

West Virginia Legislature

JOURNAL  
of the  
HOUSE of DELEGATES

Eighty-Third Legislature  
Second Regular Session

Held at Charleston  
Published by the Clerk of the House



February 6, 2018  
TWENTY-EIGHTH DAY



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Tuesday, February 6, 2018

**TWENTY-EIGHTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Tim Armstead, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Monday, February 5, 2018, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Delegate Cowles asked and obtained unanimous consent to proceed to consideration of Com. Sub. for H. B. 4329.

**Com. Sub. for H. B. 4329**, Requiring pawnbrokers to providing certain information to law-enforcement agencies; on third reading, was reported by the Clerk.

On motion of Delegate Cowles, the bill was recommitted to the Committee on the Judiciary.

**Committee Reports**

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**Com. Sub. for S. C. R. 4**, WV Army National Guard Sergeant Glenn F. Lough, P.E., Memorial Bridge,

And reports the same back with the recommendation that it be adopted, but that it first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolution (Com. Sub. for S. C. R. 4) was referred to the Committee on Rules.

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. B. 2008**, Relating to the Dealer Recovery Program,

And,

**H. B. 2983**, Granting priority to roadway construction, reconstruction and maintenance for roadways prone to recurring floods that hinder ingress and egress,

And reports the same back, with amendment, with the recommendation that they each do pass, as amended, but that they first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bills (H. B. 2008 and H. B. 2983) were each referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 4276**, Allowing magistrates to grant work release privileges,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 4276** - "A Bill to amend and reenact §62-11A-1 of the Code of West Virginia, 1931, as amended, relating to allowing magistrates to grant work release privileges,"

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 4410**, Removing the requirement that the State Auditor receive copies of the Limited Video Lottery bids,

And reports the same back with the recommendation that it do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 4016**, Relating to combatting waste, fraud, and misuse of public funds through investigations, accountability and transparency,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 4016) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 4186**, Relating generally to guaranteed asset protection waivers,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 4186** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-4-22, relating generally to guaranteed asset protection waivers; providing short title, purpose, legislative intent, and applicability of section; defining certain terms; specifying requirements for offering guaranteed asset protection waivers; requiring contractual liability or other insurance policies on guaranteed asset protection waivers in certain circumstances; requiring certain disclosures; providing for cancellation or non-cancellation; specifying requirements upon cancellation in certain circumstances; exempting certain requirements in commercial transactions; excluding waivers from consumer sales and service tax; and, providing an effective date,"

With the recommendation that the committee substitute do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 4140**, Transferring of certain powers and programs of the West Virginia Affordable Housing Trust Fund to the West Virginia Housing Development Fund,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 4140) was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 4025**, Permitting reciprocity for licensure as a pharmacy technician,

And reports the same back with the recommendation that it do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 4236**, Requiring agencies to provide an annual inventory of real property holdings to the Real Estate Division,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 4236** - "A Bill to amend and reenact §5A-10-9 of the Code of West Virginia, 1931, as amended, relating to requiring agencies to provide an annual inventory of real property holdings to the Real Estate Division; removing the exemption of certain agencies from reporting property holdings to the Real Estate Division; clarifying the information to be reported annually by agencies; and requiring an annual report by the Real Estate Division to the Governor and Legislature,"

With the recommendation that the committee substitute do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 4023**, Relating to the regulation of dialysis technicians,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 4023** - "A Bill to repeal §30-7C-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-7C-3 of said code, all relating to the regulation of dialysis technicians; establishing temporary permit time-frames; clarifying that permit holder is eligible to renew his or her permit; and repealing an advisory council,"

With the recommendation that the committee substitute do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H.B. 4348**, Relating to the powers and duties of the Public Land Corporation,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 4348) was referred to the Committee on Finance.

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4020**, Making technical corrections in the code when referencing chapter 49.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page two, by striking out everything after the enacting clause and inserting in lieu thereof the following:

#### **"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.**

~~There is hereby created~~ The prosecutor's advisory council composed of elected prosecuting attorneys of each county of the state or a designated member of their staff is continued. The

prosecutor's advisory council ~~shall conduct an initial meeting of all members not later than September 1, 1994, and shall meet not less than one time each year. At the initial meeting and annually thereafter,~~ Annually, the council shall elect from among its membership a chairman of the council who shall set the agenda for the council's meetings and shall appoint necessary committees and direct the work of the council in carrying out its duties under the provisions of this section.

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

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

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

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

~~On or before January 1, 1995,~~ The prosecuting attorney of each county in the state shall establish maintain a multidisciplinary investigative team, in accordance with the provisions of ~~section three, 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 200,000.**

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

(b) The Attorney General ~~is hereby authorized and directed to establish such~~ may establish any in-service training programs ~~as in his or her opinion that~~ will do most to assist the prosecuting attorneys in the performance of their duties. The Attorney General is authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purposes of this section. The prosecuting attorney in any county having a population in excess of 200,000 shall also discharge the additional duties imposed upon him or her by the provisions of ~~section thirteen-a, article five, chapter forty-nine~~ §49-4-503 of this code.

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

(d) Each of the county officials mentioned in this section, and, at his or her option, one or more of his or her assistants, deputies, and employees, shall participate in the programs established under this section.

(e) The county commission ~~is authorized and directed to expend funds for the purpose of reimbursing such~~ shall reimburse officials and employees for the actual amount expended by them for food, 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.**

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

(b) Whenever a humane officer, pursuant to an investigation of animal cruelty, forms a reasonable suspicion that a minor child, or incapacitated or elderly person, is the victim of abuse or neglect or has a suspicion of domestic violence, he or she shall report the suspicion and the grounds ~~therefor for the suspicion~~. In the event of suspected child abuse or neglect, the humane officer shall report to the local child protective services agency of the Department of Health and Human Resources in accordance with the provisions of ~~section five, article six-a, chapter forty-nine~~ §49-2-809 of this code. In the event of suspected abuse or neglect of an incapacitated or elderly person, he or she shall report to the department's local adult protective services agency in accordance with the provisions of §9-6-11 of this code. In the event of suspected domestic violence, he or she shall report to the State Police in accordance with the provisions of §48-27-101 *et seq.* of this code.

(c) Any person who interferes with, obstructs or resists any humane officer in the discharge of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500 or confined in jail not more than 30 days, or both fined and confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to any penalties the person incurs for cruel or inhumane treatment of any animal.

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 11. THE CHILD PROTECTION ACT OF 2006.**

#### **§15-11-2. Legislative findings.**

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



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

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

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

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

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

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

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

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

(8) Providing for increased terms of incarceration for first degree sexual assault and first degree sexual abuse committed against children under the age of 12 — §61-8B-3 and §61-8B-7 of this code;

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

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

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

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

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

(14) Authorizing the Department of Health and Human Resources to establish qualifications for sex offender treatment programs and counselors — §62-12-2 and §62-12-26 of this code;

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

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

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

(a) The superintendent shall ~~establish~~ maintain a special unit of the State Police called the Child Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying, investigating, and prosecuting criminal child abuse and neglect cases, in coordination with Child Protective Services, established pursuant to ~~section nine, article six-a, chapter forty-nine~~ §49-2-802 of this code. The unit shall assist other State Police members with child abuse or neglect investigations as well as the Division of Child Protective Services. The unit may provide training, technical expertise, and coordination of services for other law-enforcement agencies, Child Protective Services caseworkers, prosecuting attorneys, and multidisciplinary teams established pursuant to the provisions of ~~section two, article five-d, chapter forty-nine~~ §49-4-402 of this code, to identify, investigate, report, and prosecute criminal child abuse and criminal child neglect cases. However, nothing in this section may be construed to mean that the unit will assume the duties or investigations of other State Police members or other law-enforcement officers.

(b) The unit ~~will comprise~~ shall consist, at a minimum, six members of the State Police. The superintendent shall assign a unit director and ~~shall assign five~~ regional members regionally, to be dedicated and trained to assist county Child Protective Services Offices and caseworkers in investigating and coordinating with other law-enforcement personnel, cases of suspected child abuse or neglect. Cases to be investigated include allegations received pursuant to ~~§49-6A-2~~ §49-2-803 of this code, and any other credible child abuse or neglect allegations.

(c) The unit director's duties include:

- (1) Overseeing State Police members assigned to the unit;
- (2) Coordinating activities of the unit with Child Protection Services;
- (3) Assisting Child Protective Services in developing and refining protocols for improving identification and prosecution of suspected criminal acts of child abuse or neglect; and
- (4) Assuring that all other directives and responsibilities of the unit are fulfilled.

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

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

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

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

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

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

### **§15-2C-1. Definitions.**

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

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

(b) 'Child abuse and neglect' or 'child abuse or neglect' means those terms as defined in ~~section three, article one, chapter forty-nine~~ §49-1-201 of this code, and shall include any act with respect to a child which is a crime against the person pursuant to §61-2-1 *et seq.* of this code, any act which is unlawful pursuant to §61-8D-1 *et seq.* of this code and any offense with respect to a child which is enumerated in §15-2C-3 of this code.

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

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

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

(f) 'Residential care facility' means any facility where a child or an incapacitated adult or an adult receiving behavioral health services resides which is subject to registration, licensure, or certification

by the Department of Health and Human Resources, and ~~shall include~~ includes nursing homes, personal care homes, residential board and care homes, adult family care homes, group homes, legally unlicensed service providers, residential child care facilities, family based foster care homes, specialized family care homes, and intermediate care facilities for the mentally retarded.

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

(h) 'Home care' or 'home care services' means services provided to children or incapacitated adults or adults receiving behavioral health services in the home through a hospice provider, a community care provider, a home health agency, through the Medicaid waiver program, or through any person when that service is reimbursable under the state Medicaid program.

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

(j) 'Qualified entity' means any business, agency, or organization that provides care, treatment, education, training, instruction, supervision, or recreation for children, the elderly, or individuals with disabilities and is a public, private, or not-for-profit entity within the State of West Virginia and meets the definition of qualified entity under the federal National Child Protection Act 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.**

The Governor's Committee on Crime, Delinquency and Correction or its designee shall ascertain the compliance of juvenile detention and juvenile correctional facilities operated by or under contract with the Division of Juvenile Services, created pursuant to ~~section two, article five e, chapter forty-nine~~ §49-2-902 of this code, with standards for the structure, physical plant, operation, and maintenance of the facilities, promulgated by the juvenile facility standards commission, pursuant to §31-20-9a of this code: *Provided*, That ~~such~~ the review shall not include educational programs in ~~such~~ the 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.**

(a) The Secretary of Military Affairs and Public Safety shall, upon written request, direct payment from the fund in the form of a draft as provided in this article up to and including an amount not exceeding \$8,000 for the reasonable funeral expenses, including burial expenses, of a law-

enforcement, safety, or emergency worker killed on or after January 1, 1999, while carrying out official duties: *Provided*, That ~~no~~ funds shall not be expended for any funeral expense that is otherwise payable pursuant to the provisions of §23-4-1 *et seq.* of this code, as amended, or other benefit programs established by a provision of this code which does not involve employee participation: *Provided, however*, That where other funds for funeral expenses are provided pursuant to the laws of this state, from whatever source, which amount to less than \$8,000, funds provided by the provisions of this section shall be expended so as to ensure that at least \$8,000 is available for reasonable funeral expenses. The secretary shall direct payment of the funeral expenses upon written request of an employer or head of a volunteer organization, as is appropriate pursuant to this article, certifying that the individual for whom funeral expenses are requested was killed while performing official duties.

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

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

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

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

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

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

(5) Any probation officer appointed under the provisions of either §62-12-5 or ~~section 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.**

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

As used in this article:

(1) 'Abortion' means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth. This article does not prevent the prescription, sale, or transfer of intrauterine contraceptive devices, other contraceptive devices, or other generally

medically accepted contraceptive devices, instruments, medicines or drugs for a female who is not known to be pregnant and for whom the contraceptive devices, instruments, medicines or drugs were prescribed by a physician solely for contraceptive purposes and not for the purpose of inducing or causing the termination of a known pregnancy.

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

(3) 'Secretary' means the Secretary of the West Virginia Department of Health and Human Resources.

(4) 'Unemancipated minor' means any person less than 18 years of age who is not, or has not been, married, who is under the care, custody, and control of the person's parent or parents, guardian, or court of competent jurisdiction pursuant to applicable federal law or as 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.**

When used in this article:

(a) 'AIDS' means acquired immunodeficiency syndrome.

(b) 'Bureau' means the Bureau for Public Health.

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

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

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

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

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

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

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

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

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

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

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

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

(o) 'Patient' or 'test subject' or 'subject of the test' means the person upon whom a an HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.

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

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

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

(s) 'Significant exposure' means:

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

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

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

(t) 'Source patient' means any person whose body fluids have been the source of a significant exposure to a medical or emergency responder.

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

(v) 'Victim' means the person or persons to whom transmission of bodily fluids from the perpetrator of the crimes of sexual abuse, sexual assault, incest, or sexual molestation occurred 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 18 years; penalties.**

~~No~~ A person under the age of 18 years shall not have on or about his or her person or premises or use any cigarette, or cigarette paper, or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing tobacco, tobacco product, or tobacco-derived product: *Provided*, That minors participating in the inspection of locations where tobacco products or tobacco-derived products are sold or distributed pursuant to §16-9A-7 of this code is not considered to violate the provisions of this section. Any person violating the provisions of this section shall for the first violation be fined \$50 and be required to serve eight hours of community service; for a second violation, the person shall be fined \$100 and be required to serve 16 hours of community service; and for a third and each subsequent violation, the person shall be fined \$200 and be required to serve 24 hours of community service. Notwithstanding the provisions of ~~section two, article five, chapter 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.**

For the purposes of this article:

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

(b) 'Adult' means a person who is 18 years of age or older, an emancipated minor who has been established as such pursuant to the provisions of ~~section twenty-seven, article seven, chapter forty-nine~~ §49-4-115 of this code, or a mature minor.

(c) 'Advanced nurse practitioner' means a registered nurse with substantial theoretical knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge in implementing the nursing process, and who has met the further requirements of ~~title 19, legislative rules for the~~ West Virginia board of examiners for registered professional nurses, ~~series 7 rule,~~ advanced practice registered nurse, 19CSR 7, who has a mutually agreed upon association in writing with a physician, and has been selected by or assigned to the person and has primary responsibility for treatment and care of the person.

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

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

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



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

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

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

(j) 'Health care facility' means a facility commonly known by a wide variety of titles, including, but not limited to, hospital, psychiatric hospital, medical center, ambulatory health care facility, physicians' office and clinic, extended care facility operated in connection with a hospital, nursing home, a hospital extended care facility operated in connection with a rehabilitation center, hospice, home health care, and other facility established to administer health care in its ordinary course of business or practice.

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

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

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

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

(o) 'Mature minor' means a person, less than 18 years of age, who has been determined by a qualified physician, a qualified psychologist, or an advanced nurse practitioner to have the capacity to make health care decisions.

(p) 'Medical information' or 'medical records' means and includes without restriction any information recorded in any form of medium that is created or received by a health care provider, health care facility, health plan, public health authority, employer, life insurer, school, or university or health care clearinghouse that relates to the past, present or future physical or mental health of the person, the provision of health care to the person, or the past, present, or future payment for the provision of health care to the person.

(q) 'Medical power of attorney representative' or 'representative' means a person, 18 years of age or older, appointed by another person to make health care decisions pursuant to the provisions of

§16-30-6 of this code or similar act of another state and recognized as valid under the laws of this state.

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

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

(t) 'Person' means an individual, a corporation, a business trust, a trust, a partnership, an association, a government, a governmental subdivision or agency, or any other legal entity.

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

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

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

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

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

(z) 'Surrogate decisionmaker' or 'surrogate' means an individual 18 years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions, and is identified or selected by the attending physician or advanced nurse practitioner in accordance with the provisions of this article as the person who is to make those decisions in accordance with the provisions of this article.

(aa) 'Terminal condition' means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging 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.**

(a) The immunity provisions in §16-47-4(a) of this code extend to the person for whom emergency medical assistance was sought if, ~~subsequent to~~ after receiving emergency medical assistance, the person participates in, complies with, and completes a substance abuse treatment or recovery

program approved by the court. Alternatively, a court may consider the following alternative sentencing and clemency options:

- (1) Deferred prosecution under §60-6-26 or ~~under §60A-4-407~~ of this code;
- (2) Pretrial diversion under §61-11-22 of this code;
- (3) Adjudication in drug court under §62-15-1 *et seq.* of this code or ~~under section two-b, article five, chapter forty-nine §49-4-703~~ of this code; or
- (4) Any other appropriate form of alternative sentencing or rehabilitation permitted by this code, including, but not limited to:
  - (A) Probation;
  - (B) Conditional discharge under §60-6-26 of this code; or
  - (C) The weekend jail program, the work program or the community service program under §62-11A-1a of this code.

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

(a) A preliminary breath analysis may be administered to a child whenever a law-enforcement official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood for the purpose of determining the child's blood alcohol content. ~~Such~~ The breath analysis must be administered as soon as possible after the law-enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis administered pursuant to this subsection must be administered with a device and in a manner approved by the division of health for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0002 of one percent or more, by weight, and should, therefore, be taken into custody to administer a secondary test in accordance with the provisions of this section.

(b) A child may be taken into custody by a law-enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than .0002 of one percent, by weight, the child may not be taken into custody unless other grounds exist under ~~subsection (b), section eight, article five, chapter forty-nine §49-4-705(b)~~ of this code. Upon taking a child into custody pursuant to the provisions of this section, the official shall take

all reasonable steps to cause notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close relative.

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

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

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

(f) If the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0008 of one percent or less, by weight, and if the law-enforcement official does not have reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an adult, then the official shall release the child: *Provided*, That if the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .0002 of one percent or more, by weight, the child shall only be released to a parent or custodian, or to 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.**

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

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

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

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

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

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

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

A county board that enters into a truancy program agreement with the circuit court of the county that (1) provides for the referral of truant juveniles for supervision by the court's probation office

pursuant to ~~section eleven, article five, chapter forty-nine~~ §49-4-711 of this code and (2) requires the county board to pay for the costs of the probation officer or officers assigned to supervise truant juveniles, shall be reimbursed for one half of the costs of the probation officer or officers, subject to appropriation of the Legislature for this purpose to the West Virginia Department of Education. For any year in which the funds appropriated are insufficient to cover 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.

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

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

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

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

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

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

(5) A student to be reinstated shall be permitted to return to school no later than the 10th regular school day following notice by the court to the superintendent regarding the student's successful completion or satisfactory progress toward successful completion of Juvenile Drug 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.**

(a) Any male youth between the ages of 10 and 18 years may be committed to the custody of the Commissioner of Corrections by a circuit court of this state in the manner prescribed in ~~article five, chapter forty-nine §49-4-701 through §49-4-725~~ of this code; and further, any male youth who has been adjudged delinquent pursuant to ~~subdivision (1), section four, article one, chapter forty-nine §49-1-202~~ of this code, who, as a result thereof, was placed on probation and has been found, in a proceeding pursuant to the procedural requirements of ~~article five, chapter forty-nine §49-4-701 through §49-4-725~~ of this code, to have violated a term of probation, prior to the attainment of his or her 20th birthday, which constitutes a criminal offense, may be committed to the custody of the Commissioner of Corrections as a youthful offender.

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

In lieu of the physical examinations and tests provided for ~~herein in this subsection~~, the court may, in the absence of objection, have the county health officer or other local health care facility perform physical and mental examinations and tests, so long as ~~such~~ the examinations and tests are performed prior to the dispositional proceeding. Except as otherwise provided by law, ~~ne a~~ a child shall not be committed to a jail following a dispositional proceeding solely to await a physical, educational, or mental examination or the results ~~thereof~~ of the exam.

(c) All ~~such~~ examinations shall be private. ~~Ne A~~ A youth who is mentally ill or significantly intellectually disabled shall not be committed to, or retained by, the Commissioner of Corrections, but shall be returned to the committing court for further disposition. ~~Ne A~~ A youth who has a serious infectious disease shall not be retained in the custody of the Commissioner of Corrections, but shall be transferred to an appropriate treatment facility. Detailed medical records shall be kept of every youth.

(d) The results of any ~~such~~ physical, educational, and psychological examinations, together with a copy of the petition, the adjudicatory order, and the dispositional order shall accompany every youth committed to the Commissioner of Corrections, without which ~~such~~ the youth shall not be accepted. The commissioner, or his or her designated representative, shall review the records of each youth committed to assure that ~~ne a~~ a youth is not illegally detained in an inappropriate facility or custodial situation.

(e) The Commissioner of Corrections ~~shall have the authority to~~ may transfer and place such youth in any of the established centers or homes or halfway programs ~~which shall be established~~, and in less restrictive settings, whether under his or her jurisdiction or private nonprofit residential facilities, as he or she may ~~deem~~ determine appropriate to promote the rehabilitation of ~~such~~ the youth. To the extent possible, ~~ne a~~ a youth under the age of 15 shall not be in regular contact with youths between the ages of 16 and 18.

**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.**

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

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

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

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

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

After reviewing all pertinent matters, the person determining eligibility may find the affiant ~~to be~~ eligible to have the total cost of legal representation provided by the state, or may find that the total cost of providing representation shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the



maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person's particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or more of the nine factors set forth in subsection (e) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (e) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The court shall not order a person to pay costs unless the person is able to pay without undue hardship. In determining the amount and method of repayment of costs, the court shall take account of the financial resources of the person, the person's ability to pay, and the nature of the burden that payment of costs will impose. The fact that the court initially determines, at the time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude the court from subsequently ordering repayment ~~should~~ if the person's financial circumstances change.

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

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

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

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

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

## CHAPTER 31. CORPORATIONS.

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

#### §31-20-2. Definitions.

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

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

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

(c) 'Board' means the governing body of the authority.

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

(e) 'Cost of construction or renovation of a local jail facility, regional jail facility or juvenile facility' means the cost of all lands, water areas, property rights, and easements, financing charges, interest prior to and during construction and for a period not exceeding six months following the completion of construction, equipment, engineering and legal services, plans, specifications, and surveys, estimates of costs and other expenses necessary or incidental to determining the feasibility or practicability of any project, together with any other expenses necessary or incidental to the financing and the construction or renovation of the facilities and the placing of the facilities in operation.

(f) 'County' means any county of this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) 'Juvenile facility' means an adjacent regional juvenile detention facility, a juvenile 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.

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

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

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

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

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

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

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

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

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

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

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

(J) Kidnapping, concealment, or removal of a minor child from his or her custodian or from a person entitled to visitation, as set forth in §61-2-14 through §61-2-14e of this code.

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

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

(b) For all policies issued or renewed after the effective date of this section, ~~no~~ a person or entity engaged in the business of providing life or health insurance, or both, in this state may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A description of the child's school and extracurricular activities;

(6) A description of any of the limiting factors as described in §48-9-209 of this code that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

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

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

information that child abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-201(b) of this code.

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

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

(A) A custodial schedule that designates in which parent's home each minor child will reside on given days of the year; or

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

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

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

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

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

#### PART III - FACT FINDING.

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

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

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

#### **ARTICLE 22. ADOPTION.**

##### PART III. CONSENT OR RELINQUISHMENT; ABANDONMENT.

#### **§48-22-301. Persons whose consent or relinquishment is required; exceptions.**

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

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

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

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

(4) The determined father.

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

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

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

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

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

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

(2) The person is incurably insane; or

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

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

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

(f) If the child to be adopted is 12 years of age or over, the consent of the child is required to be given in the presence of a judge of a court of competent jurisdiction, unless for extraordinary cause, the requirement of such consent is waived by the court.

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

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



## PART VII. CONFIDENTIALITY.

**§48-26-701. Confidentiality.**

(a) ~~No~~ A program licensed pursuant to this article may not disclose, reveal, or release or be compelled to disclose, reveal, or release, any written records or personal or personally identifying information about a program participant created or maintained in providing services, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected, pursuant to this article except:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) ~~No~~ A monitored parenting and exchange program may not release information about the child without consent of the parent with custodial responsibility or guardian.

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

(f) ~~No~~ A consent or authorization for the transmission or disclosure of confidential information is not effective unless it is signed by the program participant whose information is being disclosed. Every person signing an authorization shall be given a copy.

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

#### **§48-26-1002. Exclusions.**

The provisions of this part do not apply to therapeutic or supervised visitation or exchanges or any activity conducted by the state or others in abuse and neglect proceedings pursuant to ~~articles six and six-a, chapter forty-nine~~ §49-2-801 through §49-2-814 and §49-4-601 through §49-4-610 of this code in which assessment, evaluation, formulation of a treatment plan, case 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.**

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

(b) Following the proceeding, the magistrate court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order entered pursuant to the proceedings, a notice of the final hearing before the family court, and a statement of the right of the respondent to appear and participate in the final hearing, as provided in subsection (d) of this section. Copies of any order entered under the provisions of this section, a notice of the final hearing before the family court, and a statement of the right of the petitioner to appear and participate in the final hearing, as provided in subsection (d) of this section, shall also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-enforcement agency having jurisdiction to enforce the order, including municipal police, the county sheriff's office and local office of the State Police, within 24 hours of the entry of the order. An emergency protective order is effective until modified by order of the family court upon hearing as provided in subsection (d) of this section. The order is in full force and effect in every county in this state.

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

(d) The family court shall schedule a final hearing on each petition in which an emergency protective order has been entered by a magistrate. The hearing shall be scheduled not later than 10 days following the entry of the order by the magistrate. The notice of the final hearing shall be served on the respondent and delivered to the petitioner, as provided in subsection (b) of this section, and must set forth the hearing date, time, and place and include a statement of the right of the parties to appear and participate in the final hearing. The notice must also provide that the petitioner's failure to appear will result in a dismissal of the petition and that the respondent's failure to appear may result in the entry of a protective order against him or her for a period of 90 or 180 days, as determined by the court. The notice must also include the name, mailing address, physical location, and telephone number of the family court having jurisdiction over the proceedings. To facilitate the preparation of the notice of final hearing required by the provisions of this subsection, the family court must provide the magistrate court with a day and time in which final hearings may be scheduled before the family court within the time required by law.

(e) Upon final hearing the petitioner must prove, by a preponderance of the evidence, the allegation of domestic violence or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed, or has been the subject of other actions to attempt to intimidate him or her, or ~~such the~~ petition shall be dismissed by the family court. If the respondent has not been served with notice of the emergency protective order, the hearing may be continued to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of ~~such the~~ records.

(f) ~~No~~ A person requested by a party to be present during a hearing held under the provisions of this article shall not be precluded from being present unless ~~such that~~ person is to be a witness in the proceeding and a motion for sequestration has been made and ~~such the~~ motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of 90 days or, in the discretion of the court, for a period of 180 days. The hearing may be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is continued, the family court may modify the emergency protective order as it ~~deems~~ considers necessary.

(h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to this section that results in the issuance of an emergency protective order naming a juvenile as the respondent in which the petition for the emergency protective order is filed by or on behalf of the juvenile's parent, guardian or custodian, or other person with whom the juvenile resides shall be treated as a petition authorized by ~~section seven, article five, chapter forty-nine~~ §49-4-704 of this code, alleging the juvenile is a juvenile delinquent: *Provided*, That the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within 24 hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with the provisions of ~~subsection (a) of section seven, article five, chapter forty-nine~~ §49-4-704(a) of this code within 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.**

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

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

'Abused child' means:

(1) A child whose health or welfare is being harmed or threatened by:

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

(B) Sexual abuse or sexual exploitation;

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

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

(E) Human trafficking or attempted human trafficking, in violation of §61-14-2 of this code.

(2) A child conceived as a result of sexual assault, as that term is defined in this section, or as a result of the violation of a criminal law of another jurisdiction which has the same essential elements: *Provided*, That no victim of sexual assault may be determined to be an abusive parent, as that term is defined in this section, based upon being a victim of sexual assault.

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

'Battered parent' for the purposes of §49-4-601 et seq. of this code means a respondent parent, guardian, or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by §48-27-202 of this code, which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

'Child abuse and neglect' or 'child abuse or neglect' means any act or omission that creates an abused child or a neglected child as those terms are defined in this section.

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

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

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

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

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

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

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

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

'Imminent danger to the physical well-being of the child' means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life, or safety of any child in the home:

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

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

(C) Nutritional deprivation;

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

(E) Inadequate treatment of serious illness or disease;

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

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

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

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

'Neglected child' means a child:

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

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

(C) 'Neglected child' does not mean a child whose education is conducted within the provisions of §18-8-1 *et seq.* of this code.

'Petitioner or copetitioner' means the department or any reputable person who files a child abuse or neglect petition pursuant to §49-4-601 *et seq.* of this code.

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

'Respondent' means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or copetitioners.

'Sexual abuse' means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-3 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or knowingly procures another person to engage in, with a child notwithstanding the fact that for a child who is less than 16 years of age, the child may have willingly participated in that conduct or the child may have suffered no apparent physical, mental or emotional injury as a result of that conduct or, for a child 16 years of age or older, the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental or emotional injury as a result of that conduct;

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

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

'Sexual assault' means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-5 of this code.

'Sexual contact' means sexual contact as that term is defined in §61-8b-1 of this code.

'Sexual exploitation' means an act where:

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

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

(C) A parent, guardian, or custodian knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this code.

'Sexual intercourse' means sexual intercourse as that term is defined in §61-8b-1 of this code.

'Sexual intrusion' means sexual intrusion as that term is defined in §61-8b-1 of this code.

'Serious physical abuse' means bodily injury which creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged 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.**

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

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

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

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

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

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

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

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

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

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

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

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

(12) All final hearings in domestic violence proceedings;

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

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

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

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

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

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

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

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



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

(e) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court is specifically authorized in this section and in chapter 48 of this code. A family court may not exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature. A family court judge is not a 'judge of any court of record' or a 'judge of a court of record' as the terms 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.**

In any proceeding held pursuant to ~~article five or six, chapter forty-nine~~ §49-4-601 through §49-4-725 of this code in which an indigent respondent or his or her counsel has filed a written request, in the manner prescribed by the Supreme Court of Appeals, evidencing an intent to appeal a decision of a circuit court in the proceeding, the court, upon presentation of a written request, presented within 30 days after the entry of the order sought to be appealed, shall authorize and direct the court reporter to furnish a transcript of the testimony of the proceeding or the part or parts ~~thereof~~ of the transcript that have specifically been requested.

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

(a) Any person or agency who knowingly offers, gives, or agrees to give to another person money, property, service, or other thing of value in consideration for the recipient's locating, providing, or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of ~~said the~~ the child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided ~~herein~~ in this section.

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

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

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

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

(1) Fees paid for reasonable and customary services provided by the Department of Health and Human Resources or any licensed or duly authorized adoption or child-placing agency;

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

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother; or

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

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

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

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

(a) Any person, under the age of 18 years of age, who escapes or attempts to escape from the custody of the Director of Juvenile Services, regardless of where ~~such~~ that person is confined or where ~~such~~ the escape occurs, is guilty of a delinquent act and subject to the jurisdiction of the circuit court of the county in which the escape occurred, pursuant to ~~section two, article five, chapter forty-nine~~ §49-4-701 of this code: *Provided*, That upon agreement of all parties, the prosecution of the escape may be transferred to the circuit court from which the juvenile was originally committed.

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

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

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

(a) Any person who knowingly and intentionally reports or causes to be reported to a law-enforcement officer, child protective service worker, or judicial officer that another has committed child sexual abuse, child abuse, or neglect as ~~such~~ those terms are defined in ~~section three, article one, chapter forty-nine~~ §49-1-201 of this code who when doing so knows or has reason to know ~~such~~

the accusation is false and who does it with the intent to influence a child custody decision shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$1,000, sentenced to not more than sixty hours of court-approved community service, or both.

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

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

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

Notwithstanding any other provision of this article to the contrary, a person under the age of 18 years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: *Provided*, That a minor may possess a firearm upon premises owned by ~~said~~ the minor or his or her family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his or her family, with the permission of the owner or lessee of ~~such~~ the property: *Provided, however*, That nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess ~~such~~ the weapon.

A violation of this section by a person under the age of 18 years shall subject the child to the jurisdiction of the circuit court under the provisions of ~~article five, chapter forty-nine~~ §49-4-701 through §49-4-725 of this code, and ~~such~~ the minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent.

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

### **§61-8-12. Incest; penalty.**

(a) For the purposes of this section:

- (1) 'Aunt' means the sister of a person's mother or father;
- (2) 'Brother' means the son of a person's mother or father;
- (3) 'Daughter' means a person's natural daughter, adoptive daughter, or the daughter of a person's husband or wife;
- (4) 'Father' means a person's natural father, adoptive father, or the husband of a person's mother;
- (5) 'Granddaughter' means the daughter of a person's son or daughter;
- (6) 'Grandfather' means the father of a person's father or mother;
- (7) 'Grandmother' means the mother of a person's father or mother;
- (8) 'Grandson' means the son of a person's son or daughter;
- (9) 'Mother' means a person's natural mother, adoptive mother, or the wife of a person's father;

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

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

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

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

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

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

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

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

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than 5 years nor more than 15 years, or fined not less than \$500 nor more than \$5,000 and imprisoned in the penitentiary not less than five years nor more than fifteen years.

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

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

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

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

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

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

(b) As used in this section:

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

(2) 'Visual portrayal' means:

(A) A photograph;

(B) A motion picture;

(C) A digital image;

(D) A digital video recording; or

(E) Any other mechanical or electronic recording process or device that can preserve, for later viewing, a visual image of a person that includes, but is not limited to, computers, cellphones, personal digital assistance, and other digital storage or transmitting devices;

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

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

**ARTICLE 8D. CHILD ABUSE.****§61-8D-9. Convictions for offenses against children.**

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

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

- (1) Is convicted of an offense punishable by life imprisonment; and
- (2) Was less than 18 years of age at the time the offense was committed.

(b) Unless otherwise provided by this code, the provisions of §62-12-1 *et seq.* of this code ~~shall govern~~ governs the eligibility for parole of a person who is convicted of an offense and sentenced to confinement if he or she was less than 18 years of age at the time the offense was committed, except that a person who is convicted of one or more offenses for which the sentence or any combination of sentences imposed is for a period that renders the person ineligible for parole until he or she has served more than 15 years shall be eligible for parole after he or she has served 15 years if the person was less than 18 years of age at the time each offense was committed.

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

- (1) Age at the time of the offense;
- (2) Impetuosity;
- (3) Family and community environment;
- (4) Ability to appreciate the risks and consequences of the conduct;
- (5) Intellectual capacity;

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

- (7) Peer or familial pressure;
- (8) Level of participation in the offense;
- (9) Ability to participate meaningfully in his or her defense;
- (10) Capacity for rehabilitation;
- (11) School records and special education evaluations;
- (12) Trauma history;

- (13) Faith and community involvement;
- (14) Involvement in the child welfare system; and
- (15) Any other mitigating factor or circumstances.

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

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

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

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

(b) Within the discretion of the chief medical examiner, or of the person making the autopsy, or if requested by the prosecuting attorney of the county, or of the county where any injury contributing to

or causing the death was sustained, a copy of the report of the autopsy shall be furnished to the prosecuting attorney.

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

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

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

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

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

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

(a) After the effective date of this section, whenever any law-enforcement officer, physician, psychologist, social worker, or investigator, in the course of his or her employment or profession or while engaged in an active criminal investigation as a law-enforcement officer or an agent of a prosecuting attorney, obtains a statement from a child 13 years of age or younger who is an alleged victim in an investigation or prosecution alleging a violation of the provisions of §61-8B-3, §61-8B-4, §61-8B-5, or §61-8B-7 of this code, he or she shall ~~forthwith~~ immediately make a contemporaneous written notation and recitation of the statement received or obtained. An audio recording or video recording with sound capability of the statement may be used in lieu of the written recitation required by the provisions of this section. Failure to comply with the provisions of this section creates a



presumption that the statement is inadmissible. The statement may be admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that the failure to comply with the provisions of this section was a good faith omission and that the content of the proffered statement is an accurate recital of the information provided by the child and is otherwise admissible.

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

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

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

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

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 4020** - "A Bill to amend and reenact §7-4-4 and §7-4-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-7-2 of said code; to amend and reenact §7-10-2 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §15-2-15 of said code; to amend and reenact §15-2C-1 of said code; to amend and reenact §15-9-3 of said code; to amend and reenact §15-11-2 of said code; to amend and reenact §16-2F-2 of said code; to amend and reenact §16-3C-1 of said code; to amend and reenact §16-9A-3 of said code; to amend and reenact §16-30-3 of said code; to amend and reenact §16-47-5 of said code; to amend and reenact §17C-5-6a of said code; to amend and reenact §18-5-15c of said code; to amend and reenact §18-8-6a of said code; to amend and reenact §18A-5-1d of said code; to amend and reenact §28-1-2 of said code; to amend and reenact §29-21-16 of said code; to amend and reenact §31-20-2 of said code; to amend and reenact §33-4-20 of said code; to amend and reenact §48-9-205 and §48-9-301 of said code; to amend and reenact §48-22-301 of said code; to amend and reenact §48-26-701 and §48-26-1002 of said code; to amend and reenact §48-27-403 of said code; to amend and reenact §49-1-201 of said code; to amend and reenact §51-2A-2 of said code; to amend and reenact §51-7-8 of said code; to amend and reenact §61-2-14h of said code; to amend and reenact §61-5-12b of said code; to amend and reenact §61-6-25 of said code; to amend and reenact §61-7-8 of said code; to amend and reenact §61-8-12 of said code; to amend and reenact §61-8B-11a of said code; to amend and reenact §61-8C-3b of said code; to amend and reenact §61-8D-9 of said code; to amend and reenact §61-11-23 of said code; to amend and reenact §61-12-10 of said code; and to amend and reenact §62-6B-5, all relating to clarifying and making technical corrections in the code when referencing chapter 49 of this code due to 2015 revisions to chapter 49 of said code; and defining terms."

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 48**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Ellington and Kelly.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4020) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 322** - "A Bill to amend and reenact §19-1-3 of the Code of West Virginia, 1931, as amended, relating to employees of the Commissioner of Agriculture"; which was referred to the Committee on Agriculture and Natural Resources then Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 343** - "A Bill to amend and reenact §11A-3-58 of the Code of West Virginia, 1931, as amended, relating to limiting expenses incurred in preparing notice to redeem, including title examination, to \$500"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 364** - "A Bill to amend and reenact §18-8-11 of the Code of West Virginia, 1931, as amended, relating to allowing a parent or legal guardian of a homeschooled child to provide a signed statement in lieu of a driver eligibility certificate by the attendance director or chief administrator affirming that the child is being educated in accordance with law, is making satisfactory academic progress, and meets certain conditions to be eligible to obtain a permit or license for operation of a motor vehicle"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 400** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22, relating to prohibiting state licensing boards from hiring lobbyists; and declaring that the director and appointed board members of each board may lobby on behalf of the board"; which was referred to the Committee on Government Organization then the Judiciary.

### **Resolutions Introduced**

Delegates C. Miller, Butler, Maynard, Brewer, Lovejoy, Eldridge, Rohrbach and C. Romine offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 47** - "Requesting the Division of Highways to name bridge number 40-60-0.03 (40A142), locally known as the Culloden Railroad Overpass, carrying US 60 over CSX Railroad in Putnam County, the 'U. S. Army SPC 4 William L. Amos Memorial Bridge'."

Whereas, U. S. Army Specialist William L. Amos was born on October 7, 1940, in Cabell County; and

Whereas, U. S. Army Specialist William L. Amos attended Cabell County schools and graduated from Milton High School in 1958; and

Whereas, U. S. Army Specialist William L. Amos served his country as a Specialist 4, HHC, 1<sup>st</sup> BN, 28<sup>th</sup> Infantry, 1<sup>st</sup> Infantry Division; and

Whereas, U. S. Army Specialist William L. Amos was killed in action on July 27, 1967, in Binh Duong Province, South Vietnam; and

Whereas, U.S. Army Specialist William L. Amos was the recipient of the Purple Heart, the Combat Infantryman Badge, the Vietnam Service Medal, the Vietnam Campaign Medal and the National Defense Service Medal; and

Whereas, The Milton City Council, American Legion Post 139, the Veterans of Foreign Wars, Milton Post 9796, and the Milton Rotary Club have submitted individual resolutions to name the bridge after U.S. Army Specialist William L. Amos; and

Whereas, No fewer than 158 individuals have also signed a petition to name the bridge after U.S. Army Specialist William L. Amos; and

Whereas, It is fitting and proper that U. S. Army Specialist William L. Amos be honored by having this bridge named for a soldier who gave the ultimate sacrifice; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 40-60-0.03 (40A142), locally known as Culloden Railroad Overpass, carrying US 60 over CSX Railroad in Putnam County, the "U. S. Army SPC 4 William L. Amos Memorial Bridge"; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the bridge as the "U. S. Army SPC 4 William L. Amos Memorial Bridge"; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Secretary of Transportation and the Commissioner of Highways.

Delegate Rodighiero offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 48** - "Requesting the Division of Highways to name bridge number 23-10-19.39 (23A365), locally known as Guyandotte River Bridge, carrying WV 10 over Guyandotte River in Logan County, the 'U. S. Army SGT Denver E. Short Memorial Bridge'."

Whereas, Denver E. Short was born May 6, 1921, in Logan County at Davin, on Huff Creek; he attended Man High School and later married Margaret Parsons from West Logan and they had two daughters, Katy Short Ojeda and Brenda Short Thomas; and

Whereas, Denver E. Short enlisted in the U. S. Army in August, 1941, and was honorably discharged on September 27, 1945; he participated in historic battles in central Europe and received medals for his service and for wounds received in action; and

Whereas, As a platoon Sergeant in Headquarters Battery of the 155<sup>th</sup> Airborne Anti-aircraft Battalion, Sergeant Denver E. Short served in four European wartime campaigns in Normandy, the Rhineland, the Ardennes and Central Europe; and

Whereas, Sergeant Denver E. Short suffered his first combat wound from small arms fire on D-Day, June 6, 1944; he was subsequently wounded in Belgium in 1944 and again in France in 1945. As a result of his wounds, he was hospitalized on numerous occasions, first in a hospital in England, and two different extended stays in hospitals in France, and was awarded three separate Purple Heart Medals for his wounds; and

Whereas, Sergeant Denver E. Short also received the first Oak Leaf Cluster to his first Purple Heart Medal, a second Oak Leaf Cluster to his second Purple Heart Medal and two Distinguished Unit Badges; and

Whereas, Sergeant Denver E. Short passed away on August 26, 2001, and was a proud veteran, great father and husband. He also was a quiet, humble man, a devout Christian and a true American hero; and

Whereas, Naming bridge number 23-10-19.39 (23A365), locally known as Guyandotte River Bridge, carrying WV 10 over Guyandotte River in Logan County, the "U. S. Army SGT Denver E. Short Memorial Bridge" is an appropriate recognition of his service and sacrifices for his country as a part of "The Greatest Generation" and service to his state, community and Logan County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 23-10-19.39 (23A365), locally known as Guyandotte River Bridge, carrying WV 10 over Guyandotte River in Logan County, the "U. S. Army SGT Denver E. Short Memorial Bridge"; and, be it

*Further Resolved*, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the "U. S. Army SGT Denver E. Short Memorial Bridge"; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of Highways.

Delegate Marcum offered the following resolution, which was read by its title and referred to the Committee on Roads and Transportation then Rules:

**H. C. R. 49** - "Requesting the Division of Highways to name bridge number 30-3/5-14.61 (30A017), locally known as Big Rock Pony Truss, carrying County Route 3/5 over West Fork of Twelvepole Creek in Mingo County, the 'Albert and Laura Baisden Memorial Bridge'."

Whereas, Albert Baisden was born April 20th, 1902, and died October 7, 1997; and

Whereas, Laura Belle Baisden was born October 13, 1924, and died October 27, 2004; and

Whereas, Albert and Laura Baisden were both members of the Church of Christ and proud members of the United Mine Workers of America; and

Whereas, Albert Baisden was a 32<sup>nd</sup> Degree Mason and a member of the Masonic Lodge for fifty-two years; and

Whereas, Albert Baisden was a widower with five children when he married Laura, February 27, 1940; and

Whereas, Together Albert and Laura raised his five children and Laura had eleven more children; and

Whereas, Albert Baisden has more than two hundred fifty descendants, the majority of whom still reside in the Dingess area; and

Whereas, Albert Baisden had three generations to graduate in the last class at Lenore High School; and

Whereas, Both Albert and Laura Baisden worked hard to provide for their family. He worked in coal mines, and she took care of farm animals, house, and children; and

Whereas, Albert was known to be a man of his word who did not back down on his opinions and Laura was known as a humble, loving person who never said a negative word about anyone, and both contributed many hours of public service to their community; and

Whereas, It is proper that these two citizens be recognized in their community by an enduring memorial; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 30-3/5-14.61 (30A017), locally known as Big Rock Pony Truss, carrying County Route 3/5 over West Fork of Twelvepole Creek in Mingo County, the "Albert and Laura Baisden Memorial Bridge"; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge the "Albert and Laura Baisden Memorial Bridge"; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates Eldridge, Diserio and Love offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 50** - "Proclaiming and making the fiddle the official musical instrument of the State of West Virginia."

Whereas, The fiddle arrived in Appalachia in the 18<sup>th</sup> century with immigrants from the British Isles, bringing with them the musical traditions of their countries. These traditions consisted primarily of English and Scottish ballads, which were essentially unaccompanied narratives, and dance music, such as Irish reels which were accompanied by a fiddle. The fiddle soon became a staple of life in West Virginia, being played in churches, in logging and mining camps, at weddings and summer picnics and in the homes and on porches of many West Virginians. It has remained so ever since, being showcased in music festivals around the state, from the Augusta Festival in Elkins, the Vandalia Gathering held on the grounds at the State Capitol and the Appalachian String Band Festival at Camp Washington-Carver in Clifftop, just to name a few. West Virginia has also produced some of the finest fiddlers in the nation, and continues to do so; and

Whereas, Fiddler Blind Alfred Reed was born on June 15, 1880, and was one of the artists who recorded at the Bristol Sessions in 1927, along with Jimmie Rogers and the Carter Family, which are the first recordings of traditional country music. He was raised in a very conservative family, and acquired a violin at a young age. Later, he began performing at county fairs, in country schoolhouses,

for political rallies, and in churches. He even played on street corners for tips. He used to sell printed copies of his compositions for ten cents each. After the Bristol Sessions, Mr. Reed recorded his most famous song, that is still being sung today, "How Can a Poor Man Stand Such Times and Live". After 1929, he stopped recording, but continued to perform locally until 1937 when a law was passed prohibiting blind street musicians. He is buried in Elgood and was inducted into the West Virginia Music Hall of Fame in 2007; and

Whereas, Edwin "Edden" Hammons was born in 1874 and is considered by many to have been one of the finest traditional West Virginia fiddlers of all time, and tales of his musical exploits and eccentric lifestyle flourish among the inhabitants of mountainous east central West Virginia. Mr. Hammons was the youngest of four brothers and three sisters, and his musical abilities were soon recognized to be superior to that of his siblings. Family tradition holds that his ability was recognized and encouraged at an early age and that the boy was spared his share of the burdens of frontier living as a result. Mr. Hammons's first attempt in music was with a fiddle made from a gourd. He soon progressed and he secured a store-bought fiddle and there was no dispute that he could draw out exquisite harmonies from the instrument. Whether because of immaturity or musical passion, Mr. Hammons refused to lay his fiddle down "like most men did" as he grew older and was faced with supporting a family. Mr. Hammons' three-week marriage to Caroline Riddle in 1892 came to a head when Caroline demanded that Edden either quit playing fiddle and go to work or she would leave. Given the ultimatum, Mr. Hammons chose the fiddle. When he was older, Mr. Hammons participated in five to ten fiddle contests each year, and rarely came away with less than first prize. Perhaps Mr. Hammons' most distinguished contest adversary was Lewis "Jack" McElwain, regarded by many others at the time to be the premier fiddler in the State of West Virginia. Mr. McElwain's accomplishments included a first-place finish at the 1893 World's Fair in Chicago. At a contest in Marlinton in 1909, Mr. McElwain and Mr. Hammons tied for top honors. Later, there were disagreements about the selection of judges and Mr. Hammons insisted that the judging be left to the attendees. Mr. Hammons usually won; and

Whereas, Fiddler Melvin Wine was born in Burnsville in 1909. At the age of nine he began to play his first fiddle tunes by sneaking out his father's prized possession, the fiddle. Mr. Wine eventually gained the courage to inform his mother of the progress he had made with his father's fiddle. One evening his mother bravely shared this with his father. At the time, Mr. Wine believed he might receive a whipping for sneaking out the fiddle. But instead, from this point on, his father supported the young boy's efforts. Mr. Wine's father learned the fiddle tunes that he passed on to Melvin from his father, Nels, Mr. Wine's grandfather. Mr. Wine passed away in 2003; and

Whereas, Mr. Clark Kessinger was born in Lincoln County on July 27, 1896. Mr. Kessinger began playing the banjo when he was five years old and two years later he performed at local saloons with his father. He switched to fiddle and began performing at country dances. After serving in the Navy, Mr. Kessinger's reputation as a fiddler increased and he visited many local fiddling contests. He teamed up with his nephew Luches "Luke" Kessinger performing at various locations. In 1927 Mr. Kessinger and Luches Kessinger had their own radio show at the newly opened station WOBV in Charleston. On February 11, 1928, the Kessingers recorded twelve sides for the Brunswick-Balke-Collender recording company. In the late 1920s, the Kessingers' records were best sellers, including "Wednesday Night Waltz", "Turkey in the Straw", "Hell Among Yearlings", "Tugboat" and "Salt River". Mr. Kessinger was also greatly influenced by classical violin players such as Fritz Kreisler, Joseph Szigeti and Jascha Heifetz. Following his last recording session on September 20, 1930, Mr. Kessinger retired as a recording artist. But in 1963 he was rediscovered and soon was competing at several fiddling contests. In August 1964, Mr. Kessinger formed a string band in Galax, Virginia, winning first prize in the string band category. In April 1971, he won the World's Champion Fiddle Prize at the 47th Old-time Fiddler's Convention in Union Grove, North Carolina. Three more albums followed on Kanawha Records. His albums were later reissued on Folkways and Country Roads. In

1971 Mr. Kessinger recorded 12 tracks for the newly formed Rounder Records. The record company had plans to record many albums with Kessinger but before they could initiate what they had planned, Mr. Kessinger had a stroke and collapsed on the scene at a fiddler's convention in Virginia. His left hand became numb, and he was unable to play the fiddle for the remainder of his life. Rounder released his recordings as "Clark Kessinger: Old-time Music with Fiddle and Guitar". He died in 1975 and was inducted into the West Virginia Music Hall of Fame in 2007; and

Whereas, Ed Haley was born in 1885 and was one of the best-known fiddlers in his region of Appalachia. He traveled frequently and performed in a variety of venues and played over WLW in Cincinnati. He also made occasional studio recordings for friends, such as for Doc Holbrook in Greenup, Kentucky. He seldom recorded commercially because he was worried that record companies would take advantage of a blind man. Late in life, he made recordings for the family on a Wilcox-Gay disc-cutting machine brought home from the service by his stepson, Ralph. The recording featured Ed, Ella, Ralph (on guitar) and daughter Mona (vocals). Ralph eventually distributed the recordings among his five siblings. Eventually about one third to one half of those recordings were released to Rounder Records, but it is estimated that two thirds of Mr. Haley's recordings are still missing. Beginning in 1990, legendary bluegrass, folk musician and songwriter John Hartford began researching the story of Mr. Haley's life and music. Generally, Mr. Hartford spent the last years of his life promoting Mr. Haley and his significance in the world of music. He learned a number of Haley's tunes and recorded them on the Grammy-nominated album, "Wild Hog in the Red Brush" and "Speed of the Old Long Bow: A Tribute to Ed Haley". Mr. Hartford and Brandon Kirk, a Harts-area historian and genealogist, collaborated on a Haley book project from 1995 until Hartford's death in 2001. In March 2000, the "Smithsonian" magazine featured a story about their research. In October 2015, Ed Haley was inducted into the West Virginia Music Hall of Fame; and

Whereas, Tim O'Brien was born on March 16, 1954, in Wheeling and plays guitar, fiddle, mandolin, banjo, bouzouki and mandocello. He has released more than ten studio albums in addition to charting a duet with Kathy Mattea entitled, "The Battle Hymn of Love", a No. 9 hit on the Billboard Hot Country charts in 1990. He eventually moved to Boulder, Colorado, in the 1970s and became part of the music scene there. In Colorado, he met guitarist Charles Sawtelle, banjoist Pete Wernick and bassist/vocalist Nick Forster with whom he formed Hot Rize in 1978. Over the next twelve years, the quartet earned recognition as one of America's most innovative and entertaining bluegrass bands. In 2005, O'Brien won a Grammy Award for Best Traditional Folk Album for "Fiddler's Green". In 1993 and 2006, O'Brien was honored with the International Bluegrass Music Association's (IBMA)'s Male Vocalist of the Year award. His band Hot Rize was the IBMA's first Entertainer of the Year in 1990. In November 2013 he was inducted into the West Virginia Music Hall of Fame; and

Whereas, Glenville resident Buddy Griffin was born at Richwood on September 22, 1948, and recalling his Nicholas County childhood has said "Everybody in the family played music. It was never expected, it was never forced on us. Nobody ever handed us an instrument and said, 'You have to play this'. It was just trying to be part of what was going on, 'cause there was always music at the house." Mr. Griffin was a part of his family's music from an early age. "The first instrument I ever touched was a bass fiddle. They kept it leaned up behind the couch. I'd stand up on the couch when I was about five, maybe six. I couldn't note it, but I could play the strings. So if they'd play some old fiddle tune, I'd have all three chords to go with it. I'd stand there and just play the strings." He soon learned to play the guitar, mandolin, fiddle, and banjo. His parents were good singers especially in the style of the Carter Family, and they taught their children the older country music. The Griffin children, however, tended toward the faster, more modern bluegrass. Erma played the guitar and bass and sang harmony. Richard played guitar and fiddle, along with other instruments, and sang the lead. Richard's father, Joe Griffin, born in 1883, played the old claw hammer style of banjo. Joe traveled to logging camps in Roane, Lincoln, and Calhoun counties and played dances on Saturday nights with some of the local fiddlers, mostly Enoch Camp. Parts of Mr. Griffin's family tree can be

traced to Revolutionary War times; some of his ancestors reportedly received land grants from General Washington. Mr. Griffin later became a staff musician at WWVA's Jamboree USA in Wheeling, played more than 200 times on the Grand Ole Opry, toured the country for more than 30 years with some of the biggest names in country and bluegrass music, appeared on more than 150 record albums, and established the world's first college degree program in bluegrass music at Glenville State College. In May 2011, he received the coveted Vandalia Award, recognizing his lifetime of devotion to entertainment and education; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature of West Virginia hereby proclaims and makes the fiddle the official musical instrument of the State of West Virginia; and, be it

*Further Resolved,* That the Legislature of West Virginia recognizes the importance and significance of the fiddle in West Virginia's history, traditions and culture; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to Buddy Griffin, Tim O'Brien, Clark Kessinger's daughter, Frances Goad, the descendants of West Virginia's other great fiddle players, Blind Alfred Reed, Edwin Hammons, Melvin Wine and Ed Haley, the West Virginia Music Hall of Fame, the Friends of Old Time Music and Dance (FOOTMAD) and Stan Bumgardner, Editor of "Goldenseal", the official state magazine of West Virginia traditional life.

### **Bills Introduced**

On motions for leave, bills were introduced, read by their titles, and severally referred as follows:

**By Delegates Frich, Atkinson, Byrd, Cooper, A. Evans, Hamilton, Love, Maynard, Pushkin, Statler and Ward:**

**H. B. 4436** - "A Bill to amend and reenact §21-6-2 of the Code of West Virginia, 1931, as amended, relating to clarifying when a minor between the ages of 16 and 18 may be employed by or elected as a member of a volunteer fire department to perform fire fighting functions"; to the Committee on Fire Departments and Emergency Medical Services then the Judiciary.

**By Delegates Storch, Fluharty, Zatezalo and Canestraro:**

**H. B. 4437** - "A Bill to amend and reenact §5A-11-3 of the Code of West Virginia, 1931, as amended, relating to collecting rents and royalties from leases of public lands; and providing that rents and royalties from leases of the minerals under the state's rivers and streams shall be expended for road paving and maintenance and other stated purposes; and permitting counties that do not have state parks to retain rents and royalties from such leases"; to the Committee on Energy then Finance.

**By Delegates Storch, Fluharty, Canestraro and Ferro:**

**H. B. 4438** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-5c, relating to reallocating and dedicating three percent of oil and gas severance tax revenues up to \$20 million annually to the oil and gas producing counties of origin and their respective municipalities; establishing state and local oil and gas county reallocated severance tax funds and providing for distribution of the moneys to the county commissions and governing bodies of the municipalities by the State Treasurer; establishing amounts each oil and gas producing county and their respective municipalities are to receive; requiring the creation of local funds into which moneys are to be deposited; requiring moneys be expended solely for economic development projects and infrastructure projects; providing definitions; providing restrictions on the expenditure of moneys; providing duties of State Tax Commissioner; requiring report of expenditures



to Joint Committee on Government and Finance; providing audits of distributed funds when authorized by the Joint Committee on Government and Finance; and authorizing legislative and emergency rules”; to the Committee on Energy then Finance.

**By Delegates Walters, Anderson, Hamilton and Hollen:**

**H. B. 4439** - “A Bill to amend and reenact §5-10-14 of the Code of West Virginia, 1931, as amended, relating to standardization of service credit for hourly employees hired for the first time after July 1, 2015, who become members of the Public Employees Retirement System”; to the Committee on Pensions and Retirement then Finance.

**By Delegates Storch, Fleischauer, Hamilton, Fluharty, Hornbuckle, Longstreth, Upson, Blair, Sypolt, Graves and Rowan:**

**H. B. 4440** - “A Bill to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended, relating to the ‘Equal Pay Act of 2018’; making it unlawful for an employer to require, as a condition of employment, that an employee refrain from disclosing information about his or her wages, benefits, or other compensation or sharing information about another employee’s wages, benefits, or other compensation; making it unlawful for an employer to prohibit employees from disclosing information about his or her wages, benefits, or other compensation or sharing information about another employee’s wages, benefits, or other compensation”; to the Committee on the Judiciary then Finance.

**By Delegates Phillips, Criss, Hollen, Walters, Paynter, Westfall, Marcum, Maynard, Dean, Zatezalo and Rohrbach:**

**H. B. 4441** - “A Bill to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-5-7a, relating to establishing that no officer may qualify as a candidate for other office until he or she has resigned from the office currently held”; to the Committee on the Judiciary.

**By Delegates Eldridge, Iaquina, Love and Paynter:**

**H. B. 4442** - “A Bill to amend and reenact §11-6B-2, §11-6B-3, §11-6B-4, and §11-6B-7 of the Code of West Virginia, 1931, as amended, relating to exempting the total amount of assessed value of a homestead owned and occupied by a disabled veteran who has a 100 percent permanent and total service-connected disability; definitions; and required proof of the disability”; to the Committee on Finance.

**By Delegates Fast, Rowan, Butler, Martin and Kessinger:**

**H. B. 4443** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-10A-7, relating to requiring a bail bondsman and bail bond enforcer submit results of drug test to Chief Judge in each jurisdiction; requiring bail bondsman and bail bond enforcer be subject to random drug testing; creating penalty of suspension or termination for failure of, or refusal to submit to, drug test; establishing that drug test records be public”; to the Committee on Prevention and Treatment of Substance Abuse then the Judiciary.

**By Delegates Frich, Byrd, Cooper, A. Evans, Hamilton, Love, Maynard, Pushkin, Statler, Butler and Paynter:**

**H. B. 4444** - “A Bill to amend and reenact §29-3-5b of the Code of West Virginia, 1931, as amended, relating to clarifying the authority of the State Fire Commission in adopting a State Building Code with regard to establishing building energy savings codes”; to the Committee on Fire Departments and Emergency Medical Services then Government Organization.

**By Delegates Hamilton, Wagner, Rodighiero, R. Miller, Campbell, Eldridge, Love, Moye and A. Evans:**

**H. B. 4445** - "A Bill to amend and reenact §17C-15-26 of the Code of West Virginia, 1931, as amended, relating to allowing vehicles operated by transportation directors and transportation supervisors employed by county boards of education to use red flashing warning lights"; to the Committee on Roads and Transportation then Education.

**By Delegates Storch, Ferro, Barrett, Ellington, R. Romine and Hamrick:**

**H. B. 4446** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-17-1, §21-17-2, §21-17-3, §21-17-4, §21-17-5, §21-17-6, §21-17-7, §21-17-8, §21-17-9, §21-17-10, §21-17-11, §21-17-12, §21-17-13, §21-17-14, §21-17-15, §21-17-16, §21-17-17, §21-17-18, §21-17-19, and §21-17-20, all relating to creating the Revised Uniform Athlete Agents Act; creating short title; defining terms; requiring registration for athlete agent; voiding contracts if athlete agent not registered; creating application process and requirements for athlete agents; establishing reciprocal registration if certain conditions are met; providing authority of secretary to issue or deny applications; providing renewal requirements; providing power of secretary to suspend, revoke, or refuse to renew registration; providing for temporary registration; establishing fees; requiring terms for validity of contract; requiring notice to educational institution; providing student right to cancel contract within specified period; requiring athlete agent retain certain records; establishing prohibited conduct of athlete agent; establishing criminal penalties; establishing civil remedies for violations of act; establishing civil penalties; requiring uniformity of application in construction of act; establishing relation to the Electronic Signatures In Global And National Commerce Act; and providing severability"; to the Committee on the Judiciary then Finance.

### House Calendar

#### Third Reading

**Com. Sub. for H. B. 2693**, Relating to state ownership of wildlife; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 49**), and there were—yeas 97, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Sobonya.

Absent and Not Voting: Ellington.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2693) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

**Com. Sub. for H. B. 4199**, Permitting a nursing home to use trained individuals to administer medication; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Cowles asked and obtained unanimous consent that the bill be placed at the foot of the calendar.

**Com. Sub. for H. B. 4230**, Relating to credit for reinsurance; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 50**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Ellington.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4230) passed.

Delegate Cowles moved that the bill take effect January 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 51**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Ellington.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4230) takes effect January 1, 2019.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

### **Second Reading**

The following bills on second reading, coming up in regular order, were each read a second time and ordered to engrossment and third reading:

**Com. Sub. for H. B. 2654**, Expanding county commissions' ability to dispose of county or district property,

**Com. Sub. for H. B. 3020**, Relating to criminal penalties for the offenses of hunting, trapping or fishing on the lands of another person,

**Com. Sub. for H. B. 4156**, Establishing the qualifications of full and part time nursing school faculty members,

**Com. Sub. for H. B. 4175**, Preventing requirement that an advanced practice registered nurse participate in a collaborative relationship to obtain payment,

**H. B. 4178**, Permitting certain portions of certified nurse aide training to be provided through distance learning technologies,

**Com. Sub. for H. B. 4275**, Relating to the law-enforcement authority of the director and officers of the division of protective services,

And,

**Com. Sub. for H. B. 4359**, Relating to the removal of animals left unattended in motor vehicles.

### **First Reading**

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**H. B. 4332**, Relating to home peritoneal renal dialysis,

And,

**Com. Sub. for H. B. 4350**, Eliminating the regulation of upholstery.

### **Third Reading**

**Com. Sub. for H. B. 4199**, Permitting a nursing home to use trained individuals to administer medication; on third reading, having been moved to the foot of the calendar in earlier proceedings, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 52**), and there were—yeas 55, nays 44, absent and not voting none, with the nays being as follows:

Nays: Barrett, Bates, Blair, Boggs, Brewer, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Fast, Ferro, Fleischauer, Fluharty, Hamilton, Hicks, Hornbuckle, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pack, Paynter, Pushkin, Pyles, Queen, Rodighiero, Rohrbach, Rowe, Sponaugle, Storch, Summers, Thompson, Upson, Wagner, Ward and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4199) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

### **Miscellaneous Business**

Delegate Kelly announced that he was absent today when the vote was taken on Roll No. 48, and that had he been present, he would have voted "Yea" thereon.

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of Delegate Lynch regarding the recent death of a West Virginia coal miner in the Appendix to the Journal.

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be added as a cosponsor of the following bills:

- Delegate Dean for H. B. 4042
- Delegate Rowe for H. B. 4344

At 12:30 p.m., the House of Delegates adjourned until 11:00 a.m., Wednesday, February 7, 2018.

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**HOUSE OF DELEGATES**  
**STEPHEN J. HARRISON, Clerk**  
**Building 1, Room M-212**  
**1900 Kanawha Blvd., East**  
**Charleston, WV 25305-0470**

## HOUSE CALENDAR

Wednesday, February 7, 2018

29<sup>th</sup> Day

11:00 A. M.

### THIRD READING

- Com. Sub. for H. B. 2654 - Expanding county commissions' ability to dispose of county or district property (SHOTT) (REGULAR)
- Com. Sub. for H. B. 3020 - Relating to criminal penalties for the offenses of hunting, trapping or fishing on the lands of another person (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4156 - Establishing the qualifications of full and part time nursing school faculty members (ELLINGTON) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 4175 - Preventing requirement that an advanced practice registered nurse participate in a collaborative relationship to obtain payment (ELLINGTON) (REGULAR)
- H. B. 4178 - Permitting certain portions of certified nurse aide training to be provided through distance learning technologies (ELLINGTON) (REGULAR)
- Com. Sub. for H. B. 4275 - Relating to the law-enforcement authority of the director and officers of the division of protective services (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4359 - Relating to the removal of animals left unattended in motor vehicles (SHOTT) (REGULAR)

### SECOND READING

- H. B. 4332 - Relating to home peritoneal renal dialysis (ELLINGTON) (REGULAR)
- Com. Sub. for H. B. 4350 - Eliminating the regulation of upholstery (HOWELL) (REGULAR)

### FIRST READING

- Com. Sub. for H. B. 4023 - Relating to the regulation of dialysis technicians (HOWELL) (REGULAR)
- H. B. 4025 - Permitting reciprocity for licensure as a pharmacy technician (HOWELL) (REGULAR)
- Com. Sub. for H. B. 4186 - Relating generally to guaranteed asset protection waivers (SHOTT) (REGULAR)

- Com. Sub. for H. B. 4236 - Requiring agencies to provide an annual inventory of real property holdings to the Real Estate Division (HOWELL) (REGULAR)
- Com. Sub. for H. B. 4276 - Allowing magistrates to grant work release privileges (SHOTT) (REGULAR)
- H. B. 4410 - Removing the requirement that the State Auditor receive copies of the Limited Video Lottery bids (SHOTT) (REGULAR)

**WEST VIRGINIA  
HOUSE OF DELEGATES**

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**WEDNESDAY, FEBRUARY 7, 2018**

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**HOUSE CONVENES AT 11:00 A.M.**

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**COMMITTEE ON FINANCE  
8:30 A.M. – ROOM 460M**

**COMMITTEE ON THE JUDICIARY  
9:00 A.M. – ROOM 418M**

**COMMITTEE ON EDUCATION  
9:00 A.M. – ROOM 434M**

**COMMITTEE ON GOVERNMENT ORGANIZATION  
9:00 A.M. – ROOM 215E**

**VETERANS' AFFAIRS & HOMELAND SECURITY  
1:00 P.M. – ROOM 434M**

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**FRIDAY, FEBRUARY 9, 2018**

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**PUBLIC HEARING-COMMITTEE ON THE JUDICIARY  
8:30 A.M. – HOUSE CHAMBER  
H. B. 4268, CO-TENANCY MODERNIZATION AND MAJORITY  
PROTECTION ACT.**

HOUSE OF DELEGATES  
STEPHEN J. HARRISON, Clerk  
Building 1, Room M-212  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0470