

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Introduced**

**Senate Bill 356**

BY SENATOR TRUMP

[Introduced January 24, 2018; Referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §7-4-4 and §7-4-5 of the Code of West Virginia, 1931, as amended;  
2 to amend and reenact §7-7-2 of said code; to amend and reenact §7-10-2 of said code; to  
3 amend and reenact §15-11-2 of said code; to amend and reenact §15-2-15 of said code;  
4 to amend and reenact §15-2C-1 of said code; to amend and reenact §15-9-3 of said code;  
5 to amend and reenact §15-11-2 of said code; to amend and reenact §16-2F-2 of said  
6 code; to amend and reenact §16-3C-1 of said code; to amend and reenact §16-9A-3 of  
7 said code; to amend and reenact §16-30-3 of said code; to amend and reenact §16-47-5  
8 of said code; to amend and reenact §17C-5-6a of said code; to amend and reenact §18-  
9 5-15c of said code; to amend and reenact §18-8-6a of said code; to amend and reenact  
10 §18A-5-1d of said code; to amend and reenact §28-1-2 of said code; to amend and reenact  
11 §29-21-16 of said code; to amend and reenact §31-20-2 of said code; to amend and  
12 reenact §33-4-20 of said code; to amend and reenact §48-9-205 and §48-9-301a of said  
13 code; to amend and reenact §48-22-301 of said code; to amend and reenact §48-26-701  
14 and §48-26-1002 of said code; to amend and reenact §48-27-403 of said code; to amend  
15 and reenact §49-1-201 of said code; to amend and reenact §51-2A-2 of said code; to  
16 amend and reenact §51-7-8 of said code; to amend and reenact §61-2-14h of said code;  
17 to amend and reenact §61-5-12b of said code; to amend and reenact §61-6-25 of said  
18 code; to amend and reenact §61-7-8 of said code; to amend and reenact §61-8-12 of said  
19 code; to amend and reenact §61-8B-11a of said code; to amend and reenact §61-8C-3b  
20 of said code; to amend and reenact §61-8D-9 of said code; to amend and reenact §61-  
21 11-23 of said code; to amend and reenact §61-12-10 of said code; and to amend and  
22 reenact §62-6B-5, all relating to making technical corrections in the code when referencing  
23 chapter 49 of this code; and defining a term.

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

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.****§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.**

1           There is hereby created the prosecutor's advisory council composed of elected  
2 prosecuting attorneys of each county of the state or a designated member of their staff. The  
3 prosecutor's advisory council shall conduct an initial meeting of all members not later than  
4 September 1, 1994, and shall meet not less than one time each year. At the initial meeting and  
5 annually thereafter, the council shall elect from among its membership a chairman of the council  
6 who shall set the agenda for the council's meetings and shall appoint necessary committees and  
7 direct the work of the council in carrying out its duties under the provisions of this section.

8           The council shall provide advice, assistance, training and leadership to the offices of the  
9 various county prosecuting attorneys of this state in criminal and civil cases which involve child  
10 abuse or neglect or sexual assault or sexual abuse of children. The council shall also provide  
11 advice and assistance to the secretary of the Department of Health and Human Resources in the  
12 implementation of a multidisciplinary planning process as set forth in ~~article five-d, chapter forty-~~  
13 ~~nine~~ §49-4-401 through §49-4-413 of this code.

14           The council may seek funds and programs to provide each prosecuting attorney's office  
15 with a staff person to assist children who are crime victims to obtain services and assistance from  
16 other agencies and programs in the community. Prosecuting attorneys shall be reimbursed by  
17 their respective county commissions for necessary expenses actually incurred when attending  
18 meetings of the council.

19           The council may apply for and receive funds from any grant program of any agency or  
20 institution in the United States, public or private, to be used for carrying out the purposes of this  
21 section.

**§7-4-5. Multidisciplinary investigative teams.**

1           On or before January 1, 1995, the prosecuting attorney of each county in the state shall

2 establish a multidisciplinary investigative team, in accordance with the provisions of ~~section three,~~  
3 ~~article five-d, chapter forty-nine~~ §49-4-402 of this code.

## **ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.**

### **§7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of two hundred thousand.**

1 (a) There is hereby established county in-service training programs as hereinafter set  
2 forth.

3 (b) The Attorney General is hereby authorized and directed to establish such in-service  
4 training programs as in his or her opinion will do most to assist the prosecuting attorneys in the  
5 performance of their duties. The Attorney General is authorized to accept any federal aid which  
6 may be made available or any financial assistance which may be available from any private  
7 nonprofit organization for the purposes of this section. The prosecuting attorney in any county  
8 having a population in excess of two hundred thousand shall also discharge the additional duties  
9 imposed upon him or her by the provisions of ~~section thirteen-a, article five, chapter forty-nine~~  
10 §49-4-503 of this code.

11 (c) The State Auditor is hereby authorized and directed to establish such in-service training  
12 programs for county commissioners, county clerks, sheriffs and their assistants and employees  
13 as in his or her opinion will do most to modernize and improve the services of their respective  
14 offices. The State Auditor in conjunction with the West Virginia Supreme Court of Appeals is  
15 authorized and directed to establish such in-service training programs for circuit clerks and their  
16 assistants and employees. The State Tax Commissioner is authorized and directed to establish  
17 such in-service training programs for assessors and their assistants and employees. The State  
18 Tax Commissioner, State Auditor and the West Virginia Supreme Court of Appeals are authorized  
19 to accept any federal aid which may be made available or any financial assistance which may be  
20 available from any private nonprofit organization for the purpose of this article.

21 (d) Each of the county officials mentioned in this section, and, at his or her option, one or

22 more of his or her assistants, deputies and employees, shall participate in the programs  
23 established under this section.

24 (e) The county commission is authorized and directed to expend funds for the purpose of  
25 reimbursing such officials and employees for the actual amount expended by them for food,  
26 lodging and registration while in attendance at authorized training for the purpose of this section.

## **ARTICLE 10. HUMANE OFFICERS.**

### **§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.**

1 (a) It is the duty of humane officers to prevent the perpetration or continuance of any act  
2 of cruelty upon any animal and to investigate and, upon probable cause, to cause the arrest and  
3 assist in the prosecution of any person engaging in such cruel and forbidden practices. Upon  
4 reasonable cause, and as provided by law, such officers have the right to access and inspection  
5 of records and property as may be reasonably necessary to any investigation.

6 (b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a  
7 reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse  
8 or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the  
9 grounds therefor. In the event of suspected child abuse or neglect, the humane officer shall report  
10 to the local child protective services agency of the Department of Health and Human Resources  
11 in accordance with the provisions of ~~section five, article six-a, chapter forty-nine~~ §49-2-809 of this  
12 code. In the event of suspected abuse or neglect of an incapacitated or elderly person, he or she  
13 shall report to the department's local adult protective services agency in accordance with the  
14 provisions of §9-6-11 of this code. In the event of suspected domestic violence, he or she shall  
15 report to the State Police in accordance with the provisions of §48-27-1 *et seq.* of this code.

16 (c) Any person who interferes with, obstructs or resists any humane officer in the discharge  
17 of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less

18 than \$100 nor more than \$500 or confined in jail not more than thirty days, or both fined and  
19 confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to  
20 any penalties the person incurs for cruel or inhumane treatment of any animal.

## CHAPTER 15. PUBLIC SAFETY.

### ARTICLE 1I. THE CHILD PROTECTION ACT OF 2006.

#### §15-1I-2. Legislative findings.

1 (a) The purpose of "The Child Protection Act of 2006" is to put in place a series of  
2 programs, criminal law revisions and other reforms to provide and promote the ability of the  
3 children of this state to live their lives without being exposed and subjected to neglect and physical  
4 and sexual abuse. The targeted increases in terms of incarceration, enhanced treatment, post-  
5 release supervision and new approaches toward the state's child protection system will, in the  
6 aggregate, strengthen government's ability to address this most serious problem. The Legislature  
7 finds that the broad reaching measures encompassed in this Act will provide for greater  
8 intervention among and punishment and monitoring of individuals who create a risk to our  
9 children's safety and well-being.

10 (b) The Legislature further finds that the following reforms implemented as part of this Act  
11 will provide protections to the children of this state and are all important to eliminate risks to  
12 children and are essential elements of "The Child Protection Act of 2006":

13 (1) Creating a special unit in the State Police specializing in the investigation of child abuse  
14 and neglect -- §15-2-15 of this code;

15 (2) Modifying the Sex Offender Registration Act to ensure more effective registration,  
16 identification and monitoring of persons convicted of sexual offenses -- §15-12-1 *et seq.* of this  
17 code;

18 (3) Establishing the Child Abuse and Neglect Registry, requiring the registry to disclose  
19 information to certain state and local officials -- §15-13-1 *et seq.* of this code;

20 (4) Providing for coded driver's licenses and nondriver identification cards to more easily  
21 identify sexually violent predators -- §17B-2-3 of this code;

22 (5) Prohibiting contractors and service providers convicted of certain offenses from  
23 accessing school grounds and providing for the release of criminal history information by the  
24 central abuse registry to county school boards -- §18-5-15c of this code;

25 (6) Establishing a task force to study the feasibility of constructing separate correctional  
26 facilities for the incarceration and treatment of sex offenders -- §25-1-22 of this code;

27 (7) Requiring the State Police and the Department of Health and Human Resources to  
28 maintain statewide child abuse and neglect statistical indexes of all convictions and allegations,  
29 respectively -- §15-2-15 and ~~section eleven, article six a, chapter forty nine~~ §49-2-813 of this  
30 code;

31 (8) Providing for increased terms of incarceration for first degree sexual assault and first  
32 degree sexual abuse committed against children under the age of twelve -- §61-8B-3 and §61-  
33 8B-7 of this code;

34 (9) Eliminating eligibility of certain sex offenders for probation, home incarceration and  
35 alternative sentences and providing for enhanced terms of incarceration for certain subsequent  
36 sex offenses committed by recidivist sex offenders -- §61-8B-9a and §61-8B-7-9b of this code;

37 (10) Providing for polygraph examinations for certain sex offenders on probation, parole  
38 or supervised release -- §62-11D-1 *et seq.* of this code;

39 (11) Providing for electronic monitoring of certain sex offenders on probation, parole and  
40 supervised release -- §62-11D-1 *et seq.* of this code;

41 (12) Establishing a task force to develop measures aimed at managing sexually violent  
42 predators released from confinement -- §62-11E-1 *et seq.* of this code;

43 (13) Making psychiatric evaluations a condition of probation eligibility for certain sex  
44 offenders -- §62-12-2 of this code;

45 (14) Authorizing the Department of Health and Human Resources to establish

46 qualifications for sex offender treatment programs and counselors -- §62-12-2 and §62-12-26 of  
47 this code;

48 (15) Providing for extended supervision of certain offenders and supervised release  
49 requirements for sexually violent offenders -- §62-12-26 of this code; and

50 (16) Providing for prerelease risk assessments of certain sex offenders -- §62-12-27 of  
51 this code.

52 (c) In addition, the Legislature finds that those enhanced terms of incarceration and post-  
53 conviction measures provided for in this Act which impact certain offenders convicted of sexual  
54 offenses against adults are necessary and appropriate to protect children from neglect and  
55 physical and sexual abuse given that: (1) Clinical research indicates that a substantial percentage  
56 of sexual offenders "cross over" among age groups in selecting their victims; (2) many of the risk  
57 factors prevalent among sex offenders that "cross over" (e.g., substance abuse, lack of empathy  
58 toward victim, inability to control inappropriate impulses, childhood abuse) also are prevalent  
59 among perpetrators of child abuse and neglect; and (3) enhanced terms of incarceration, post-  
60 conviction supervision, monitoring and treatment measures will enable the criminal justice system  
61 to identify and address those "cross over" offenders before they can victimize additional children.

## **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

### **§15-2-15. State Police Child Abuse and Neglect Investigations Unit.**

1 (a) The superintendent shall establish a special unit of the State Police, called the Child  
2 Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying,  
3 investigating and prosecuting criminal child abuse and neglect cases, in coordination with Child  
4 Protective Services, established pursuant to ~~section nine, article six-a, chapter forty-nine~~ §49-2-  
5 802 of this code. The unit shall assist other State Police members with child abuse or neglect  
6 investigations as well as the Division of Child Protective Services. The unit may provide training,  
7 technical expertise and coordination of services for other law-enforcement agencies, Child  
8 Protective Services caseworkers, prosecuting attorneys and multidisciplinary teams established



9 pursuant to the provisions of ~~section two, article five-d, chapter forty-nine~~ §49-4-402 of this code,  
10 to identify, investigate, report and prosecute criminal child abuse and criminal child neglect cases.  
11 However, nothing in this section may be construed to mean that the unit will assume the duties  
12 or investigations of other State Police members or other law-enforcement officers.

13 (b) The unit will comprise, at a minimum, six members of the State Police. The  
14 superintendent shall assign a unit director, and shall assign five members regionally, to be  
15 dedicated and trained to assist county Child Protective Services Offices and caseworkers in  
16 investigating and coordinating with other law-enforcement personnel, cases of suspected child  
17 abuse or neglect. Cases to be investigated include allegations received pursuant to §49-6A-2 of  
18 this code, and any other credible child abuse or neglect allegations.

19 (c) The unit director's duties include:

20 (1) Overseeing State Police members assigned to the unit;

21 (2) Coordinating activities of the unit with Child Protection Services;

22 (3) Assisting Child Protective Services in developing and refining protocols for improving  
23 identification and prosecution of suspected criminal acts of child abuse or neglect; and

24 (4) Assuring that all other directives and responsibilities of the unit are fulfilled.

25 (d) The unit shall maintain a statewide statistical index on child abuse and neglect  
26 convictions resulting from convictions for violations of §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-  
27 3a, §61-8D-4 and §61-8D-4a of this code, to monitor the timely and proper investigation and  
28 disposition of child abuse or neglect cases. The statistical data index maintained by the unit shall  
29 not contain information of a specific nature that would identify individual cases or persons.

30 (e) On or before December 31, of each year, the unit director shall submit an annual report  
31 to the Joint Committee on Government and Finance. The annual report is to include the statistical  
32 index required under the provisions of subsection (d) of this section, and may include  
33 recommendations for statutory or program reforms that will assist the unit and further promote the  
34 goals of the unit. The report may not contain information of a specific nature that would identify

35 individual cases or persons.

36 (f) Every state law-enforcement agency of this state shall periodically provide statistical  
37 information regarding child abuse and neglect cases investigated and prosecuted by that law-  
38 enforcement agency to the unit.

39 (g) The superintendent may propose rules for legislative approval or procedural rules as  
40 necessary to effectuate the provisions of this section in accordance with the provisions of §29A-  
41 3-1 *et seq.* of this code. The superintendent shall provide forms to law-enforcement agencies,  
42 circuit clerks and parole officers to facilitate submission of appropriate information necessary to  
43 prepare the statistical reports required by this section.

44 (h) There is hereby established a special account in the state Treasury, into which shall  
45 be deposited any gifts, grants or donations made to the unit, and any other funds directed to be  
46 deposited into the account by appropriation of the Legislature, and to be expended for the  
47 purposes of this section pursuant to appropriation of the Legislature.

## **ARTICLE 2C. CENTRAL ABUSE REGISTRY.**

### **§15-2C-1. Definitions.**

1 The following words when used in this article have meanings ascribed to them in this  
2 section, except in those instances where the context clearly indicates a different meaning:

3 (a) "Central abuse registry" or "registry" means the registry created by this article which  
4 shall contain the names of individuals who have been convicted of a felony or a misdemeanor  
5 offense constituting abuse, neglect or misappropriation of the property of a child or an  
6 incapacitated adult or an adult receiving behavioral health services.

7 (b) "Child abuse and neglect" or "child abuse or neglect" means those terms as defined in  
8 ~~section three, article one, chapter forty-nine~~ §49-1-401 of this code, and shall include any act with  
9 respect to a child which is a crime against the person pursuant to §61-2-1 *et seq.* of this code,  
10 any act which is unlawful pursuant to §61-8D-1 *et seq.* of this code and any offense with respect  
11 to a child which is enumerated in §15-2C-3 of this code.

12 (c) "Abuse or neglect of an incapacitated adult" means "abuse," "neglect" and  
13 "incapacitated adult" as those terms are defined in §9-6-1 of this code, and shall include any act  
14 with respect to an incapacitated adult which is a crime against the person pursuant to §61-2-1 *et*  
15 *seq.* of this code, and any offense with respect to an incapacitated adult which is enumerated in  
16 §15-2C-3 of this code.

17 (d) "Adult receiving behavioral health services" means a person over the age of eighteen  
18 years who is receiving any behavioral health service from a licensed behavioral health provider  
19 or any behavioral health provider whose services are paid for, in whole or in part, by Medicaid or  
20 Medicare.

21 (e) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or  
22 jury following a hearing on the merits, or entry of a plea of guilty or *nolo contendere*.

23 (f) "Residential care facility" means any facility where a child or an incapacitated adult or  
24 an adult receiving behavioral health services resides which is subject to registration, licensure or  
25 certification by the Department of Health and Human Resources, and shall include nursing  
26 homes, personal care homes, residential board and care homes, adult family care homes, group  
27 homes, legally unlicensed service providers, residential child care facilities, family based foster  
28 care homes, specialized family care homes and intermediate care facilities for the mentally  
29 retarded.

30 (g) "Misappropriation of property" means any act which is a crime against property under  
31 §61-3-1 *et seq.* of this code with respect to a child in a residential care facility or an incapacitated  
32 adult or an adult receiving behavioral health services in a residential care facility or a child or an  
33 incapacitated adult or an adult receiving behavioral health services who is a recipient of home  
34 care services.

35 (h) "Home care" or "home care services" means services provided to children or  
36 incapacitated adults or adults receiving behavioral health services in the home through a hospice  
37 provider, a community care provider, a home health agency, through the Medicaid waiver

38 program, or through any person when that service is reimbursable under the state Medicaid  
39 program.

40 (i) "Requester" means the West Virginia Department of Education, any residential care  
41 facility, any state licensed day care center, any qualified entity as defined in this section or any  
42 provider of home care services or an adult receiving behavioral health services providing to the  
43 Central Abuse Registry the name of an individual and other information necessary to identify that  
44 individual, and either: (1) Certifying that the individual is being considered for employment or  
45 service as a volunteer by the requester or for a contractual relationship with the requester wherein  
46 the individual will provide services to a child or an incapacitated adult or an adult receiving  
47 behavioral health services for compensation; or contractors and vendors who have or may have  
48 unsupervised access to the child, disabled or elderly person for whom the qualified entity provides  
49 care; or (2) certifying that an allegation of abuse, neglect or misappropriation of property has been  
50 made against the individual.

51 (j) "Qualified entity" means any business, agency or organization that provides care,  
52 treatment, education, training, instruction, supervision or recreation for children, the elderly or  
53 individuals with disabilities and is a public, private or not-for-profit entity within the State of West  
54 Virginia and meets the definition of qualified entity under the federal National Child Protection Act  
55 of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

## **ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.**

### **§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.**

1 The Governor's Committee on Crime, Delinquency and Correction or its designee shall  
2 ascertain the compliance of juvenile detention and juvenile correctional facilities operated by or  
3 under contract with the Division of Juvenile Services, created pursuant to ~~section two, article five-~~

4 e, ~~chapter forty-nine~~ §49-2-902 of this code, with standards for the structure, physical plant,  
5 operation and maintenance of the facilities, promulgated by the juvenile facility standards  
6 commission, pursuant to §31-20-9a of this code: *Provided*, That such review shall not include  
7 educational programs in such facilities.

## **ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.**

### **§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.**

1 (a) The Secretary of Military Affairs and Public Safety shall, upon written request, direct  
2 payment from the fund in the form of a draft as provided in this article up to and including an  
3 amount not exceeding \$8,000 for the reasonable funeral expenses, including burial expenses, of  
4 a law-enforcement, safety or emergency worker killed on or after January 1, 1999, while carrying  
5 out official duties: *Provided*, That no funds shall be expended for any funeral expense that is  
6 otherwise payable pursuant to the provisions of §23-4-1 *et seq.* of this code, as amended, or other  
7 benefit programs established by a provision of this code which does not involve employee  
8 participation: *Provided, however*, That where other funds for funeral expenses are provided  
9 pursuant to the laws of this state, from whatever source, which amount to less than \$8,000, funds  
10 provided by the provisions of this section shall be expended so as to ensure that at least \$8,000  
11 is available for reasonable funeral expenses. The secretary shall direct payment of the funeral  
12 expenses upon written request of an employer or head of a volunteer organization, as is  
13 appropriate pursuant to this article, certifying that the individual for whom funeral expenses are  
14 requested was killed while performing official duties.

15 (b) The secretary shall supply the draft in the name of the person contracting for the funeral  
16 services and, if known, the service provider to the employer or agency head making the request  
17 who shall tender the draft to the person who contracted for the services.

18 (c) For the purposes of this section, "law-enforcement, safety or emergency worker"  
19 means:

20 (1) Any duly authorized member of a law-enforcement agency who is authorized to  
21 maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of  
22 the state or any county or municipality of the state, other than parking ordinances, and including  
23 those persons employed as security officers at municipal, county, regional or state offices,  
24 authorities or institutions, although their employers may not be public law-enforcement agencies,  
25 employed by the Hatfield-McCoy Regional Recreation Authority and members of the West Virginia  
26 National Guard while engaged in active duty service: *Provided*, That this section does not apply  
27 to those persons employed by private security firms or agencies;

28 (2) Any state, regional, county or municipal correctional employee;

29 (3) Any firefighter employed by the state or any political subdivision of the state and any  
30 volunteer firefighter performing as a member of a volunteer fire department;

31 (4) Any "emergency medical services personnel", as defined in §16-4C-3 of this code,  
32 employed by or volunteering for any state agency or institution or political subdivision of the state;  
33 or

34 (5) Any probation officer appointed under the provisions of either §62-12-5 or ~~section~~  
35 ~~fifteen, article five, chapter forty-nine~~ §49-4-719 of this code.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 2F. PARENTAL NOTIFICATION OF ABORTIONS PERFORMED ON UNEMANCIPATED MINORS.

#### §16-2F-2. Definitions.

1 For purposes of this article, unless the context in which used clearly requires otherwise:

2 As used in this article:

3 (1) "Abortion" means the use of any instrument, medicine, drug or any other substance or  
4 device with intent to terminate the pregnancy of a female known to be pregnant and with intent to  
5 cause the expulsion of a fetus other than by live birth. This article does not prevent the

6 prescription, sale or transfer of intrauterine contraceptive devices, other contraceptive devices or  
7 other generally medically accepted contraceptive devices, instruments, medicines or drugs for a  
8 female who is not known to be pregnant and for whom the contraceptive devices, instruments,  
9 medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for  
10 the purpose of inducing or causing the termination of a known pregnancy.

11 (2) "Medical emergency" means the same as that term is defined in §16-2M-2 of this code.

12 (3) "Secretary" means the Secretary of the West Virginia Department of Health and Human  
13 Resources.

14 (4) "Unemancipated minor" means any person less than eighteen years of age who is not,  
15 or has not been, married, who is under the care, custody and control of the person's parent or  
16 parents, guardian or court of competent jurisdiction pursuant to applicable federal law or as  
17 provided in ~~section twenty-seven, article seven, chapter forty-nine~~ §49-4-115 of this code.

### **ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.**

#### **§16-3C-1. Definitions.**

1 When used in this article:

2 (a) "AIDS" means acquired immunodeficiency syndrome.

3 (b) "Bureau" means the Bureau for Public Health.

4 (c) "Commissioner" means the commissioner of the Bureau for Public Health.

5 (d) "Convicted" includes pleas of guilty and pleas of nolo contendere accepted by the court  
6 having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial or a trial to a  
7 court and an adjudicated juvenile offender as defined in ~~sections two and four, article one, chapter~~  
8 ~~forty-nine~~ §49-1-202 of this code.

9 (e) "Department" means the State Department of Health and Human Resources.

10 (f) "Funeral director" has the same meaning ascribed to such term in §30-6-3 of this code.

11 (g) "Funeral establishment" has the same meaning ascribed to that term in §30-6-3 of this  
12 code.

13 (h) "HIV" means the human immunodeficiency virus identified as the causative agent of  
14 AIDS.

15 (i) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test  
16 approved by the bureau, the federal drug administration or the Centers for Disease Control and  
17 Prevention.

18 (j) "Health facility" means a hospital, nursing home, physician's office, clinic, blood bank,  
19 blood center, sperm bank, laboratory or other health care institution.

20 (k) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist  
21 or other person providing medical, dental, nursing, psychological or other health care services of  
22 any kind.

23 (l) "Health Information Exchange" means the electronic movement of health-related  
24 information in accord with law and nationally recognized standards.

25 (m) "High risk behavior" means behavior by a person including, but not limited to: (i)  
26 Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money  
27 or drugs; (iii) unprotected sex with multiple partners; (iv) anonymous unprotected sex; (v) or  
28 needle sharing; (vi) diagnosis of a sexually transmitted disease; or (vii) unprotected sex or sharing  
29 injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.

30 (n) "Medical or emergency responders" means paid or volunteer firefighters, law-  
31 enforcement officers, emergency medical technicians, paramedics, or other emergency service  
32 personnel, providers or entities acting within the usual course of their duties; good samaritans  
33 and other nonmedical and nonemergency personnel providing assistance in emergencies; funeral  
34 directors; health care providers; commissioner of the Bureau for Public Health; and all employees  
35 thereof and volunteers associated therewith.

36 (o) "Patient" or "test subject" or "subject of the test" means the person upon whom a HIV



37 test is performed, or the person who has legal authority to make health care decisions for the test  
38 subject.

39 (p) "Permitted purpose" is a disclosure permitted by the Health Insurance Portability and  
40 Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a patient  
41 or test subject.

42 (q) "Person" includes any natural person, partnership, association, joint venture, trust,  
43 public or private corporation or health facility.

44 (r) "Release of test results" means a permitted or authorized disclosure of HIV-related test  
45 results.

46 (s) "Significant exposure" means:

47 (1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery or  
48 traumatic events; or

49 (2) Exposure of mucous membranes to visible blood or body fluids, to which universal  
50 precautions apply according to the national Centers for Disease Control and Prevention, and  
51 laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or

52 (3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped,  
53 abraded or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

54 (t) "Source patient" means any person whose body fluids have been the source of a  
55 significant exposure to a medical or emergency responder.

56 (u) "Targeted testing" means performing an HIV-related test for sub-populations at higher  
57 risk, typically defined on the basis of behavior, clinical or demographic characteristics.

58 (v) "Victim" means the person or persons to whom transmission of bodily fluids from the  
59 perpetrator of the crimes of sexual abuse, sexual assault, incest or sexual molestation occurred  
60 or was likely to have occurred in the commission of such crimes.

## **ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.**

### **§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products**

**or vapor products by persons under the age of eighteen years; penalties.**

1 No person under the age of eighteen years shall have on or about his or her person or  
2 premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or  
3 made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing  
4 tobacco, tobacco product or tobacco-derived product: *Provided*, That minors participating in the  
5 inspection of locations where tobacco products or tobacco-derived products, are sold or  
6 distributed pursuant to §16-9A-7 of this code is not considered to violate the provisions of this  
7 section. Any person violating the provisions of this section shall for the first violation be fined \$50  
8 and be required to serve eight hours of community service; for a second violation, the person shall  
9 be fined \$100 and be required to serve sixteen hours of community service; and for a third and  
10 each subsequent violation, the person shall be fined \$200 and be required to serve twenty-four  
11 hours of community service. Notwithstanding the provisions of ~~section two, article five, chapter~~  
12 ~~forty-nine~~ §49-4-701 of this code, the magistrate court has concurrent jurisdiction.

**ARTICLE 30. WEST VIRGINIA HEALTH CARE DECISIONS ACT.**

**§16-30-3. Definitions.**

1 For the purposes of this article:

2 (a) "Actual knowledge" means the possession of information of the person's wishes  
3 communicated to the health care provider orally or in writing by the person, the person's medical  
4 power of attorney representative, the person's health care surrogate or other individuals resulting  
5 in the health care provider's personal cognizance of these wishes. Constructive notice and other  
6 forms of imputed knowledge are not actual knowledge.

7 (b) "Adult" means a person who is eighteen years of age or older, an emancipated minor  
8 who has been established as such pursuant to the provisions of ~~section twenty-seven, article~~  
9 ~~seven, chapter forty-nine~~ §49-4-115 of this code or a mature minor.

10 (c) "Advanced nurse practitioner" means a registered nurse with substantial theoretical  
11 knowledge in a specialized area of nursing practice and proficient clinical utilization of the

12 knowledge in implementing the nursing process, and who has met the further requirements of title  
13 19, legislative rules for West Virginia board of examiners for registered professional nurses, series  
14 7 , who has a mutually agreed upon association in writing with a physician and has been selected  
15 by or assigned to the person and has primary responsibility for treatment and care of the person.

16 (d) "Attending physician" means the physician selected by or assigned to the person who  
17 has primary responsibility for treatment and care of the person and who is a licensed physician.  
18 If more than one physician shares that responsibility, any of those physicians may act as the  
19 attending physician under this article.

20 (e) "Capable adult" means an adult who is physically and mentally capable of making  
21 health care decisions and who is not considered a protected person pursuant to the provisions of  
22 chapter 44A of this code.

23 (f) "Close friend" means any adult who has exhibited significant care and concern for an  
24 incapacitated person who is willing and able to become involved in the incapacitated person's  
25 health care and who has maintained regular contact with the incapacitated person so as to be  
26 familiar with his or her activities, health and religious and moral beliefs.

27 (g) "Death" means a finding made in accordance with accepted medical standards of  
28 either: (1) The irreversible cessation of circulatory and respiratory functions; or (2) the irreversible  
29 cessation of all functions of the entire brain, including the brain stem.

30 (h) "Guardian" means a person appointed by a court pursuant to the provisions of chapter  
31 44A of this code who is responsible for the personal affairs of a protected person and includes a  
32 limited guardian or a temporary guardian.

33 (i) "Health care decision" means a decision to give, withhold or withdraw informed consent  
34 to any type of health care, including, but not limited to, medical and surgical treatments, including  
35 life-prolonging interventions, psychiatric treatment, nursing care, hospitalization, treatment in a  
36 nursing home or other facility, home health care and organ or tissue donation.

37 (j) "Health care facility" means a facility commonly known by a wide variety of titles,

38 including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care  
39 facility, physicians' office and clinic, extended care facility operated in connection with a hospital,  
40 nursing home, a hospital extended care facility operated in connection with a rehabilitation center,  
41 hospice, home health care and other facility established to administer health care in its ordinary  
42 course of business or practice.

43 (k) "Health care provider" means any licensed physician, dentist, nurse, physician's  
44 assistant, paramedic, psychologist or other person providing medical, dental, nursing,  
45 psychological or other health care services of any kind.

46 (l) "Incapacity" means the inability because of physical or mental impairment to appreciate  
47 the nature and implications of a health care decision, to make an informed choice regarding the  
48 alternatives presented and to communicate that choice in an unambiguous manner.

49 (m) "Life-prolonging intervention" means any medical procedure or intervention that, when  
50 applied to a person, would serve to artificially prolong the dying process or to maintain the person  
51 in a persistent vegetative state. Life-prolonging intervention includes, among other things, nutrition  
52 and hydration administered intravenously or through a feeding tube. The term "life-prolonging  
53 intervention" does not include the administration of medication or the performance of any other  
54 medical procedure considered necessary to provide comfort or to alleviate pain.

55 (n) "Living will" means a written, witnessed advance directive governing the withholding or  
56 withdrawing of life-prolonging intervention, voluntarily executed by a person in accordance with  
57 the requirements of §16-30-4 of this code.

58 (o) "Mature minor" means a person less than eighteen years of age who has been  
59 determined by a qualified physician, a qualified psychologist or an advanced nurse practitioner to  
60 have the capacity to make health care decisions.

61 (p) "Medical information" or "medical records" means and includes without restriction any  
62 information recorded in any form of medium that is created or received by a health care provider,  
63 health care facility, health plan, public health authority, employer, life insurer, school or university

64 or health care clearinghouse that relates to the past, present or future physical or mental health  
65 of the person, the provision of health care to the person, or the past, present or future payment  
66 for the provision of health care to the person.

67 (q) "Medical power of attorney representative" or "representative" means a person  
68 eighteen years of age or older appointed by another person to make health care decisions  
69 pursuant to the provisions of §16-30-6 of this code or similar act of another state and recognized  
70 as valid under the laws of this state.

71 (r) "Parent" means a person who is another person's natural or adoptive mother or father  
72 or who has been granted parental rights by valid court order and whose parental rights have not  
73 been terminated by a court of law.

74 (s) "Persistent vegetative state" means an irreversible state as diagnosed by the attending  
75 physician or a qualified physician in which the person has intact brain stem function but no higher  
76 cortical function and has neither self-awareness or awareness of the surroundings in a learned  
77 manner.

78 (t) "Person" means an individual, a corporation, a business trust, a trust, a partnership, an  
79 association, a government, a governmental subdivision or agency or any other legal entity.

80 (u) "Physician orders for scope of treatment (POST) form" means a standardized form  
81 containing orders by a qualified physician that details a person's life-sustaining wishes as provided  
82 by §16-30-25 of this code.

83 (v) "Principal" means a person who has executed a living will or medical power of attorney.

84 (w) "Protected person" means an adult who, pursuant to the provisions of chapter 44A of  
85 this code, has been found by a court, because of mental impairment, to be unable to receive and  
86 evaluate information effectively or to respond to people, events and environments to an extent  
87 that the individual lacks the capacity to: (1) Meet the essential requirements for his or her health,  
88 care, safety, habilitation or therapeutic needs without the assistance or protection of a guardian;  
89 or (2) manage property or financial affairs to provide for his or her support or for the support of

90 legal dependents without the assistance or protection of a conservator.

91 (x) "Qualified physician" means a physician licensed to practice medicine who has  
92 personally examined the person.

93 (y) "Qualified psychologist" means a psychologist licensed to practice psychology who has  
94 personally examined the person.

95 (z) "Surrogate decisionmaker" or "surrogate" means an individual eighteen years of age  
96 or older who is reasonably available, is willing to make health care decisions on behalf of an  
97 incapacitated person, possesses the capacity to make health care decisions and is identified or  
98 selected by the attending physician or advanced nurse practitioner in accordance with the  
99 provisions of this article as the person who is to make those decisions in accordance with the  
100 provisions of this article.

101 (aa) "Terminal condition" means an incurable or irreversible condition as diagnosed by the  
102 attending physician or a qualified physician for which the administration of life-prolonging  
103 intervention will serve only to prolong the dying process.

## **ARTICLE 47. ALCOHOL AND DRUG OVERDOSE PREVENTION AND CLEMENCY ACT.**

### **§16-47-5. Immunity, alternative sentencing and clemency options for a person for whom emergency medical assistance was sought.**

1 (a) The immunity provisions in §16-47-4(a) of this code extend to the person for whom  
2 emergency medical assistance was sought if, subsequent to receiving emergency medical  
3 assistance, the person participates in, complies with and completes a substance abuse treatment  
4 or recovery program approved by the court. Alternatively, a court may consider the following  
5 alternative sentencing and clemency options:

6 (1) Deferred prosecution under §60-6-26 or ~~under~~ §60A-4-407 of this code;

7 (2) Pretrial diversion under §61-11-22 of this code;

8 (3) Adjudication in drug court under §62-15-1 *et seq.* of this code or ~~under section two-b,~~  
9 ~~article five, chapter forty-nine~~ §49-4-703 of this code; or

10 (4) Any other appropriate form of alternative sentencing or rehabilitation permitted by this  
11 code, including, but not limited to:

12 (A) Probation;

13 (B) Conditional discharge under §60-6-26 of this code; or

14 (C) The weekend jail program, the work program or the community service program under  
15 §62-11A-1a of this code.

16 (b) Notwithstanding any other provision of this section to the contrary, a person who may  
17 seek immunity or clemency pursuant to subsection (a) of this section and is charged with an  
18 offense not exempted by §16-47-4(a) of this code may enter a plea of guilty to an offense  
19 exempted by §16-47-4(a) of this code if the person, after consultation with his or her attorney, so  
20 desires.

## **CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.**

### **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

#### **§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.**

1 (a) A preliminary breath analysis may be administered to a child whenever a law-  
2 enforcement official has reasonable cause to believe the child to have been driving a motor  
3 vehicle with any amount of alcohol in his or her blood for the purpose of determining the child's  
4 blood alcohol content. Such breath analysis must be administered as soon as possible after the  
5 law-enforcement officer arrives at a reasonable belief that the child has been driving a motor  
6 vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis  
7 administered pursuant to this subsection must be administered with a device and in a manner  
8 approved by the division of health for that purpose. If a preliminary breath analysis is administered,

9 the results shall be used solely for the purpose of guiding the officer in deciding whether the child,  
10 at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two  
11 hundredths of one percent or more, by weight, and should, therefore, be taken into custody to  
12 administer a secondary test in accordance with the provisions of this section.

13 (b) A child may be taken into custody by a law-enforcement official without a warrant or  
14 court order if the official has reasonable grounds to believe the child to have been driving a motor  
15 vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is  
16 administered and the results of the analysis indicate that the child has an alcohol concentration  
17 in his or her blood of less than two hundredths of one percent, by weight, the child may not be  
18 taken into custody unless other grounds exist under ~~subsection (b), section eight, article five,~~  
19 ~~chapter forty-nine~~ §49-4-705(b) of this code. Upon taking a child into custody pursuant to the  
20 provisions of this section, the official shall take all reasonable steps to cause notification to be  
21 made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close  
22 relative.

23 (c) Upon taking a child into custody pursuant to this section, the official shall take the child  
24 to a facility where a secondary test of the child's blood or urine may be administered at the  
25 direction of the official or a test of the child's breath may be administered by the official. The law-  
26 enforcement agency by which such law-enforcement official is employed shall designate whether  
27 the secondary test is a test of either blood, breath or urine: *Provided*, That if the test so designated  
28 is a blood test and the child refuses to submit to the blood test, then the law-enforcement official  
29 taking the child into custody shall designate in lieu thereof a breath test to be administered.  
30 Notwithstanding the provisions of §17C-5-7 of this code, a refusal to submit to a blood test only  
31 shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any  
32 child taken into custody pursuant to this section shall be given a written statement advising him  
33 or her that a refusal to submit to a secondary test of either blood, breath or urine, as finally  
34 designated by the law-enforcement agency or official in accordance with this subsection, will



35 result in the suspension of his or her license to operate a motor vehicle in this state for a period  
36 of at least thirty days or a revocation of the license for a period up to life.

37 (d) If the law-enforcement official taking the child into custody is employed by a law-  
38 enforcement agency which does not have available the testing equipment or facilities necessary  
39 to conduct any secondary breath test which may be administered pursuant to the provisions of  
40 this section, then the official who took the child into custody may request another qualified person  
41 to administer a secondary breath test: *Provided*, That the breath test shall be administered in the  
42 presence of the official who took the child into custody. The results of such breath test may be  
43 used in evidence to the same extent and in the same manner as if such test had been conducted  
44 by the law-enforcement official who took the child into custody. The qualified person administering  
45 the breath test must be a member of the West Virginia state police, the sheriff of the county  
46 wherein the child was taken into custody or any deputy of such sheriff or a law-enforcement official  
47 of another municipality within the county wherein the child was taken into custody. Only the person  
48 actually administering the secondary breath test is competent to testify as to the results and the  
49 veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance  
50 with the provisions of §17C-5-6 of this code.

51 (e) After taking the child into custody, if the law-enforcement official has reasonable cause  
52 to believe that the act of the child in driving the motor vehicle is such that it would provide grounds  
53 for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an  
54 adult, then the official shall proceed to treat the child in the same manner as any other child taken  
55 into custody without a warrant or court order, in accordance with the provisions of §17C-5-8 of  
56 this code.

57 (f) If the results of any secondary test administered pursuant to this section indicate that  
58 the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood  
59 of eight hundredths of one percent or less, by weight, and if the law-enforcement official does not  
60 have reasonable cause to believe that the act of the child in driving the motor vehicle is such that

61 it would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this  
62 code if the child were an adult, then the official shall release the child: *Provided*, That if the results  
63 of any secondary test administered pursuant to this section indicate that the child, at the time of  
64 driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of  
65 one percent or more, by weight, the child shall only be released to a parent or custodian, or to  
66 some other responsible adult.

## CHAPTER 18. EDUCATION.

### ARTICLE 5. COUNTY BOARD OF EDUCATION.

#### **§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.**

1 (a) In recognition of the findings of the Legislature as set forth in ~~section one, article six-c,~~  
2 ~~chapter forty-nine~~ §49-2-401 of this code, the Legislature further finds that public schools are able  
3 to provide a special environment for the training of children, parents and school personnel in the  
4 prevention of child abuse and neglect and child assault and that child abuse and neglect  
5 prevention and child assault prevention programs in the public schools are an effective and cost-  
6 efficient method of reducing the incidents of child abuse and neglect, promoting a healthy family  
7 environment and reducing the general vulnerability of children.

8 (b) County boards of education shall be required, to the extent funds are provided, to  
9 establish programs for the prevention of child abuse and neglect and child assault. Such programs  
10 shall be provided to pupils, parents and school personnel as deemed appropriate. Such programs  
11 shall be in compliance with regulations to be developed by the state Board of Education with the  
12 advice and assistance of the state Department of Health and Human Resources and the West  
13 Virginia State Police: *Provided*, That any such programs which substantially comply with the  
14 regulations adopted by the board and were in effect prior to the adoption of the regulations may  
15 be continued.

16 (c) Funds for implementing the child abuse and neglect prevention and child assault  
17 prevention programs may be allocated to the county boards of education from the children's trust  
18 fund established pursuant to the provisions of ~~article six-e, chapter forty-nine~~ §49-2-401 of this  
19 code or appropriated for such purpose by the Legislature.

20 (d) County boards of education shall request from the state Criminal Identification Bureau  
21 the record of any and all criminal convictions relating to child abuse, sex-related offenses or  
22 possession of controlled substances with intent to deliver same for all of its future employees.  
23 This request shall be made immediately after the effective date of this section, and thereafter as  
24 warranted.

25 (e) Contractors or service providers or their employees may not make direct,  
26 unaccompanied contact with students or access school grounds unaccompanied when students  
27 are present if it cannot be verified that the contractors, service providers or employees have not  
28 previously been convicted of a qualifying offense, as defined in §15-12-2 of this code. For the  
29 purposes of this section, contractor and service provider shall be limited to any vendor, individual  
30 or entity under contract with a county school board. County school boards may require contractors  
31 and service providers to verify the criminal records of their employees before granting the above-  
32 mentioned contact or access. Where prior written consent is obtained, county school boards may  
33 obtain information from the Central Abuse Registry regarding contractors, service providers and  
34 their employees for the purposes of this subsection. Where a contractor or service provider gives  
35 his or her prior written consent, the county school board also may share information provided by  
36 the Central Abuse Registry with other county school boards for the purposes of satisfying the  
37 requirements of this subsection. The requirements of this subsection shall not go into effect until  
38 July 1, 2007.

## **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

**§18-8-6a. Incentive for county board participation in circuit court juvenile probation  
truancy programs.**

1 A county board that enters into a truancy program agreement with the circuit court of the  
2 county that (1) provides for the referral of truant juveniles for supervision by the court's probation  
3 office pursuant to ~~section eleven, article five, chapter forty-nine~~ §49-4-711 of this code and (2)  
4 requires the county board to pay for the costs of the probation officer or officers assigned to  
5 supervise truant juveniles, shall be reimbursed for one half of the costs of the probation officer or  
6 officers, subject to appropriation of the Legislature for this purpose to the West Virginia  
7 Department of Education. For any year in which the funds appropriated are insufficient to cover  
8 the reimbursement costs, the county's costs shall be reimbursed pro rata.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

#### **§18A-5-1d. Return to school through Juvenile Drug Court for certain students.**

1 (a) When a student is expelled from school pursuant to §18A-5-1a of this code, the county  
2 board, county superintendent or principal for the school from which the student was expelled or  
3 the parent, guardian or custodian may refer the student to a Juvenile Drug Court, operated  
4 pursuant to ~~section two-b, article five, chapter forty-nine~~ §49-4-703 of this code. Upon such  
5 referral, the judge assigned to Juvenile Drug Court shall determine whether the student is an  
6 appropriate candidate for Juvenile Drug Court.

7 (b) If the judge determines the student is an appropriate candidate for Juvenile Drug Court,  
8 then the court has jurisdiction over the student in the same manner as it has jurisdiction over all  
9 other persons in Juvenile Drug Court. Such jurisdiction over students includes the ability to issue  
10 any of the various sanctions available to the Juvenile Drug Court, including temporary detention.

11 (c)(1) Successful completion of Juvenile Drug Court or certification by the Juvenile Drug  
12 Court judge that the student is making satisfactory progress toward successful completion of  
13 Juvenile Drug Court warrants consideration for reduction of the expulsion period, pursuant to  
14 §18A-5-1a of this code.

15 (2) The Juvenile Drug Court shall notify the county superintendent of such completion or  
16 certification. The county superintendent shall arrange a meeting with the Juvenile Drug Court  
17 treatment team, the court and the student assistance team of the school from which the student  
18 was expelled to discuss the student's history, progress and potential for improvement.

19 (3) The student assistance team shall evaluate and recommend whether the student's  
20 expulsion period should be reduced and the student reinstated in school.

21 (4) The student assistance team's recommendation shall be presented to the  
22 superintendent, who shall make the final determination. The superintendent shall prepare a  
23 statement detailing reasons for or against school reinstatement and submit the statement to the  
24 county board. If the superintendent determines to reduce the expulsion period, he or she shall  
25 submit the statement required by §18A-5-1a(i) of this code and place the student in an appropriate  
26 school within the district.

27 (5) A student to be reinstated shall be permitted to return to school no later than the tenth  
28 regular school day following notice by the court to the superintendent regarding the student's  
29 successful completion or satisfactory progress toward successful completion of Juvenile Drug  
30 Court.

## **CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**

### **ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.**

#### **§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.**

1 (a) Any male youth between the ages of ten and eighteen years may be committed to the  
2 custody of the Commissioner of Corrections by a circuit court of this state in the manner  
3 prescribed in ~~article five, chapter forty-nine~~ §49-4-701 through §49-4-725 of this code; and further,  
4 any male youth who has been adjudged delinquent pursuant to ~~subdivision (1), section four,~~  
5 ~~article one, chapter forty-nine~~ §49-1-202 of this code, who, as a result thereof, was placed on

6 probation and has been found, in a proceeding pursuant to the procedural requirements of ~~article~~  
7 ~~five, chapter forty-nine~~ §49-4-701 through §49-4-725 of this code, to have violated a term of  
8 probation, prior to the attainment of his or her twentieth birthday, which constitutes a criminal  
9 offense, may be committed to the custody of the Commissioner of Corrections as a youthful  
10 offender.

11 (b) Every youth committed hereunder shall, following the dispositional proceeding, be  
12 transferred to the place or places designated by the Commissioner of Corrections for complete  
13 physical, educational and psychological examinations, including all appropriate tests, to be  
14 completed as soon as possible, the completion of the physical examinations to be within twenty  
15 days. Such youth shall be housed in a manner so as to prevent the spread of infectious disease.  
16 Following disposition and prior to transfer to the custody of the Commissioner of Corrections,  
17 each youth shall be allowed to visit with his or her relatives, without being committed to jail for a  
18 period of not less than one hour. The cost of the examinations herein shall be borne by the  
19 committing county. The youth shall be provided all treatment and rehabilitation indicated by such  
20 examinations.

21 In lieu of the physical examinations and tests provided for herein, the court may, in the  
22 absence of objection, have the county health officer or other local health care facility perform  
23 physical and mental examinations and tests, so long as such examinations and tests are  
24 performed prior to the dispositional proceeding. Except as otherwise provided by law, no child  
25 shall be committed to a jail following a dispositional proceeding solely to await a physical,  
26 educational or mental examination or the results thereof.

27 (c) All such examinations shall be private. No youth who is mentally ill or significantly  
28 intellectually disabled shall be committed to, or retained by, the Commissioner of Corrections, but  
29 shall be returned to the committing court for further disposition. No youth who has a serious  
30 infectious disease shall be retained in the custody of the Commissioner of Corrections, but shall  
31 be transferred to an appropriate treatment facility. Detailed medical records shall be kept of every

32 youth.

33 (d) The results of any such physical, educational and psychological examinations, together  
34 with a copy of the petition, the adjudicatory order and the dispositional order shall accompany  
35 every youth committed to the Commissioner of Corrections, without which such youth shall not  
36 be accepted. The commissioner, or his or her designated representative, shall review the records  
37 of each youth committed to assure that no youth is illegally detained in an inappropriate facility or  
38 custodial situation.

39 (e) The Commissioner of Corrections shall have the authority to transfer and place such  
40 youth in any of the centers or homes or halfway programs which shall be established, and in less  
41 restrictive settings, whether under his or her jurisdiction or private nonprofit residential facilities,  
42 as he or she may deem appropriate to promote the rehabilitation of such youth. To the extent  
43 possible, no youth under the age of fifteen shall be in regular contact with youths between the  
44 ages of sixteen and eighteen.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

#### **§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.**

1 (a) The agency shall establish, and periodically review and update financial guidelines for  
2 determining eligibility for legal representation made available under the provisions of this article.  
3 The agency shall adopt a financial affidavit form for use by persons seeking legal representation  
4 made available under the provisions of this article.

5 (b) All persons seeking legal representation made available under the provisions of this  
6 article shall complete the agency's financial affidavit form, which shall be considered as an  
7 application for the provision of publicly funded legal representation.

8 (c) Any juvenile shall have the right to be effectively represented by counsel at all stages  
9 of proceedings brought under the provisions of ~~article five, chapter forty-nine~~ §49-4-701 through  
10 §49-4-725 of this code. If the child advises the court of his or her inability to pay for counsel, the  
11 court shall require the child's parent or custodian to execute a financial affidavit. If the financial  
12 affidavit demonstrates that neither of the child's parents, or, if applicable, the child's custodian,  
13 has sufficient assets to pay for counsel, the court shall appoint counsel for the child. If the financial  
14 affidavit demonstrates that either of the child's parents, or, if applicable, the child's custodian,  
15 does have sufficient assets to pay for counsel, the court shall order the parent, or, if applicable,  
16 the custodian, to provide, by paying for, legal representation for the child in the proceedings.

17 The court may disregard the assets of the child's parents or custodian and appoint  
18 counsel for the child, as provided above, if the court concludes, as a matter of law, that the child  
19 and the parent or custodian have a conflict of interest that would adversely affect the child's right  
20 to effective representation of counsel, or concludes, as a matter of law, that requiring the child's  
21 parent or custodian to provide legal representation for the child would otherwise jeopardize the  
22 best interests of the child.

23 (d) In circuits in which no public defender office is in operation, circuit judges shall make  
24 all determinations of eligibility. In circuits in which a public defender office is in operation, all  
25 determinations of indigency shall be made by a public defender office employee designated by  
26 the executive director. Such determinations shall be made after a careful review of the financial  
27 affidavit submitted by the person seeking representation. The review of the affidavit shall be  
28 conducted in accord with the financial eligibility guidelines established by the agency pursuant to  
29 subsection (a) of this section. In addition to the financial eligibility guidelines, the person  
30 determining eligibility shall consider other relevant factors, including, but not limited to, those set  
31 forth in subdivisions (1) through (9) of subsection (e) of this section. If there is substantial reason  
32 to doubt the accuracy of information in the financial affidavit, the person determining eligibility may  
33 make such inquiries as are necessary to determine whether the affiant has truthfully and



34 completely disclosed the required financial information.

35 After reviewing all pertinent matters the person determining eligibility may find the affiant  
36 to be eligible to have the total cost of legal representation provided by the state, or may find that  
37 the total cost of providing representation shall be apportioned between the state and the eligible  
38 person. A person whose annual income exceeds the maximum annual income level allowed for  
39 eligibility may receive all or part of the necessary legal representation, or a person whose income  
40 falls below the maximum annual income level for eligibility may be denied all or part of the  
41 necessary legal representation if the person determining eligibility finds the person's particular  
42 circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis  
43 of one or more of the nine factors set forth in subsection (e) of this section. If legal representation  
44 is made available to a person whose income exceeds the maximum annual income level for  
45 eligibility, or if legal representation is denied to a person whose income falls below the maximum  
46 annual income level for eligibility, the person determining eligibility shall make a written statement  
47 of the reasons for the action and shall specifically relate those reasons to one or more of the  
48 factors set forth in subsection (e) of this section.

49 (e) The following factors shall be considered in determining eligibility for legal  
50 representation made available under the provisions of this article:

51 (1) Current income prospects, taking into account seasonal variations in income;

52 (2) Liquid assets, assets which may provide collateral to obtain funds to employ private  
53 counsel and other assets which may be liquidated to provide funds to employ private counsel;

54 (3) Fixed debts and obligations, including federal, state and local taxes and medical  
55 expenses;

56 (4) Child care, transportation and other expenses necessary for employment;

57 (5) Age or physical infirmity of resident family members;

58 (6) Whether the person seeking publicly funded legal representation has made reasonable  
59 and diligent efforts to obtain private legal representation, and the results of those efforts;

60 (7) The cost of obtaining private legal representation with respect to the particular matter  
61 in which assistance is sought;

62 (8) Whether the person seeking publicly funded legal representation has posted a cash  
63 bond for bail or has obtained release on bond for bail through the services of a professional  
64 bondsman for compensation and the amount and source of the money provided for such bond;

65 (9) The consequences for the individual if legal assistance is denied.

66 (f) Legal representation requested by the affiant may not be denied in whole or part unless  
67 the affiant can obtain legal representation without undue financial hardship. Persons determined  
68 to be ineligible by public defender personnel may have the initial determination reviewed by a  
69 local circuit judge who may amend, modify or rewrite the initial determination. At any stage of the  
70 proceedings a circuit court may determine a prior finding of eligibility was incorrect or has become  
71 incorrect as the result of the affiant's changed financial circumstances, and may revoke any prior  
72 order providing legal representation. In such event any attorney previously appointed shall be  
73 entitled to compensation under the provisions of law applicable to such appointment for services  
74 already rendered.

75 (g) In the circumstances and manner set forth below, circuit judges may order repayment  
76 to the state, through the office of the clerk of the circuit court having jurisdiction over the  
77 proceedings, of the costs of representation provided under this article:

78 (1) In every case in which services are provided to an indigent person and an adverse  
79 judgment has been rendered against such person, the court may require that person, and in  
80 juvenile cases, may require the juvenile's parents or custodian, to pay as costs the compensation  
81 of appointed counsel, the expenses of the defense and such other fees and costs as authorized  
82 by statute.

83 (2) The court shall not order a person to pay costs unless the person is able to pay without  
84 undue hardship. In determining the amount and method of repayment of costs, the court shall  
85 take account of the financial resources of the person, the person's ability to pay and the nature of

86 the burden that payment of costs will impose. The fact that the court initially determines, at the  
87 time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude  
88 the court from subsequently ordering repayment should the person's financial circumstances  
89 change.

90 (3) When a person is ordered to repay costs, the court may order payment to be made  
91 forthwith or within a specified period of time or in specified installments. If a person is sentenced  
92 to a term of imprisonment, an order for repayment of costs is not enforceable during the period of  
93 imprisonment unless the court expressly finds, at the time of sentencing, that the person has  
94 sufficient assets to pay the amounts ordered to be paid or finds there is a reasonable likelihood  
95 the person will acquire the necessary assets in the foreseeable future.

96 (4) A person who has been ordered to repay costs, and who is not in contumacious default  
97 in the payment thereof, may at any time petition the sentencing court for modification of the  
98 repayment order. If it appears to the satisfaction of the court that continued payment of the amount  
99 ordered will impose undue hardship on the person or the person's dependents, the court may  
100 modify the method or amount of payment.

101 (5) When a person ordered to pay costs is also placed on probation or imposition or  
102 execution of sentence is suspended, the court may make the repayment of costs a condition of  
103 probation or suspension of sentence.

104 (h) Circuit clerks shall keep a record of repaid counsel fees and defense expenses  
105 collected pursuant to this section and shall, quarterly, pay the moneys to the State Auditor who  
106 shall deposit the funds in the General Revenue Fund of the state.

107 (i) The making of an affidavit subject to inquiry under this section does not in any event  
108 give rise to criminal remedies against the affiant nor occasion any civil action against the affiant  
109 except for the recovery of costs as in any other case where costs may be recovered and the  
110 recovery of the value of services, if any, provided pursuant to this article. A person who has made  
111 an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as

112 provided by law.

## CHAPTER 31. CORPORATIONS.

### ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY

#### AUTHORITY.

##### §31-20-2. Definitions.

1 Unless the context indicates clearly otherwise, as used in this article:

2 (a) "Adjacent regional juvenile detention facility" means a facility constructed or maintained  
3 on property owned or controlled by the Regional Jail Authority and designed (1) for the short term  
4 preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting  
5 transportation to or placement at another juvenile detention facility or juvenile correctional facility  
6 or who are awaiting trial as an adult pursuant to ~~section ten, article five, chapter forty-nine~~ §49-4-  
7 710 of this code; or (2) for the court-ordered, short term placement of juveniles in a facility that is  
8 characterized by programmatic intervention and by staff restrictions of the movements and  
9 activities of juveniles placed there, that limits the juveniles' access to the surrounding community  
10 and that is not characterized by construction fixtures designed to physically restrict the  
11 movements and activities of juveniles.

12 (b) "Authority" or "West Virginia Regional Jail Authority" means the West Virginia Regional  
13 Jail and Correctional Facility Authority created by this article.

14 (c) "Board" means the governing body of the authority.

15 (d) "Bonds" means bonds of the authority issued under this article.

16 (e) "Cost of construction or renovation of a local jail facility, regional jail facility or juvenile  
17 facility" means the cost of all lands, water areas, property rights and easements, financing  
18 charges, interest prior to and during construction and for a period not exceeding six months  
19 following the completion of construction, equipment, engineering and legal services, plans,  
20 specifications and surveys, estimates of costs and other expenses necessary or incidental to

21 determining the feasibility or practicability of any project, together with any other expenses  
22 necessary or incidental to the financing and the construction or renovation of the facilities and the  
23 placing of the facilities in operation.

24 (f) "County" means any county of this state.

25 (g) "Federal agency" means the United States of America and any department,  
26 corporation, agency or instrumentality created, designated or established by the United States of  
27 America.

28 (h) "Fund" or "funds" means a Regional Jail and Correctional Facility Authority fund  
29 provided in §31-20-10 of this code, including those accounts that may be established by the  
30 authority for accurate accounting of the expenditure of public funds by that agency.

31 (i) "Government" means state and federal government, and any political subdivision,  
32 agency or instrumentality of the state or federal government, corporate or otherwise.

33 (j) "Inmate" means any adult person properly committed to a local or regional jail facility or  
34 a correctional facility.

35 (k) "Local jail facility" means any county facility for the confinement, custody, supervision  
36 or control of adult persons convicted of misdemeanors, awaiting trial or awaiting transportation to  
37 a state correctional facility.

38 (l) "Municipality" means any city, town or village in this state.

39 (m) "Notes" means any notes as defined in §46-3-104 of this code issued under this article  
40 by the authority.

41 (n) "Correctional facility" means any correctional facility, penitentiary or other correctional  
42 institution operated by the Division of Corrections for the incarceration of adults.

43 (o) "Regional jail facility" or "regional jail" means any facility operated by the authority and  
44 used jointly by two or more counties for the confinement, custody, supervision or control of adult  
45 persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state  
46 correctional facility.

47 (p) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or  
48 interest on, loans and other investments, grants, contributions and all other income received by  
49 the authority.

50 (q) "Security interest" means an interest in the loan portfolio of the authority which is  
51 secured by an underlying loan or loans and is evidenced by a note issued by the authority.

52 (r) "Work farm" has the same meaning as that term is used in §7-8-12 of this code  
53 authorizing work farms for individual counties.

54 (s) "Juvenile detention facility" or "juvenile detention center" means a facility operated by  
55 the Division of Juvenile Services (1) for the short term preadjudicatory detention of juveniles, for  
56 the confinement of juveniles who are awaiting transportation to or placement at another juvenile  
57 detention facility or juvenile correctional facility or who are awaiting trial as an adult pursuant to  
58 ~~section ten, article five, chapter forty nine~~ §49-4-710 of this code; or (2) for the court-ordered,  
59 short term placement of juveniles in a facility that is characterized by programmatic intervention  
60 and by staff restrictions of the movements and activities of juveniles placed there, that limits the  
61 juveniles' access to the surrounding community and that is not characterized by construction  
62 fixtures designed to physically restrict the movements and activities of juveniles.

63 (t) "Juvenile correctional facility" means a facility operated by the Division of Juvenile  
64 Services (1) for the postdispositional confinement of juveniles adjudicated of offenses that would  
65 be criminal offenses if committed by an adult; or (2) for the court-ordered placement of juveniles  
66 in a facility that is characterized by programmatic intervention and by staff restrictions of the  
67 movements and activities of juveniles placed there, that limits the juveniles' access to the  
68 surrounding community and that is not characterized by construction fixtures designed to  
69 physically restrict the movements and activities of juveniles.

70 (u) "Juvenile facility" means an adjacent regional juvenile detention facility, a juvenile  
71 detention facility, a juvenile detention center or a juvenile correctional facility.

## CHAPTER 33. INSURANCE.

### ARTICLE 4. GENERAL PROVISIONS.

#### **§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.**

1 (a) For purposes of this section, the following definitions shall apply:

2 (1) "Abuse," as used in this section, means the occurrence of one or more of the following  
3 acts between family or household members:

4 (A) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to  
5 another with or without dangerous or deadly weapons;

6 (B) Placing another in reasonable apprehension of physical harm;

7 (C) Creating fear of physical harm by harassment, psychological abuse or threatening  
8 acts;

9 (D) Committing either sexual assault or sexual abuse as those terms are defined in §61-  
10 8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

11 (E) Holding, confining, detaining or abducting another person against that person's will;

12 (F) Intentionally or recklessly damaging, destroying or taking the tangible property of  
13 another individual;

14 (G) Insulting, taunting or challenging another individual or engaging in a course of alarming  
15 or distressing conduct in a manner which is likely to provoke a violent or disorderly response or  
16 which is likely to cause humiliation, degradation or fear in another individual;

17 (H) Trespassing on or in the property of another individual, or on or in property from which  
18 the trespasser has been excluded by court order;

19 (I) Child abuse or neglect, as defined in ~~section three, article one, chapter forty-nine~~ §49-  
20 1-201 of this code;

21 (J) Kidnapping, concealment or removal of a minor child from his or her custodian or from

22 a person entitled to visitation, as set forth in §61-2-14 through §61-2-14e of this code.

23 (2) "Family or household member" means current or former spouses, persons living as  
24 spouses, persons who formerly resided as spouses, parents, children and stepchildren, current  
25 or former sexual or intimate partners, other persons related by blood or marriage, persons who  
26 are presently or in the past have resided or cohabited together or a person with whom the victim  
27 has a child in common.

28 (3) "Victim of abuse," as used in this section, means an individual who has been or is  
29 subject to abuse, including, but not limited to, an individual who seeks, has sought or should have  
30 sought medical or psychological treatment for abuse, protection from abuse or shelter from abuse.

31 (b) For all policies issued or renewed after the effective date of this section, no person or  
32 entity engaged in the business of providing life or health insurance, or both, in this state may:

33 (1) Deny, refuse to issue, refuse to renew, refuse to reissue, cancel or otherwise terminate  
34 an insurance policy or restrict coverage on any individual because that individual is, has been or  
35 may be the victim of abuse;

36 (2) Add any surcharge or rating factor to a premium of an insurance policy because an  
37 individual has been or may be the victim of abuse;

38 (3) Exclude or limit coverage for losses or deny a claim incurred because an individual  
39 has been or may be the victim of abuse; or

40 (4) Require as part of the application process any information regarding whether that  
41 individual has been or may be the victim of abuse.

42 (c) Nothing in this section may be construed to prohibit a person from declining to issue  
43 an insurance policy insuring the life of an individual who is or has been the victim of abuse if the  
44 perpetrator of abuse is the applicant or would be the owner of the insurance policy.

45 (d) Nothing in this section may be construed to prohibit a person from underwriting or  
46 rating a risk on the basis of a preexisting physical or mental condition, even if the condition had  
47 been caused by abuse: *Provided, That:*



48 (1) The person routinely underwrites or rates the condition in the same manner with  
49 respect to an insured or an applicant who is not a victim of abuse;

50 (2) The fact that an individual is, has been, or may be the victim of abuse may not be  
51 considered a physical or mental condition; and

52 (3) The underwriting or rating is not used to evade the intent of this law or any other  
53 provision of law. A person may not be held civilly or criminally liable for any cause of action which  
54 may be brought because of compliance with this section.

## **CHAPTER 48. DOMESTIC RELATIONS.**

### **ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION- MAKING RESPONSIBILITY OF CHILDREN.**

#### **§48-9-205. Permanent parenting plan.**

1 (a) A party seeking a judicial allocation of custodial responsibility or decision-making  
2 responsibility under this article shall file a proposed parenting plan with the court. Parties may file  
3 a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably  
4 discoverable by the filing party or parties:

5 (1) The name, address and length of residence of any adults with whom the child has lived  
6 for one year or more, or in the case of a child less than one year old, any adults with whom the  
7 child has lived since the child's birth;

8 (2) The name and address of each of the child's parents and any other individuals with  
9 standing to participate in the action under §48-9-103 of this code;

10 (3) A description of the allocation of care taking and other parenting responsibilities  
11 performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-  
12 four months preceding the filing of an action under this article;

13 (4) A description of the work and child-care schedules of any person seeking an allocation  
14 of custodial responsibility, and any expected changes to these schedules in the near future;

- 15 (5) A description of the child's school and extracurricular activities;
- 16 (6) A description of any of the limiting factors as described in §48-9-209 of this code that  
17 are present, including any restraining orders against either parent to prevent domestic or family  
18 violence, by case number and jurisdiction;
- 19 (7) Required financial information; and
- 20 (8) A description of the known areas of agreement and disagreement with any other  
21 parenting plan submitted in the case.

22 The court shall maintain the confidentiality of any information required to be filed under  
23 this section when the person giving that information has a reasonable fear of domestic abuse and  
24 disclosure of the information would increase that fear.

25 (b) The court shall develop a process to identify cases in which there is credible  
26 information that child abuse or neglect, as defined in ~~section three, article one, chapter forty-nine~~  
27 §49-1-201 of this code, or domestic violence as defined in §48-27-202 of this code has occurred.  
28 The process shall include assistance for possible victims of domestic abuse in complying with  
29 subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe  
30 shelter, counseling, safety planning, information regarding the potential impact of domestic abuse  
31 on children and information regarding civil and criminal remedies for domestic abuse. The process  
32 shall also include a system for ensuring that jointly submitted parenting plans that are filed in  
33 cases in which there is credible information that child abuse or domestic abuse has occurred  
34 receive the court review that is mandated by §48-9-201(b) of this code.

35 (c) Upon motion of a party and after consideration of the evidence, the court shall order a  
36 parenting plan consistent with the provisions of §48-9-206, §48-9-207, §48-9-208 and §48-9-209  
37 of this code, containing:

38 (1) A provision for the child's living arrangements and each parent's custodial  
39 responsibility, which shall include either:

40 (A) A custodial schedule that designates in which parent's home each minor child will

41 reside on given days of the year; or

42 (B) A formula or method for determining such a schedule in sufficient detail that, if  
43 necessary, the schedule can be enforced in subsequent proceedings by the court;

44 (2) An allocation of decision-making responsibility as to significant matters reasonably  
45 likely to arise with respect to the child;

46 (3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise  
47 under the plan, and remedies for violations of the plan; and

48 (4) A plan for the custody of the child should one or both of the parents as a member of  
49 the National Guard, a reserve component or an active duty component be mobilized, deployed or  
50 called to active duty.

51 (d) A parenting plan may, at the court's discretion, contain provisions that address matters  
52 that are expected to arise in the event of a party's relocation, or provide for future modifications  
53 in the parenting plan if specified contingencies occur.

### PART 3 - FACT FINDING.

#### **§48-9-301a. Child abuse allegations.**

1 (a) If allegations of child abuse are made during a child custody proceeding and the court  
2 has concerns regarding the child's safety, the court may take any reasonable, temporary steps  
3 as the court, in its discretion, deems appropriate under the circumstances to protect the child's  
4 safety until an investigation can be completed. Nothing in this subsection shall affect the  
5 applicability of ~~sections two and nine of article six-a, chapter forty-nine~~ §49-2-802 and §49-2-803  
6 of this code.

7 (b) If allegations of child abuse are made during a child custody proceeding, the court may  
8 request that the local child protective service conduct an investigation of the allegations pursuant  
9 to ~~article six-a, chapter forty-nine~~ §49-2-801 through §49-2-814 of this code. Upon completion of  
10 the investigation, the agency shall report its findings to the court.

**ARTICLE 22. ADOPTION.****PART 3. CONSENT OR RELINQUISHMENT; ABANDONMENT.****§48-22-301. Persons whose consent or relinquishment is required; exceptions.**

1 (a) Subject to the limitations hereinafter set forth, consent to or relinquishment for adoption  
2 of a minor child is required of:

3 (1) The parents or surviving parent, whether adult or infant, of a marital child;

4 (2) The outsider father of a marital child who has been adjudicated to be the father of the  
5 child or who has filed a paternity action which is pending at the time of the filing of the petition for  
6 adoption;

7 (3) The birth mother, whether adult or infant, of a nonmarital child; and

8 (4) The determined father.

9 (b) Consent or relinquishment shall not be required of a parent or of any other person  
10 having custody of the adoptive child:

11 (1) Whose parental rights have been terminated pursuant to the provisions of ~~article three,~~  
12 ~~chapter forty-nine~~ §49-4-114 of this code;

13 (2) Whom the court finds has abandoned the child as set forth in ~~22-306~~ §48-22-306 of  
14 this code; or

15 (3) Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is  
16 married to the petitioning adoptive parent. In such stepparent adoption, the parent must assent to  
17 the adoption by joining as a party to the petition for adoption.

18 (c) If the mother, legal father or determined father is under disability, the court may order  
19 the adoption if it finds:

20 (1) The parental rights of the person are terminated, abandoned or permanently  
21 relinquished;

22 (2) The person is incurably insane; or

23           (3) The disability arises solely because of age and an otherwise valid consent or  
24           relinquishment has been given.

25           (d) If all persons entitled to parental rights of the child sought to be adopted are deceased  
26           or have been deprived of the custody of the child by law, then consent or relinquishment is  
27           required of the legal guardian or of any other person having legal custody of the child at the time.  
28           If there is no legal guardian nor any person who has legal custody of the child, then consent or  
29           relinquishment is required from some discreet and suitable person appointed by the court to act  
30           as the next friend of the child in the adoption proceedings.

31           (e) If one of the persons entitled to parental rights of the child sought to be adopted is  
32           deceased, only the consent or relinquishment of the surviving person entitled to parental rights is  
33           required.

34           (f) If the child to be adopted is twelve years of age or over, the consent of the child is  
35           required to be given in the presence of a judge of a court of competent jurisdiction, unless for  
36           extraordinary cause, the requirement of such consent is waived by the court.

37           (g) Any consent to adoption or relinquishment of parental rights shall have the effect of  
38           authorizing the prospective adoptive parents or the agency to consent to medical treatment for  
39           the child, whether or not such authorization is expressly stated in the consent or relinquishment.

## **ARTICLE 26. DOMESTIC VIOLENCE ACT.**

### **PART 7. CONFIDENTIALITY.**

#### **§48-26-701. Confidentiality.**

1           (a) No program licensed pursuant to this article may disclose, reveal or release or be  
2           compelled to disclose, reveal or release, any written records or personal or personally identifying  
3           information about a program participant created or maintained in providing services, regardless  
4           of whether the information has been encoded, encrypted, hashed, or otherwise protected,  
5           pursuant to this article except:

6 (1) Upon written consent, or upon oral consent in emergency situations defined by  
7 legislative rule, of the person seeking or who has sought services from the program;

8 (2) In any proceeding brought under §9-6-4 and §9-6-5 of this code or ~~article six, chapter~~  
9 ~~forty-nine~~ §49-4-601 through §49-4-610 of this code;

10 (3) As mandated by ~~article six-a, chapter forty-nine~~ §49-2-801 through §49-2-814 and §9-  
11 6-1 *et seq.* of this code;

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

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

17 (6) As authorized by the releases signed by batterer intervention and prevention program  
18 participants pursuant to the provisions of subsection (b) of this section.

19 (b) Batterer intervention and prevention program participants shall authorize the release  
20 of information by signing the following releases:

21 (1) Allowing the provider to inform the victim or alleged victim and the victim's advocates  
22 that the batterer is participating in a batterer intervention and prevention program with the provider  
23 and to provide information to the victim or alleged victim and her or his advocates, if necessary,  
24 for the victim's or alleged victim's safety;

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

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

31 (4) Allowing the provider to report to the court, if the participation was court ordered, and

32 to the victim or alleged victim, if she or he requests and provides a method of notification, and to  
33 his or her advocate, any assault, failure to comply with program requirements, failure to attend  
34 the program, threat of harm by the batterer, reason for termination and recommendations for  
35 changes in the court order; and

36 (5) Allowing the provider to report to the victim or alleged victim, or his or her advocate,  
37 without the participant's authorization, all perceived threats of harm, the participant's failure to  
38 attend and reason for termination.

39 (c) Monitored parenting and exchange programs may disclose to one parent or guardian,  
40 without the permission of the other parent or guardian, any perceived threat of harm or violation  
41 of the court order or violation of the monitored parenting and exchange program rules by the other  
42 parent or guardian.

43 (d) No monitored parenting and exchange program may release information about the  
44 child without consent of the parent with custodial responsibility or guardian.

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

47 (f) No consent or authorization for the transmission or disclosure of confidential information  
48 is effective unless it is signed by the program participant whose information is being disclosed.  
49 Every person signing an authorization shall be given a copy.

50 (g) A victim of domestic violence, dating violence, sexual assault, or stalking shall not be  
51 required to provide consent to release his or her personally identifying information as a condition  
52 of eligibility for the services, nor may any personally identifying information be shared in order to  
53 comply with federal or state reporting, evaluation, or data collection requirements: *Provided, That*  
54 nothing in this section prohibits a program from reporting suspected abuse or neglect, as defined  
55 by law, when the program is mandated by law to report suspected abuse or neglect.

**§48-26-1002. Exclusions.**

1 The provisions of this part do not apply to therapeutic or supervised visitation or exchanges

2 or any activity conducted by the state or others in abuse and neglect proceedings pursuant to  
3 ~~articles six and six-a, chapter forty-nine~~ §49-2-801 through §49-2-814 and §49-4-601 through  
4 §49-4-610 of this code in which assessment, evaluation, formulation of a treatment plan, case  
5 management, counseling, therapy or similar activities occur.

## **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

### **§48-27-403. Emergency protective orders of court; hearings; persons present.**

1 (a) Upon the filing of a verified petition under this article, the magistrate court may enter  
2 an emergency protective order as it may deem necessary to protect the petitioner or minor  
3 children from domestic violence and, upon good cause shown, may do so ex parte without the  
4 necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and  
5 present danger of abuse to the petitioner or minor children shall constitute good cause for the  
6 issuance of an emergency protective order pursuant to this section. If the respondent is not  
7 present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the  
8 court, in writing, the efforts which have been made to give notice to the respondent or just cause  
9 why notice should not be required. Copies of medical reports or records may be admitted into  
10 evidence to the same extent as though the original thereof. The custodian of such records shall  
11 not be required to be present to authenticate such records for any proceeding held pursuant to  
12 this subsection. If the magistrate court determines to enter an emergency protective order, the  
13 order shall prohibit the respondent from possessing firearms.

14 (b) Following the proceeding, the magistrate court shall order a copy of the petition to be  
15 served immediately upon the respondent, together with a copy of any emergency protective order  
16 entered pursuant to the proceedings, a notice of the final hearing before the family court and a  
17 statement of the right of the respondent to appear and participate in the final hearing, as provided  
18 in subsection (d) of this section. Copies of any order entered under the provisions of this section,  
19 a notice of the final hearing before the family court and a statement of the right of the petitioner to  
20 appear and participate in the final hearing, as provided in subsection (d) of this section, shall also



21 be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-  
22 enforcement agency having jurisdiction to enforce the order, including municipal police, the county  
23 sheriff's office and local office of the State Police, within twenty-four hours of the entry of the order.  
24 An emergency protective order is effective until modified by order of the family court upon hearing  
25 as provided in subsection (d) of this section. The order is in full force and effect in every county in  
26 this state.

27 (c) Subsequent to the entry of the emergency protective order, service on the respondent  
28 and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred  
29 to the office of the clerk of the circuit court for use by the family court.

30 (d) The family court shall schedule a final hearing on each petition in which an emergency  
31 protective order has been entered by a magistrate. The hearing shall be scheduled not later than  
32 ten days following the entry of the order by the magistrate. The notice of the final hearing shall be  
33 served on the respondent and delivered to the petitioner, as provided in subsection (b) of this  
34 section, and must set forth the hearing date, time and place and include a statement of the right  
35 of the parties to appear and participate in the final hearing. The notice must also provide that the  
36 petitioner's failure to appear will result in a dismissal of the petition and that the respondent's  
37 failure to appear may result in the entry of a protective order against him or her for a period of  
38 ninety or one hundred eighty days, as determined by the court. The notice must also include the  
39 name, mailing address, physical location and telephone number of the family court having  
40 jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing  
41 required by the provisions of this subsection, the family court must provide the magistrate court  
42 with a day and time in which final hearings may be scheduled before the family court within the  
43 time required by law.

44 (e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the  
45 allegation of domestic violence or that he or she reported or witnessed domestic violence against  
46 another and has, as a result, been abused, threatened, harassed or has been the subject of other

47 actions to attempt to intimidate him or her, or such petition shall be dismissed by the family court.  
48 If the respondent has not been served with notice of the emergency protective order, the hearing  
49 may be continued to permit service to be effected. The failure to obtain service upon the  
50 respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be  
51 admitted into evidence to the same extent as though the original thereof, upon proper  
52 authentication, by the custodian of such records.

53 (f) No person requested by a party to be present during a hearing held under the provisions  
54 of this article shall be precluded from being present unless such person is to be a witness in the  
55 proceeding and a motion for sequestration has been made and such motion has been granted. A  
56 person found by the court to be disruptive may be precluded from being present.

57 (g) Upon hearing, the family court may dismiss the petition or enter a protective order for  
58 a period of ninety days or, in the discretion of the court, for a period of one hundred eighty days.  
59 The hearing may be continued on motion of the respondent, at the convenience of the court.  
60 Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is  
61 continued, the family court may modify the emergency protective order as it deems necessary.

62 (h) Notwithstanding any other provision of this code to the contrary, a petition filed  
63 pursuant to this section that results in the issuance of an emergency protective order naming a  
64 juvenile as the respondent in which the petition for the emergency protective order is filed by or  
65 on behalf of the juvenile's parent, guardian or custodian or other person with whom the juvenile  
66 resides shall be treated as a petition authorized by ~~section seven, article five, chapter forty nine~~  
67 §49-4-704 of this code, alleging the juvenile is a juvenile delinquent: *Provided*, That the magistrate  
68 court shall notify the prosecuting attorney in the county where the emergency protective order is  
69 issued within twenty-four hours of the issuance of the emergency protective order and the  
70 prosecuting attorney may file an amended verified petition to comply with the provisions of  
71 ~~subsection (a) of section seven, article five, chapter forty nine~~ §49-4-704(a) of this code within  
72 two judicial days.

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

#### PART II. DEFINITIONS.

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

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

5           "Abandonment" means any conduct that demonstrates the settled purpose to forego the  
6 duties and parental responsibilities to the child;

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

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

12           (B) Sexual abuse or sexual exploitation;

13           (C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of  
14 §61-2-14h of this code; or

15           (D) Domestic violence as defined in §48-27-202 of this code.

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

19           "Battered parent," for the purposes of ~~part six, article four of this chapter~~ §49-4-601 through  
20 §49-4-610 of this code, means a respondent parent, guardian, or other custodian who has been  
21 adjudicated by the court to have not condoned the abuse or neglect and has not been able to

22 stop the abuse or neglect of the child or children due to being the victim of domestic violence as  
23 defined by §48-27-202 of this code which was perpetrated by the same person or persons  
24 determined to have abused or neglected the child or children.

25 “Child abuse and neglect” or “child abuse or neglect” means an act that creates an abused  
26 child or a neglected child as those terms are defined in this section by a parent, guardian or  
27 custodian who is responsible for the child’s welfare, under circumstance which harm or threaten  
28 the health and welfare of the child.

29 “Child abuse and neglect services” means social services which are directed toward:

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

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

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

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

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

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

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

46 “Imminent danger to the physical well-being of the child” means an emergency situation  
47 in which the welfare or the life of the child is threatened. These conditions may include an

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

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

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

55 (C) Nutritional deprivation;

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

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

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

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

60 (H) The parent, guardian or custodian's abuse of alcohol or drugs or other controlled  
61 substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a  
62 degree as to pose an imminent risk to a child's health or safety; or

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

64 "Neglected child" means a child:

65 (A) Whose physical or mental health is harmed or threatened by a present refusal, failure  
66 or inability of the child's parent, guardian or custodian to supply the child with necessary food,  
67 clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is  
68 not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

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

71 (C) "Neglected child" does not mean a child whose education is conducted within the  
72 provisions of §18-8-1 of this code.

73 "Petitioner or co-petitioner" means the Department or any reputable person who files a

74 child abuse or neglect petition pursuant to §49-4-601 of this code.

75 “Permanency plan” means the part of the case plan which is designed to achieve a  
76 permanent home for the child in the least restrictive setting available.

77 “Respondent” means all parents, guardians, and custodians identified in the child abuse  
78 and neglect petition who are not petitioners or co-petitioners.

79 “Sexual abuse” means:

80 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8C-  
81 3 of this code, which a parent, guardian or custodian engages in, attempts to engage in, or  
82 knowingly procures another person to engage in with a child notwithstanding the fact that for a  
83 child who is less than sixteen years of age the child may have willingly participated in that conduct  
84 or the child may have suffered no apparent physical injury or mental or emotional injury as a result  
85 of that conduct or, for a child sixteen years of age or older the child may have consented to that  
86 conduct or the child may have suffered no apparent physical injury or mental or emotional injury  
87 as a result of that conduct;

88 (B) Any conduct where a parent, guardian or custodian displays his or her sex organs to  
89 a child, or procures another person to display his or her sex organs to a child, for the purpose of  
90 gratifying the sexual desire of the parent, guardian or custodian, of the person making that display,  
91 or of the child, or for the purpose of affronting or alarming the child; or

92 (C) Any of the offenses proscribed in §61-8B-7, §61-8B-8 or §61-8B-9 of this code.

93 “Sexual assault” means any of the offenses proscribed in §61-8B-3, §61-8B-4 or §61-8B-  
94 5 of this code.

95 “Sexual contact” means sexual contact as that term is defined in §61-8B-1 of this code.

96 “Sexual exploitation” means an act where:

97 (A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces,  
98 entices or coerces a child to engage in sexually explicit conduct as that term is defined in §61-  
99 8C-1 of this code; or

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

105 "Sexual intercourse" means sexual intercourse as that term is defined in §61-8B-1 of this  
106 code.

107 "Sexual intrusion" means sexual intrusion as that term is defined in §61-8B-1 of this code.

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

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

### **ARTICLE 2A. FAMILY COURTS.**

#### **§51-2A-2. Family court jurisdiction; exceptions; limitations.**

1 (a) The family court shall exercise jurisdiction over the following matters:

2 (1) All actions for divorce, annulment or separate maintenance brought under the  
3 provisions of §48-3-1 *et seq.*, §48-4-1 *et seq.* or §48-5-1 *et seq.* of this code, except as provided  
4 in subsections (b) and (c) of this section;

5 (2) All actions to obtain orders of child support brought under the provisions of §48-11-1  
6 *et seq.*, §48-12-1 *et seq.* and §48-14-1 *et seq.* of this code;

7 (3) All actions to establish paternity brought under the provisions of §48-24-1 *et seq.* of  
8 this code and any dependent claims related to such actions regarding child support, parenting  
9 plans or other allocation of custodial responsibility or decision-making responsibility for a child;

10 (4) All actions for grandparent visitation brought under the provisions of §48-10-1 *et seq.*  
11 of this code;

12 (5) All actions for the interstate enforcement of family support brought under §48-16-1 *et*  
13 *seq.* of this code and for the interstate enforcement of child custody brought under the provisions  
14 of §48-20-1 *et seq.* of this code;

15 (6) All actions for the establishment of a parenting plan or other allocation of custodial  
16 responsibility or decision-making responsibility for a child, including actions brought under the  
17 Uniform Child Custody Jurisdiction and Enforcement Act, as provided in §48-20-1 *et seq.* of this  
18 code;

19 (7) All petitions for writs of habeas corpus wherein the issue contested is custodial  
20 responsibility for a child;

21 (8) All motions for temporary relief affecting parenting plans or other allocation of custodial  
22 responsibility or decision-making responsibility for a child, child support, spousal support or  
23 domestic violence;

24 (9) All motions for modification of an order providing for a parenting plan or other allocation  
25 of custodial responsibility or decision-making responsibility for a child or for child support or  
26 spousal support;

27 (10) All actions brought, including civil contempt proceedings, to enforce an order of  
28 spousal or child support or to enforce an order for a parenting plan or other allocation of custodial  
29 responsibility or decision-making responsibility for a child;

30 (11) All actions brought by an obligor to contest the enforcement of an order of support  
31 through the withholding from income of amounts payable as support or to contest an affidavit of  
32 accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

33 (12) All final hearings in domestic violence proceedings;

34 (13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

35 (14) All proceedings for payment of attorney fees if the family court judge has jurisdiction  
36 of the underlying action;

37 (15) All proceedings for property distribution brought under §48-7-1 *et seq.* of this code;



38 (16) All proceedings to obtain spousal support brought under §48-8-1 *et seq.* of this code;

39 (17) All proceedings relating to the appointment of guardians or curators of minor children  
40 brought pursuant to §44-10-3, §44-10-4 and §44-10-6 of this code, exercising concurrent  
41 jurisdiction with the circuit court; and

42 (18) All proceedings relating to petitions for sibling visitation.

43 (b) If an action for divorce, annulment or separate maintenance does not require the  
44 establishment of a parenting plan or other allocation of custodial responsibility or decision-making  
45 responsibility for a child and does not require an award or any payment of child support, the circuit  
46 court has concurrent jurisdiction with the family court over the action if, at the time of the filing of  
47 the action, the parties also file a written property settlement agreement executed by both parties.

48 (c) If an action for divorce, annulment or separate maintenance is pending and a petition  
49 is filed pursuant to the provisions of ~~article six, chapter forty-nine~~ §49-4-601 through §49-4-610 of  
50 this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment or  
51 separate maintenance action, the orders of the circuit court in which the abuse or neglect petition  
52 is filed shall supersede and take precedence over an order of the family court respecting the  
53 allocation of custodial and decision-making responsibility for the child between the parents. If no  
54 order for the allocation of custodial and decision-making responsibility for the child between the  
55 parents has been entered by the family court in the pending action for divorce, annulment or  
56 separate maintenance, the family court shall stay any further proceedings concerning the  
57 allocation of custodial and decision-making responsibility for the child between the parents and  
58 defer to the orders of the circuit court in the abuse or neglect proceedings.

59 (d) If a family court judge is assigned as a judicial officer of a domestic violence court then  
60 jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as  
61 referenced in §48-27-301 of this code involving a family or household member as referenced in  
62 §48-27-204(1) through §48-27-204(6) and §48-27-204(7)(A), §48-27-204(7)(B) and §48-27-  
63 204(7)(H) of this code shall be concurrent with the circuit and magistrate courts.

64 (e) A family court is a court of limited jurisdiction. A family court is a court of record only  
65 for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court  
66 is specifically authorized in this section and in chapter 48 of this code. A family court may not  
67 exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers  
68 provided for courts of record in this code unless specifically authorized by the Legislature. A family  
69 court judge is not a "judge of any court of record" or a "judge of a court of record" as the terms  
70 are defined and used in §51-9-1 *et seq.* of this code.

## **ARTICLE 7. OFFICIAL REPORTERS.**

### **§51-7-8. Transcripts to be furnished indigent persons in juvenile delinquency and child abuse and neglect proceedings upon timely request; payment therefor.**

1 In any proceeding held pursuant to ~~article five or six, chapter forty-nine~~ §49-4-601 through  
2 §49-4-725 of this code in which an indigent respondent or his or her counsel has filed a written  
3 request, in the manner prescribed by the Supreme Court of Appeals, evidencing an intent to  
4 appeal a decision of a circuit court in the proceeding, the court, upon presentation of a written  
5 request, presented within thirty days after the entry of the order sought to be appealed, shall  
6 authorize and direct the court reporter to furnish a transcript of the testimony of the proceeding or  
7 the part or parts thereof that have specifically been requested.

8 The court, after being sufficiently satisfied of the reasonableness of a voucher or claim  
9 submitted for payment of the cost of preparing the transcript, shall certify the cost to the State  
10 Auditor, who shall, in a timely manner, pay the court reporter's fee from appropriations to the  
11 Supreme Court of Appeals.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 2. CRIMES AGAINST THE PERSON.**

#### **§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.**

1 (a) Any person or agency who knowingly offers, gives or agrees to give to another person

2 money, property, service or other thing of value in consideration for the recipient's locating,  
3 providing or procuring a minor child for any purpose which entails a transfer of the legal or physical  
4 custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and  
5 subject to fine and imprisonment as provided herein.

6 (b) Any person who knowingly receives, accepts or offers to accept money, property,  
7 service or other thing of value to locate, provide or procure a minor child for any purpose which  
8 entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption  
9 or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

10 (c) Any person who violates the provisions of this section is guilty of a felony and, upon  
11 conviction thereof, may be confined in the state correctional facility for not less than one year nor  
12 more than ten years or, in the discretion of the court, be confined in jail not more than one year  
13 and fined not less than \$2,000 nor more than \$10,000.

14 (d) A child whose parent, guardian or custodian has sold or attempted to sell said child in  
15 violation of the provisions of §48-22-1 *et seq.* of this code may be deemed an abused child as  
16 defined by ~~section three, article one, chapter forty-nine~~ §49-1-201 of this code. The court may  
17 place such a child in the custody of the department of health and human resources or with such  
18 other responsible person as the best interests of the child dictate.

19 (e) This section does not prohibit the payment or receipt of the following:

20 (1) Fees paid for reasonable and customary services provided by the department of health  
21 and human resources or any licensed or duly authorized adoption or child-placing agency.

22 (2) Reasonable and customary legal, medical, hospital or other expenses incurred in  
23 connection with the pregnancy, birth and adoption proceedings.

24 (3) Fees and expenses included in any agreement in which a woman agrees to become  
25 a surrogate mother.

26 (4) Any fees or charges authorized by law or approved by a court in a proceeding relating  
27 to the placement plan, prospective placement or placement of a minor child for adoption.

28 (f) At the final hearing on the adoption as provided in §48-22-1 *et seq.* of this code, an  
29 affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted  
30 to the court.

## **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

### **§61-5-12b. Escape from custody of the Director of Juvenile Services.**

1 (a) Any person, under the age of eighteen years of age, who escapes or attempts to  
2 escape from the custody of the Director of Juvenile Services, regardless of where such person is  
3 confined or where such escape occurs, is guilty of a delinquent act and subject to the jurisdiction  
4 of the circuit court of the county in which the escape occurred, pursuant to ~~section two, article~~  
5 ~~five, chapter forty-nine~~ §49-4-701 of this code: *Provided*, That upon agreement of all parties, the  
6 prosecution of the escape may be transferred to the circuit court from which the juvenile was  
7 originally committed.

8 (b) Any person, over the age of eighteen years of age or any juvenile who has been  
9 transferred to the adult jurisdiction of the committing court, who escapes or attempts to escape  
10 from the custody of the Director of Juvenile Services, regardless of where such person is confined  
11 or where such escape or attempted escape occurs, is guilty of escape and, if the person is  
12 detained or confined for an offense which is a felony or would have been a felony if committed by  
13 an adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state  
14 correctional facility not more than five years. Any person, over the age of eighteen years of age  
15 or any juvenile who has been transferred to the adult jurisdiction of the committing court, who is  
16 detained for an offense which is a misdemeanor or would have been a misdemeanor if committed  
17 by an adult is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional  
18 jail for not more than one year.

## **ARTICLE 6. CRIMES AGAINST THE PEACE.**

### **§61-6-25. Falsely reporting child abuse.**

1 (a) Any person who knowingly and intentionally reports or causes to be reported to a law-  
2 enforcement officer, child protective service worker or judicial officer that another has committed  
3 child sexual abuse, child abuse or neglect as such are defined in ~~section three, article one, chapter~~  
4 ~~forty-nine~~ §49-1-201 of this code who when doing so knows or has reason to know such  
5 accusation is false and who does it with the intent to influence a child custody decision shall be  
6 guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$1,000, sentenced to  
7 not more than sixty hours of court-approved community service, or both.

8 (b) In addition to any other sanctions imposed by the provisions of this section, any person  
9 convicted of a violation of this section shall be required to attend and complete a court-approved  
10 parenting class.

## **ARTICLE 7. DANGEROUS WEAPONS.**

### **§61-7-8. Possession of deadly weapons by minors; prohibitions.**

1 Notwithstanding any other provision of this article to the contrary, a person under the age  
2 of eighteen years who is not married or otherwise emancipated shall not possess or carry  
3 concealed or openly any deadly weapon: *Provided*, That a minor may possess a firearm upon  
4 premises owned by said minor or his or her family or on the premises of another with the  
5 permission of his or her parent or guardian and in the case of property other than his or her own  
6 or that of his or her family, with the permission of the owner or lessee of such property: *Provided*,  
7 *however*, That nothing in this section shall prohibit a minor from possessing a firearm while  
8 hunting in a lawful manner or while traveling from a place where he or she may lawfully possess  
9 a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess  
10 such weapon.

11 A violation of this section by a person under the age of eighteen years shall subject the  
12 child to the jurisdiction of the circuit court under the provisions of ~~article five, chapter forty-nine~~  
13 §49-4-701 through §49-4-725 of this code, and such minor may be proceeded against in the same  
14 manner as if he or she had committed an act which if committed by an adult would be a crime,

15 and may be adjudicated delinquent.

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-12. Incest; penalty.**

1 (a) For the purposes of this section:

2 (1) "Aunt" means the sister of a person's mother or father;

3 (2) "Brother" means the son of a person's mother or father;

4 (3) "Daughter" means a person's natural daughter, adoptive daughter or the daughter of a  
5 person's husband or wife;

6 (4) "Father" means a person's natural father, adoptive father or the husband of a person's  
7 mother;

8 (5) "Granddaughter" means the daughter of a person's son or daughter;

9 (6) "Grandfather" means the father of a person's father or mother;

10 (7) "Grandmother" means the mother of a person's father or mother;

11 (8) "Grandson" means the son of a person's son or daughter;

12 (9) "Mother" means a person's natural mother, adoptive mother or the wife of a person's  
13 father;

14 (10) "Niece" means the daughter of a person's brother or sister;

15 (11) "Nephew" means the son of a person's brother or sister;

16 (12) "Sexual intercourse" means any act between persons involving penetration, however  
17 slight, of the female sex organ by the male sex organ or involving contact between the sex organs  
18 of one person and the mouth or anus of another person;

19 (13) "Sexual intrusion" means any act between persons involving penetration, however  
20 slight, of the female sex organ or of the anus of any person by an object for the purpose of  
21 degrading or humiliating the person so penetrated or for gratifying the sexual desire of either  
22 party;

23 (14) "Sister" means the daughter of a person's father or mother;

24 (15) "Son" means a person's natural son, adoptive son or the son of a person's husband  
25 or wife; and

26 (16) "Uncle" means the brother of a person's father or mother.

27 (b) A person is guilty of incest when such person engages in sexual intercourse or sexual  
28 intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother,  
29 grandson, granddaughter, nephew, niece, uncle or aunt.

30 (c) Any person who violates the provisions of this section shall be guilty of a felony, and,  
31 upon conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more  
32 than fifteen years, or fined not less than \$500 nor more than \$5,000 and imprisoned in the  
33 penitentiary not less than five years nor more than fifteen years.

34 (d) In addition to any penalty provided under this section and any restitution which may be  
35 ordered by the court under §61-11A-1 *et seq.* of this code, the court may order any person  
36 convicted under the provisions of this section where the victim is a minor to pay all or any portion  
37 of the cost of medical, psychological or psychiatric treatment of the victim, the need for which  
38 results from the act or acts for which the person is convicted, whether or not the victim is  
39 considered to have sustained bodily injury.

40 (e) In any case where a person is convicted of an offense described herein against a child  
41 and further has or may have custodial, visitation or other parental rights to the child, the court  
42 shall find that the person is an abusing parent within the meaning of ~~article six, chapter forty-nine~~  
43 §49-4-601 through §49-4-610 of this code, and shall take such further action in accord with the  
44 provisions of ~~said article~~ those sections.

## **ARTICLE 8B. SEXUAL OFFENSES.**

### **§61-8B-11a. Convictions for offenses against children.**

1 In any case where a person is convicted of an offense described in this article against a  
2 child and the person has custodial, visitation or other parental rights to the child who is the victim  
3 of the offense or any child who resides in the same household as the victim, the court shall, at the

4 time of sentencing, find that the person is an abusing parent within the meaning of ~~article six,~~  
5 ~~chapter forty-nine~~ §49-4-601 through §49-4-610 of this code as to the child victim, and may find  
6 that the person is an abusing parent as to any child who resides in the same household as the  
7 victim, and shall take such further action in accord with the provisions of ~~said article~~ those  
8 sections.

## **ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.**

### **§61-8C-3b. Prohibiting juveniles from manufacturing, possessing and distributing nude or partially nude images of minors; creating exemptions; declaring a violation to be an act of juvenile delinquency; and providing for the punishment thereof.**

1 (a) Any minor who intentionally possesses, creates, produces, distributes, presents,  
2 transmits, posts, exchanges, or otherwise disseminates a visual portrayal of another minor posing  
3 in an inappropriate sexual manner or who distributes, presents, transmits, posts, exchanges or  
4 otherwise disseminates a visual portrayal of himself or herself posing in an inappropriate sexual  
5 manner shall be guilty of an act of delinquency and upon adjudication disposition may be made  
6 by the circuit court pursuant to the provisions of ~~article five, chapter forty-nine~~ §49-4-701 through  
7 §49-4-725 of this code.

8 (b) As used in this section:

9 (1) "Posing in an inappropriate sexual manner" means exhibition of a bare female breast,  
10 female or male genitalia, pubic or rectal areas of a minor for purposes of sexual titillation.

11 (2) "Visual portrayal" means:

12 (A) A photograph;

13 (B) A motion picture;

14 (C) A digital image;

15 (D) A digital video recording; or

16 (E) Any other mechanical or electronic recording process or device that can preserve, for  
17 later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones,



18 personal digital assistance and other digital storage or transmitting devices;

19 (c) It shall be an affirmative defense to an alleged violation of this section that a minor  
 20 charged with possession of the prohibited visual depiction did neither solicit its receipt nor  
 21 distribute, transmit or present it to another person by any means.

22 (d) Notwithstanding the provisions of §15-12-1 *et seq.* of this code, an adjudication of  
 23 delinquency under the provisions of this section shall not subject the minor to the requirements of  
 24 said article and chapter.

## **ARTICLE 8D. CHILD ABUSE.**

### **§61-8D-9. Convictions for offenses against children.**

1 In any case where a person is convicted of a felony offense against a child as set forth in  
 2 this article and the person has custodial, visitation or other parental rights to the child who is the  
 3 victim of the offense or any child who resides in the same household as the victim, the court shall,  
 4 at the time of sentencing, find that the person is an abusing parent within the meaning of ~~article~~  
 5 ~~six, chapter forty-nine~~ §49-4-601 through §49-4-610 of this code as to the child victim, and may  
 6 find that the person is an abusing parent as to any child who resides in the same household as  
 7 the victim, and shall take such further action in accord with the provisions of ~~said article~~ those  
 8 sections.

## **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

### **§61-11-23. Punishment for juvenile convicted as an adult; eligibility for parole; factors to be considered prior to sentencing.**

1 (a) Notwithstanding any other provision of law to the contrary, a sentence of life  
 2 imprisonment without the possibility of parole may not be imposed on a person who:

- 3 (1) Is convicted of an offense punishable by life imprisonment; and
- 4 (2) Was less than eighteen years of age at the time the offense was committed.

5 (b) Unless otherwise provided by this code, the provisions of §62-12-1 *et seq.* of this code

6 shall govern the eligibility for parole of a person who is convicted of an offense and sentenced to  
7 confinement if he or she was less than eighteen years of age at the time the offense was  
8 committed, except that a person who is convicted of one or more offenses for which the sentence  
9 or any combination of sentences imposed is for a period that renders the person ineligible for  
10 parole until he or she has served more than fifteen years shall be eligible for parole after he or  
11 she has served fifteen years if the person was less than eighteen years of age at the time each  
12 offense was committed.

13 (c) In addition to other factors required by law to be considered prior to the imposition of a  
14 sentence, in determining the appropriate sentence to be imposed on a person who has been  
15 transferred to the criminal jurisdiction of the court pursuant to ~~section ten, article five, chapter~~  
16 ~~forty-nine~~ §49-4-710 of this code and who has been subsequently tried and convicted of a felony  
17 offense as an adult, the court shall consider the following mitigating circumstances:

18 (1) Age at the time of the offense;

19 (2) Impetuosity;

20 (3) Family and community environment;

21 (4) Ability to appreciate the risks and consequences of the conduct;

22 (5) Intellectual capacity;

23 (6) The outcomes of a comprehensive mental health evaluation conducted by an mental  
24 health professional licensed to treat adolescents in the State of West Virginia: *Provided*, That no  
25 provision of this section may be construed to require that a comprehensive mental health  
26 evaluation be conducted;

27 (7) Peer or familial pressure;

28 (8) Level of participation in the offense;

29 (9) Ability to participate meaningfully in his or her defense;

30 (10) Capacity for rehabilitation;

31 (11) School records and special education evaluations;

- 32 (12) Trauma history;
- 33 (13) Faith and community involvement;
- 34 (14) Involvement in the child welfare system; and
- 35 (15) Any other mitigating factor or circumstances.

36 (d)(1) Prior to the imposition of a sentence on a person who has been transferred to the  
37 criminal jurisdiction of the court pursuant to ~~section ten, article five, chapter forty-nine~~ §49-4-710  
38 of this code and who has been subsequently tried and convicted of ~~an~~ a felony offense as an  
39 adult, the court shall consider the outcomes of any comprehensive mental health evaluation  
40 conducted by an mental health professional licensed to treat adolescents in the State of West  
41 Virginia. The comprehensive mental health evaluation must include the following:

- 42 (A) Family interviews;
- 43 (B) Prenatal history;
- 44 (C) Developmental history;
- 45 (D) Medical history;
- 46 (E) History of treatment for substance use;
- 47 (F) Social history; and
- 48 (G) A psychological evaluation.

49 (2) The provisions of this subsection are only applicable to sentencing proceedings for  
50 convictions rendered after the effective date of this section and shall not constitute sufficient  
51 grounds for the reconsideration of sentences imposed as the result of convictions rendered after  
52 the effective date of this section.

## **ARTICLE 12. POSTMORTEM EXAMINATIONS.**

### **§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.**

- 1 (a) If in the opinion of the chief medical examiner, or of the county medical examiner of  
2 the county in which the death in question occurred, it is advisable and in the public interest that

3 an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge  
4 of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy  
5 shall be conducted by the chief medical examiner or his or her designee, by a member of his or  
6 her staff, or by a competent pathologist designated and employed by the chief medical examiner  
7 under the provisions of this article. For this purpose, the chief medical examiner may employ any  
8 county medical examiner who is a pathologist who holds board certification or board eligibility in  
9 forensic pathology or has completed an American Board of Pathology fellowship in forensic  
10 pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be  
11 in addition to the fee provided for investigations pursuant to §61-12-8 of this code. A full record  
12 and report of the findings developed by the autopsy shall be filed with the office of the chief  
13 medical examiner by the person making the autopsy.

14 (b) Within the discretion of the chief medical examiner, or of the person making the  
15 autopsy, or if requested by the prosecuting attorney of the county, or of the county where any  
16 injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall  
17 be furnished to the prosecuting attorney.

18 (c) The office of the chief medical examiner shall keep full, complete and properly indexed  
19 records of all deaths investigated, containing all relevant information concerning the death and  
20 the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement  
21 officer may secure copies of these records or information necessary for the performance of his or  
22 her official duties.

23 (d) Copies of these records or information shall be furnished, upon request, to any court  
24 of law, or to the parties therein to whom the cause of death is a material issue, except where the  
25 court determines that interests in a civil matter conflict with the interests in a criminal proceeding,  
26 in which case the interests in the criminal proceeding shall take precedence. The office of chief  
27 medical examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred  
28 in the production of records under this subsection and subsection (c) of this section.

29 (e) The chief medical examiner is authorized to release investigation records and autopsy  
30 reports to the multidisciplinary team authorized by ~~section three, article five-d, chapter forty-nine~~  
31 §49-4-402 of this code and as authorized in subsection (h) of this section. At the direction of the  
32 Secretary of the Department of Health and Human Resources the chief medical examiner may  
33 release records and information to other state agencies when considered to be in the public  
34 interest.

35 (f) Any person performing an autopsy under this section is empowered to keep and retain,  
36 for and on behalf of the chief medical examiner, any tissue from the body upon which the autopsy  
37 was performed which may be necessary for further study or consideration.

38 (g) In cases of the death of any infant in the State of West Virginia where sudden infant  
39 death syndrome is the suspected cause of death and the chief medical examiner or the medical  
40 examiner of the county in which the death in question occurred considers it advisable to perform  
41 an autopsy, it is the duty of the chief medical examiner or the medical examiner of the county in  
42 which the death occurred to notify the sudden infant death syndrome program within the division  
43 of maternal and child health and to inform the program of all information to be given to the infant's  
44 parents.

45 (h) If the chief medical officer determines that a drug overdose is the cause of death of a  
46 person, the chief medical examiner shall provide notice of the death to the West Virginia  
47 Controlled Substances Monitoring Program Database Review Committee established pursuant  
48 to §60A-9-5(b) of this code and shall include in the notice any information relating to the cause of  
49 the fatal overdose.

## **CHAPTER 62. CRIMINAL PROCEDURE.**

### **ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.**

#### **§62-6B-5. Memorialization of statements of certain child witnesses; admissibility; hearing.**

1 (a) After the effective date of this section, whenever any law-enforcement officer,  
2 physician, psychologist, social worker or investigator, in the course of his or her employment or  
3 profession or while engaged in an active criminal investigation as a law-enforcement officer or an  
4 agent of a prosecuting attorney, obtains a statement from a child thirteen years of age or younger  
5 who is an alleged victim in an investigation or prosecution alleging a violation of the provisions of  
6 §61-8B-3, §61-8B-4, §61-8B-5 or §61-8B-7 of this code, he or she shall forthwith make a  
7 contemporaneous written notation and recitation of the statement received or obtained. An audio  
8 recording or video recording with sound capability of the statement may be used in lieu of the  
9 written recitation required by the provisions of this section. Failure to comply with the provisions  
10 of this section creates a presumption that the statement is inadmissible. The statement may be  
11 admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that  
12 the failure to comply with the provisions of this section was a good faith omission and that the  
13 content of the proffered statement is an accurate recital of the information provided by the child  
14 and is otherwise admissible.

15 (b) The provisions of this section shall not apply to:

16 ~~(1) Persons engaged in investigation pursuant to the provisions of article six or seven,~~  
17 ~~chapter forty-nine of this code~~

18 ~~(2)~~ (1) Medical personnel and other persons performing a forensic medical examination of  
19 a child who is an alleged victim; and

20 ~~(3)~~ (2) Prosecuting attorneys when counseling with a child in preparation for eliciting the  
21 child's testimony in court.

NOTE: The purpose of this bill is to make technical corrections in the code when referencing chapter 49 of the code. Chapter 49 was reorganized and renumbered in 2015 and certain references to that chapter in other portions of the code are required to be changed to reflect the new code sections. The bill also defines a term.

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