 (1) Establishing the fiscal year of the interstate commission;

14 (2) Establish an executive committee and the other committees as may be necessary to;

15 (3) Provide for the establishment of committees governing any general or specific delegation
16 of any authority or function of the interstate commission;

17 (4) Provide reasonable procedures for calling and conducting meetings of the interstate
18 commission, and ensure reasonable notice of each meeting;

19 (5) Establish the titles and responsibilities of the officers of the interstate commission;

20 (6) Provide a mechanism for concluding the operations of the interstate commission and the
21 return of any surplus funds that may exist upon the termination of the compact after the payment

1 and/or reserving of all of its debts and obligations.

2 (7) Providing "start-up" rules for initial administration of the compact; and

3 (8) Establish standards and procedures for compliance and technical assistance in carrying
4 out the compact.

5 Section B. Officers and Staff.

6 (b) (1) The interstate commission shall, by a majority of the members, elect annually from
7 among its members a chairperson and a vice chairperson, each of whom shall have the authority and
8 duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or
9 disability, the vice-chairperson shall preside at all meetings of the interstate commission. The
10 officers so elected shall serve without compensation or remuneration from the interstate commission;
11 provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any
12 ordinary and necessary costs and expenses incurred by them in the performance of their duties and
13 responsibilities as officers of the interstate commission.

14 (2) The interstate commission shall, through its executive committee, appoint or retain an
15 executive director for such period, upon terms and conditions and compensation as the interstate
16 commission may deem appropriate. The executive director shall serve as secretary to the interstate
17 commission, but shall not be a member and shall hire and supervise other staff as may be authorized
18 by the interstate commission.

19 Section C. Qualified Immunity, Defense and Indemnification.

20 (c)(1) The commission's executive director and employees shall be immune from suit and
21 liability, either personally or in their official capacity, for any claim for damage to or loss of property

1 or personal injury or other civil liability caused or arising out of or relating to any actual or alleged
2 act, error, or omission that occurred, or that such person had a reasonable basis for believing
3 occurred within the scope of commission employment, duties, or responsibilities; provided, that any
4 such person shall not be protected from suit or liability for any damage, loss, injury, or liability
5 caused by the intentional or willful and wanton misconduct of any such person.

6 (2) The liability of any commissioner, or the employee or agent of a commissioner, acting
7 within the scope of a person's employment or duties for acts, errors, or omissions occurring within
8 such person's state may not exceed the limits of liability set forth under the Constitution and laws
9 of that state for state officials, employees, and agents. Nothing in this subsection shall be construed
10 to protect a person from suit or liability for any damage, loss, injury, or liability caused by the
11 intentional or willful and wanton misconduct of a person.

12 (3) The interstate commission shall defend the executive director or the employees or
13 representatives of the interstate commission and, subject to the approval of the Attorney General of
14 the state represented by any commissioner of a compacting state, shall defend the commissioner or
15 the commissioner's representatives or employees in any civil action seeking to impose liability
16 arising out of any actual or alleged act, error or omission that occurred within the scope of interstate
17 commission employment, duties or responsibilities, or that the defendant had a reasonable basis for
18 believing occurred within the scope of interstate commission employment, duties, or responsibilities,
19 provided that the actual or alleged act, error, or omission did not result from intentional or willful
20 and wanton misconduct on the part of such person.

21 (4) The interstate commission shall indemnify and hold the commissioner of a compacting

1 state, or the commissioner's representatives or employees, or the interstate commission's
2 representatives or employees, harmless in the amount of any settlement or judgment obtained against
3 such persons arising out of any actual or alleged act, error, or omission that occurred within the scope
4 of interstate commission employment, duties, or responsibilities, or that such persons had a
5 reasonable basis for believing occurred within the scope of interstate commission employment,
6 duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result
7 from intentional or willful and wanton misconduct on the part of such persons.

8 ARTICLE VI.

9 RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

10 (a) The interstate commission shall promulgate and publish rules in order to effectively and
11 efficiently achieve the purposes of the compact.

12 (b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and
13 rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the
14 "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1
15 (2000), or such other administrative procedures act, as the interstate commission deems appropriate
16 consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted
17 by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified,
18 as published with the final version of the rule as approved by the commission.

19 (c) When promulgating a rule, the interstate commission shall, at a minimum:

20 (1) Publish the proposed rule's entire text stating the reason(s) for that proposed rule;

21 (2) Allow and invite any and all persons to submit written data, facts, opinions and

1 arguments, which information shall be added to the record, and be made publicly available;

2 (3) Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons;

3 and

4 (4) Promulgate a final rule and its effective date, if appropriate, based on input from state or
5 local officials, or interested parties.

6 (d) Allow, not later than sixty days after a rule is promulgated, any interested person to file
7 a petition in the United States District Court for the District of Columbia or in the federal district
8 court where the interstate commission's principal office is located for judicial review of such rule.
9 If the court finds that the interstate commission's action is not supported by substantial evidence in
10 the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this
11 subsection, evidence is substantial if it would be considered substantial evidence under the Model
12 State Administrative Procedures Act.

13 (e) If a majority of the Legislatures of the compacting states rejects a rule, those states may,
14 by enactment of a statute or resolution in the same manner used to adopt the compact, cause that
15 such rule shall have no further force and effect in any compacting state.

16 (f) The existing rules governing the operation of the "Interstate Compact on Juveniles"
17 superceded by this article shall be null and void twelve months after the first meeting of the interstate
18 commission created hereunder.

19 (g) Upon determination by the interstate commission that a state-of-emergency exists, it may
20 promulgate an emergency rule which shall become effective immediately upon adoption, provided
21 that the usual rule-making procedures provided hereunder shall be retroactively applied to the rule

1 as soon as reasonably possible, but no later than ninety days after the effective date of the emergency
2 rule.

3 ARTICLE VII.

4 OVERSIGHT, ENFORCEMENT AND DISPUTE

5 SOLUTION BY THE INTERSTATE COMMISSION.

6 Section A. Oversight.

7 (a)(1) The interstate commission shall oversee the administration and operations of the
8 interstate movement of juveniles subject to this compact in the compacting states and shall monitor
9 such activities being administered in noncompacting states which may significantly affect
10 compacting states.

11 (2) The courts and executive agencies in each compacting state shall enforce this compact
12 and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent.

13 (3) The provisions of this compact and the rules promulgated hereunder shall be received by
14 all the judges, public officers, commissions, and departments of the state government as evidence
15 of the authorized statute and administrative rules. All courts shall take judicial notice of the compact
16 and the rules.

17 (4) In any judicial or administrative proceeding in a compacting state pertaining to the subject
18 matter of this compact which may affect the powers, responsibilities or actions of the interstate
19 commission, it shall be entitled to receive all service of process in any such proceeding, and shall
20 have standing to intervene in the proceeding for all purposes.

21 Section B. Dispute Resolution.

1 (b)(1) The compacting states shall report to the interstate commission on all issues and
2 activities necessary for the administration of the compact as well as issues and activities pertaining
3 to compliance with the provisions of the compact and its bylaws and rules.

4 (2) The interstate commission shall attempt, upon the request of a compacting state, to
5 resolve any disputes or other issues which are subject to the compact and which may arise among
6 compacting states and between compacting and noncompacting states. The commission shall
7 promulgate a rule providing for both mediation and binding dispute resolution for disputes among
8 the compacting states.

9 (3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the
10 provisions and rules of this compact using any or all means set forth in Article XI of this compact.

11 ARTICLE VIII.

12 FINANCE.

13 (a) The interstate commission shall pay or provide for the payment of the reasonable
14 expenses of its establishment, organization and ongoing activities.

15 (b) The interstate commission shall levy on and collect an annual assessment from each
16 compacting state to cover the cost of the internal operations and activities of the interstate
17 commission and its staff which must be in a total amount sufficient to cover the interstate
18 commission's annual budget as approved each year. The aggregate annual assessment amount shall
19 be allocated based upon a formula to be determined by the interstate commission, taking into
20 consideration the population of each compacting state and the volume of interstate movement of
21 juveniles in each compacting state and shall promulgate a rule binding upon all compacting states

1 which governs the assessment.

2 (c) The interstate commission shall not incur any obligations of any kind prior to securing
3 the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of
4 the compacting states, except by and with the authority of the compacting state.

5 (d) The interstate commission shall keep accurate accounts of all receipts and disbursements.
6 The receipts and disbursements of the interstate commission shall be subject to the audit and
7 accounting procedures established under its bylaws. However, all receipts and disbursements of
8 funds handled by the interstate commission shall be audited yearly by a certified or licensed public
9 accountant and the report of the audit shall be included in and become part of the annual report of
10 the interstate commission.

11 ARTICLE IX.

12 THE STATE COUNCIL.

13 Each member state shall create a state council for interstate juvenile supervision. While each
14 state may determine the membership of its own state council, its membership must include at least
15 one representative from the legislative, judicial, and executive branches of government, victims
16 groups, and the compact administrator, deputy compact administrator or designee. Each compacting
17 state retains the right to determine the qualifications of the compact administrator or deputy compact
18 administrator. Each state council will advise and may exercise oversight and advocacy concerning
19 that state's participation in interstate commission activities and other duties as may be determined
20 by that state, including, but not limited to, development of policy concerning operations and
21 procedures of the compact within that state.

1 ARTICLE X.

2 COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

3 (a) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico,
4 the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in
5 Article II of this compact is eligible to become a compacting state.

6 (b) The compact shall become effective and binding upon legislative enactment of the
7 compact into law by no less than thirty-five of the states. The initial effective date shall be the later
8 of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall
9 become effective and binding as to any other compacting state upon enactment of the compact into
10 law by that state. The Governors of nonmember states or their designees shall be invited to
11 participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the
12 compact by all states and territories of the United States.

13 (c) The interstate commission may propose amendments to the compact for enactment by the
14 compacting states. No amendment shall become effective and binding upon the interstate
15 commission and the compacting states unless and until it is enacted into law by unanimous consent
16 of the compacting states.

17 ARTICLE XI.

18 WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

19 Section A. Withdrawal.

20 (a) (1) Once effective, the compact shall continue in force and remain binding upon each and
21 every compacting state; provided that a compacting state may withdraw from the compact by

1 specifically repealing the statute which enacted the compact into law.

2 (2) The effective date of withdrawal is the effective date of the repeal.

3 (3) The withdrawing state shall immediately notify the chairperson of the interstate
4 commission in writing upon the introduction of legislation repealing this compact in the withdrawing
5 state. The interstate commission shall notify the other compacting states of the withdrawing state's
6 intent to withdraw within sixty days of its receipt thereof.

7 (4) The withdrawing state is responsible for all assessments, obligations and liabilities
8 incurred through the effective date of withdrawal, including any obligations, the performance of
9 which extend beyond the effective date of withdrawal.

10 (5) Reinstatement following withdrawal of any compacting state shall occur upon the
11 withdrawing state reenacting the compact or upon such later date as determined by the interstate
12 commission.

13 Section B. Technical Assistance, Fines, Suspension, Termination and Default.

14 (b)(1) If the interstate commission determines that any compacting state has at any time
15 defaulted in the performance of any of its obligations or responsibilities under this compact, or the
16 bylaws or duly promulgated rules, the interstate commission may impose any or all of the following
17 penalties:

18 (A) Remedial training and technical assistance as directed by the interstate commission;

19 (B) Alternative dispute resolution;

20 (C) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the
21 interstate commission; and

1 (D) Suspension or termination of membership in the compact shall be imposed only after all
2 other reasonable means of securing compliance under the bylaws and rules have been exhausted and
3 the interstate commission has therefore determined that the offending state is in default. Immediate
4 notice of suspension shall be given by the interstate commission to the Governor, the chief justice
5 or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's
6 Legislature, and the state council.

7 (2) The grounds for default include, but are not limited to, failure of a compacting state to
8 perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly
9 promulgated rules and any other grounds designated in commission bylaws and rules.

10 (3) The interstate commission shall immediately notify the defaulting state in writing of the
11 penalty imposed by the interstate commission and of the default pending a cure of the default.

12 (4) The commission shall stipulate the conditions and the time period within which the
13 defaulting state must cure its default. If the defaulting state fails to cure the default within the time
14 period specified by the commission, the defaulting state shall be terminated from the compact upon
15 an affirmative vote of a majority of the compacting states and all rights, privileges and benefits
16 conferred by this compact shall be terminated from the effective date of termination.

17 (5) Within sixty days of the effective date of termination of a defaulting state, the commission
18 shall notify the Governor, the chief justice or chief judicial officer, the majority and minority leaders
19 of the defaulting state's Legislature, and the state council of such termination.

20 (6) The defaulting state is responsible for all assessments, obligations and liabilities incurred
21 through the effective date of termination including any obligations, the performance of which

1 extends beyond the effective date of termination.

2 (7) The interstate commission shall not bear any costs relating to the defaulting state unless
3 otherwise mutually agreed upon in writing between the interstate commission and the defaulting
4 state.

5 (8) Reinstatement following termination of any compacting state requires both a reenactment
6 of the compact by the defaulting state and the approval of the interstate commission pursuant to the
7 rules.

8 Section C. Judicial Enforcement.

9 (c) The interstate commission may, by majority vote of the members, initiate legal action in
10 the United States District Court for the District of Columbia or, at the discretion of the interstate
11 commission, in the federal district where the interstate commission has its offices, to enforce
12 compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any
13 compacting state in default. In the event judicial enforcement is necessary the prevailing party shall
14 be awarded all costs of such litigation including reasonable attorneys fees.

15 Section D. Dissolution of Compact.

16 (d)(1) The compact dissolves effective upon the date of the withdrawal or default of the
17 compacting state, which reduces membership in the compact to one compacting state.

18 (2) Upon the dissolution of this compact, the compact becomes null and void and shall be
19 of no further force or effect, and the business and affairs of the interstate commission shall be
20 concluded and any surplus funds shall be distributed in accordance with the bylaws.

21 ARTICLE XII.

1 SEVERABILITY AND CONSTRUCTION.

2 (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or
3 provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

4 (b) The provisions of this compact shall be liberally construed to effectuate its purposes.

5 ARTICLE XIII.

6 BINDING EFFECT OF COMPACT AND OTHER LAWS.

7 Section A. Other Laws.

8 (a)(1) Nothing herein prevents the enforcement of any other law of a compacting state that
9 is not inconsistent with this compact.

10 (2) All compacting states' laws other than state Constitutions and other interstate compacts
11 conflicting with this compact are superseded to the extent of the conflict.

12 Section B. Binding Effect of the Compact.

13 (b)(1) All lawful actions of the interstate commission, including all rules and bylaws
14 promulgated by the interstate commission, are binding upon the compacting states.

15 (2) All agreements between the interstate commission and the compacting states are binding
16 in accordance with their terms.

17 (3) Upon the request of a party to a conflict over meaning or interpretation of interstate
18 commission actions, and upon a majority vote of the compacting states, the interstate commission
19 may issue advisory opinions regarding such meaning or interpretation.

20 (4) In the event any provision of this compact exceeds the constitutional limits imposed on
21 the Legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be

1 conferred by such provision upon the interstate commission shall be ineffective and such obligations,
2 duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the
3 agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect
4 at the time this compact becomes effective.

5 **§49-7-302. State council for interstate juvenile supervision; members; authority.**

6 (a) Upon the effective date of the interstate compact for juveniles, there shall be created a
7 state council for interstate juvenile supervision. The state council shall be comprised of a total of
8 nine members, to be selected and designated as follows:

9 (1) Two members designated by the Legislature, one of whom shall be named and appointed
10 by the Speaker of the House, and the other of whom shall be designated by the President of the
11 Senate;

12 (2) Two members designated by the judiciary, both of whom shall be named and appointed
13 by the Chief Justice of the Supreme Court of Appeals of West Virginia;

14 (3) The compact administrator or a designee of the compact administrator; and

15 (4) Four members to be designated and appointed by the Governor, two of whom must be
16 representatives of state agencies dealing with juvenile corrections, juvenile placement or juvenile
17 services, and one of whom must be a representative of a victims' group.

18 (b) Within ninety days of the effective date of this compact, the state council shall meet and
19 designate a commissioner who shall represent the state as the compacting state's voting
20 representative under Article III of this compact.

21 (c) The state council will exercise oversight and advocacy concerning West Virginia's

1 participation in interstate commission activities and rule makings, and engage in other duties and
2 activities as determined by its members, including, but not limited to, the development of policy
3 concerning the operations and procedures for implementing the compact and interstate commission
4 rules within West Virginia.

5 **§49-7-303. Appointment of compact administrator.**

6 (a) Upon and after the effective date of the interstate compact for juveniles, the Governor is
7 hereby authorized and empowered to designate an officer who shall be the compact administrator
8 and who, acting jointly with like offices of the other party states, shall be responsible for the
9 administration and management of this state's supervision and transfer of juveniles subject to the
10 terms of this compact, the rules adopted by the interstate commission and the policies adopted by
11 the state council under this compact. The compact administrator shall serve subject to the will and
12 pleasure of the Governor, and must meet the minimum qualifications for the position of compact
13 administrator, as established by the state council. The compact administrator is hereby authorized,
14 empowered and directed to cooperate with all departments, agencies and officers of and in the
15 government of this state and its subdivisions in facilitating the proper administration of the compact
16 or of any supplementary agreement or agreements entered into by this state hereunder.

17 (b) Until the state council has met and established minimum qualifications for the position
18 of compact administrator the individual or administrator who has been designated to act as the
19 juvenile compact administrator for the interstate compact for juveniles may perform the duties and
20 responsibilities of compact administrator under this article.

21 (c) Until the state council has met and designated a commissioner to vote on behalf of the

1 State of West Virginia at the interstate commission, the individual or administrator who has been
2 designated to act as the juvenile compact administrator for the interstate compact for juveniles shall
3 function as the acting commissioner for the State of West Virginia before the interstate commission
4 formed under the new compact.

5 **§49-7-304. Notification of the effective date of the interstate compact for juveniles.**

6 Within ten days of the date that the thirty-fifth state adopts legislation approving this
7 compact, the appointed or designated juvenile compact administrator under section three hundred
8 three, article seven of this chapter shall advise the Governor, the Chief Justice of the Supreme Court
9 of Appeals of West Virginia, the Speaker of the House of Delegates and the President of the Senate
10 of the effective date of this compact.