ATTACHMENT NO. 1

[EMERGENCY REMOVAL PETITION]

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
Division No. 2

IN THE INTEREST OF: GRB, dob: 4/9/05
JLB, dob: 2/9/08

ADULT RESPONDENT(S): NM, mother G and J
IB, father J
LWB., father G

PETITION FOR IMMEDIATE TRANSFER OF CUSTODY OF
MINOR CHILDREN DUE TO ALLEGATIONS OF IMMINENT
(W.Va. Code §49-6-3)

1. The West Virginia Department of Health and Human Resources, by Child Protective Services Worker _____, hereby requests the immediate transfer of custody of the above-named children to the Department of Health and Human Resources based upon the Department's belief that the physical welfare of the children is at imminent risk based upon the following circumstances.

2. Respondent NM is the mother of GB and JB. She and the children have been residing at 608 Elmina Street, Morgantown, with Respondent IB, who is the father of JB.

3. Respondent LWB is the ex-husband of Respondent NM and the father of GB. Reportedly Mr. B. has visitation rights with GB through a Family Court proceeding held in later April 2008.

4. Between March 8, 2007 and November 29, 2007, the DHHR had an open CPS case involving NM and her children due to a substantiation of drug use by Ms. M. The referral that opened the protective services case reported that NM was using marijuana and abusing prescription pain pills. Ms. M admitted those allegations. Soon after the case was opened Ms.

M advised her CPS worker that she was living with a convicted felon, but stated that she was not threatened because "he just beat some *guy's* head off of the concrete." This man was identified as IB.

5. During Ms. M's open CPS case she submitted to drug screening, attended Valley Mental Health counseling appointments and received in-home services through Home Base, Inc. Because the problems that had caused the case to be opened appeared to be remedied, the case was closed on November 29, 2007.

6. On the evening of May 2, 2008, the DHHR received a referral that JB had tested positive for cocaine at Ruby Hospital. The DHHR began to investigate.

7. When the Petitioner interviewed NM on May 5, 2008, Ms. Mailey advised of an incident of domestic abuse that occurred on the weekend of April 26-27, 2008, at the family's home. Ms. M reported to the Petitioner that she had asked for Mr. B's assistance in bathing JB. Mr. B refused, stating that his hands were full. Ms. M stated that Mr. B was holding a Popsicle at the time, which made her angry. She stated that she "snapped at IB" and an argument ensued.

8. Later during that evening Ms. M attempted to take a cigarette from Mr. B's pocket. She stated that he then grabbed her right arm and twisted it behind her back, injuring ligaments in her shoulder and causing bruising on her arm. When she attempted again to take a cigarette from him, he became very angry and chased her through the house into a bedroom where he caught her, grabbed her by the throat and threw her against the wall. Ms. M demonstrated Mr. B's throwing action to the Petitioner. Being thrown against the wall resulted in the left orbital bone of Ms. M's face sustaining a hair-line fracture. There was extensive bruising of her face and a hemotoma caused blood to pool behind her left eye.

9. During this episode GB came downstairs as Mr. B continued to chase Ms. M through the house. When Ms. M tried to run out the backdoor she tripped over GB who was on her tricycle. This caused GB to fall and suffer a bruise to her forehead. Because Ms. M was screaming at Mr. B due of what had happened with GB he attempted to quiet her by choking her with his hand. When that was not successful he placed his knee on her throat.

10. Although Ms. M reports that she was seen at Med Express for x-rays and at Monongalia General Hospital for a CT scan and was referred to an ophthalmologist to check for detached retinas, Ms. M reports that, to an extent she believes that she deserves Mr. B's abuse because she talks back to him and fights back when he is attacking her. Ms. M appears to have no wish to press charges against Mr. B and she remained at the residence with him after the described attack and injuries.

11. Ms. M described other incidents of physical abuse by Mr. B beginning in November 2007 while she was pregnant with JB. She has been the subject of choking, arm twisting, having her arms slammed in doors, and having her leg pulled so far behind her head that she suffered a groin strain. According to Ms. M, Mr. B reports that he does not remember abusing her due to "black-outs".

12. Ms. M also described to the Petitioner that another argument between her and Mr. Br occurred on Thursday, May 1, 2008. Immediately after the argument began she left the residence to spend the night at the home of a friend, JF. She stated that, while she was there with GB and JB there were a number of people present using powder and crack cocaine. Ms. M stated that Mr. B came to Ms. F's home on Friday morning and used powder cocaine while there.

13. On Friday afternoon, May 2, 2008, Mr. B, Ms. M, GB, JB, and Ms. F and her son left Ms. F's home and were driving in Westover when they encountered DD. Ms. M explained to the

Petitioner that, earlier in the week Mr. D had taken money from Mr. B during a drug transaction. On May 2, 2008, Mr. B confronted Mr. D. The confrontation escalated into a physical altercation, which then resulted in IB stabbing DD. Mr. D was hospitalized and Mr. B was later arrested and charged with Malicious Assault after having been apprehended by police. Both children were present during this violent episode and GB even got out of the car to watch what was happening.

14. Later on Friday, May 2, 2008, Ms. M asked her mother, SC, to care for JB for a while because she was stressed out. Ms. C agreed, but later when the baby continued to cry inconsolably for hours, she took him to be seen at Ruby Hospital Emergency Department. A urine screen showed that JB was positive for cocaine metabolite.

15. When Ms. C inspected the diaper bag that had been sent along with JB by Ms. M, Ms. C found an amount of a substance later determined to be opium, a smoking device and a lighter. Ms. M told the Petitioner that Mr. B had placed those items in the diaper bag on Friday morning so that he would not be caught with them. She further stated that IB sells opium and has sold other drugs, including marijuana, in order to make ends meet.

16. During JB's stay in the hospital (where he remains at this time due to a decision at the hospital to maintain 96 hour care and observation) SC has remained with him. Ms. M did not immediately go to the hospital on Friday May 2, 2008, after learning that JB had been admitted. Although she visited for a time on Saturday, May 3, 2008, she did not remain. Neither did Ms. M visit the hospital on Sunday, May 4, 2008. Ms. C advised the Petitioner on Monday, May 5, 2008, that Ms. M was busy attempting to find enough money to post Mr. B's $100,000.00 bail. Mr. B made bail on May 5, 2008.

17. In discussing the fact that Jacob had tested positive for cocaine, Ms. M conjectured that JB had been exposed to cocaine by skin-to-skin contact with Mr. B. Specifically, Ms. M described that Mr. B had used powder cocaine on Friday morning May 2, 2008, had then begun to sweat profusely which prompted him to remove his shirt. He then lay on the couch with JB on his chest and fell asleep. Ms. M denied that she could have exposed JB to cocaine through breastfeeding because she denied using cocaine. She also stated that, if she had transmitted cocaine to JB through breastfeeding, his urine screen should have shown that he was positive for marijuana, benzodiazepine and opiates (percocet) because she had smoked marijuana and had been using the prescription drugs.

18. Due to the use of illegal substances by the Respondents while they have the care and custody of the two children, and because of the severe episodes of domestic violence between the Respondents that occurs in the presence of the children and subjects them to collateral injury, the Department believes that it is necessary to protect the safety and welfare of the children by placing them temporarily in the legal and physical custody of the West Virginia DHHR with consideration given to their physical placement with suitable relatives.

WHEREFORE, your Petitioner asks that custody of the children be immediately transferred to the West Virginia Department of Health and Human Resources for a temporary period not to exceed ten (10) days pending the scheduling of a preliminary hearing. Your Petitioner additionally requests that a preliminary hearing be scheduled so that the Court can consider the facts and allegations contained in this Petition and make proper findings of fact and conclusions of law consistent with the evidence presented; and grant further relief in the best interests of the children at the initial hearing, or at any subsequent hearing, in accordance with

the provisions of Chapter 49 of the West Virginia Code regarding disposition in cases of children who are abandoned.

The Respondents are hereby notified that pursuant to West Virginia Code §49-7-5, the Court will make a determination whether, and at what financial level, child support will be required for the child who is placed out of the home. Financial disclosure by the Respondents will be required to assist the Court in reaching the determination.

_____
Petitioner

STATE OF WEST VIRGINIA
COUNTY OF MONONGALIA, to-wit:

_____, a reputable person and the Petitioner named in the foregoing Petition, states that the facts and allegations contained therein are true insofar as they are based upon your Petitioner's own knowledge and observations. Insofar as they are based upon information, your Petitioner verily believes them to be true.

_____
Petitioner

Taken, subscribed and sworn to before me this ____ day of April 2008.

My Commission expires: May 25, 2013

_____
Notary