WEST VIRGINIA CODE CHAPTER 49 ARTICLE 1

WV Legislature

Part I. General Provisions and Purpose.

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

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

(b) The recodification of this chapter during the regular session of the Legislature in the year 2015 is intended to embrace in a revised, consolidated, and codified form and arrangement the laws of the State of West Virginia relating to child welfare at the time of that enactment.

WV Legislature

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

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

WV Legislature

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

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 The prior enactments of chapter forty-nine of this code, whether amended and reenacted or repealed by the action of the Legislature during the 2015 regular session, have full force and effect until that time.

WV Legislature

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

The Department of Human Services and the Department of Military Affairs and Public Safety are not required to change any form or letter that contains a citation to this code that is changed or otherwise affected by the recodification.

WV Legislature

§49-1-105. Purpose.

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

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

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

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

(3) Preserve and strengthen the child family ties;

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

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

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

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

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

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

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

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

(12) Protect the welfare of the general public.

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

(d) Through licensure, approval, and registration of child care, the state exercises its benevolent police power to protect the user of a service from risks against which he or she would have little or no competence for self protection. Licensure, approval, and registration

WV Legislature

processes shall, therefore, continually balance the child's rights and need for protection with the interests, rights and responsibility of the service providers.

WV Legislature

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

(a) The child welfare service of the state shall be located within and administered by the Bureau for Social Services. The Division of Corrections and Rehabilitation of the Department of Homeland Security shall administer the secure predispositional juvenile detention and juvenile correctional facilities of the state. Notwithstanding any other provision of this code to the contrary, the administrative authority of the Division of Corrections and Rehabilitation over any child or juvenile in this state extends only to those detained or committed to a secure detention facility or secure correctional facility operated and maintained by the division by an order of a court of competent jurisdiction during the period of actual detention or confinement in the facility.

(b) The Department of Human Services is designated as the state entity to cooperate with the United States Department of Health and Human Services and United States Department of Justice in extending and improving child welfare services, to comply with federal regulations, and to receive and expend federal funds for these services. The Division of Corrections and Rehabilitation of the Department of Homeland Security is designated as the state entity to cooperate with the United States Department of Health and Human Services and United States Department of Justice in operating, maintaining and improving juvenile correction facilities and centers for the predispositional detention of children, to comply with federal regulations, and to receive and expend federal funds for these services.

(c) The Division of Corrections and Rehabilitation of the Department of Homeland Security is authorized to operate and maintain centers for juveniles needing detention pending disposition by a court having juvenile jurisdiction or temporary care following that court action.

WV Legislature

§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

WV Legislature

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;

WV Legislature

(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.

"Parent Resource Navigator" means an individual established through the Court Improvement Program (CIP) or Public Defender Services (PDS) model who is assisting a parent or parents through requirements to be unified or reunified with their child or children.

"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;

WV Legislature

(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.

WV Legislature

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

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, adult, child, developmental disability, and transitioning adult status, 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.

"Adult" means a person who is at least eighteen years of age.

"Child" or "Juvenile" means any person under eighteen years of age or is a transitioning adult. Once a child or juvenile is transferred to a court with criminal jurisdiction pursuant to section seven hundred ten, article four of this chapter, he or she shall remain a child or juvenile for the purposes of the applicability of this chapter. Unless otherwise stated, for the purpose of child care services "child" means an individual who meets one of the following conditions:

(A) Is under thirteen years of age;

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

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

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

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

(A) Who habitually and continually refuses to respond to the lawful supervision by his or her parents, guardian or legal custodian such that the juvenile's behavior substantially endangers the health, safety or welfare of the juvenile or any other person;

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

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

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

(A) Is eighteen years of age but under twenty-one years of age, was in the custody of the Department of Human Services upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the

WV Legislature

juvenile court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the eighteenth birthday; or

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

WV Legislature

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

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

"Approval" means a finding by the Secretary of the Department of Human Services that a facility operated by the state has met the requirements of legislative rules promulgated for operation of that facility and that a certificate of approval or a certificate of operation has been issued.

"Certification of approval" or "certificate of operation" means a statement issued by the Secretary of the Department of Human Services that a facility meets all of the necessary requirements for operation.

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

"Certificate of registration" means a statement issued by the Secretary of the Department of Human Services to a family child care home, informal family child care home, or relative family child care home to provide specified services for a limited period in accordance with the terms of the certificate.

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

"Registration" means the grant of official permission to a family child care home, informal family child care home, or a relative family child care home determined to be in compliance with the legislative rules promulgated pursuant to this chapter.

"Rule" means legislative rules promulgated by the Secretary of the Department of Human Services or a statement issued by the Secretary of the Department of Human Services of the standards to be applied in the various areas of child care.

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

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

WV Legislature

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

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, custodians, legal guardians and family, 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.

“Caregiver” means any person who is at least eighteen years of age and:

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

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

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

“Dysfunctional family,” for the purposes of part two, article two of this chapter, means a parent or parents or an adult or adults and a child or children living together and functioning in an impaired or abnormal manner so as to cause substantial physical or emotional danger, injury or harm to one or more children thereof regardless of whether those children are natural offspring, adopted children, step children or unrelated children to that parents.

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

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

“Parental rights” means any and all rights and duties regarding a parent to a minor child.

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

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

WVLegislature

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

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, developmental disabilities, 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.

“Developmental disability” means a severe, chronic disability of a person which:

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

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

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

(i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency; and

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

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

“Family or primary caregiver,” for the purposes of part six, article two of this chapter, means the person or persons with whom the developmentally disabled person resides and who is primarily responsible for the physical care, education, health and nurturing of the disabled person pursuant to the provisions of part six, article two of this chapter. The term does not include hospitals, nursing homes, personal care homes or any other similar institution.

“Legal guardian,” for the purposes of part six of article two of this chapter, means the person who is appointed legal guardian of a developmentally disabled person and who is

WV Legislature

responsible for the physical and financial aspects of caring for that person, regardless of whether the disabled person resides with his or her legal guardian or another family member.

WV Legislature

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

When used in this chapter, the following terms have the following meanings, unless the context clearly indicates otherwise:

"Child Advocacy Center (CAC)" means a community-based organization that is a member, in good standing, of the West Virginia Child Advocacy Network, Inc., as set forth in §49-3-101 of this code.

"Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social, and personal needs and the consideration of the child's rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the Division of Corrections and Rehabilitation pursuant to §49-2-901 *et seq.* of this code. It includes the provision of child care services or residential services.

"Child care center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, for the care of 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.

"Child care services" means direct care and protection of children during a portion of a 24-hour day outside of the child's own home which provides experiences to children that foster their healthy development and education.

"Child placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are 16 or 17 years of age and living in unlicensed residences.

"Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Corrections and Rehabilitation, pursuant to §49-2-901 *et seq.* of this code, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

"Community based" means a facility, program, or service located near the child's home or family and involving community participation in planning, operation, and evaluation and which may include, but is not limited to, medical, educational, vocational, social, and

WV Legislature

psychological guidance, training, special education, counseling, substance abuse, and any other treatment or rehabilitation services.

"Community-based juvenile probation sanctions" means any of a continuum of nonresidential accountability measures, programs, and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

(A) Electronic monitoring;

(B) Drug and alcohol screening, testing, or monitoring;

(C) Youth reporting centers;

(D) Reporting and supervision requirements;

(E) Community service; and

(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.

"Community services" means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

"Evidence-based practices" means policies, procedures, programs, and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

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

"Family child care facility" means any facility which is used to provide nonresidential child care services for compensation for seven to 12 children, including children who are living in the household, who are under six years of age. A facility may be in a provider’s residence or a separate building.

"Family child care home" means a facility which is used to provide nonresidential child care services for compensation in a provider’s residence. The provider may care for four to six children at one time, including children who are living in the household, who are under six years of age.

"Family resource network" means:

WV Legislature

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

(i) Has agreed to a single governing entity;

(ii) Has agreed to engage in activities to improve service systems for children and families within the community;

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

(iv) Has, as the majority of the members of the governing body, nonproviders, which includes family representatives and other members who are not employees of publicly funded agencies, with family representatives as the majority of those members who are nonproviders;

(v) Has members of the governing body who are representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency, and the county school district; and

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

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

"Family support", for the purposes of §49-2-601 *et seq.* of this code, means goods and services needed by families to care for their family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

"Family support program" means a coordinated system of family support services administered by the Department of Human Services through contracts with behavioral health agencies throughout the state.

"Fictive kin" means an adult of at least 21 years of age, who is not a relative of the child, as defined herein, but who has an established, substantial relationship with the child, including but not limited to, teachers, coaches, ministers, and parents, or family members of the child's friends.

"Foster family home" means a private residence which is used for the care on a residential basis of no more than six children who are unrelated, by blood, marriage, or adoption, to any adult member of the household.

"Foster parent" means a person with whom the department has placed a child and who has been certified by the department, a child placing agency, or another agent of the department to provide foster care.

WV Legislature

"Health care and treatment" means:

(A) Developmental screening;

(B) Mental health screening;

(C) Mental health treatment;

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

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

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

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

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

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

"Informal family child care" means a home that is used to provide nonresidential child care services for compensation for three or fewer children, including children who are living in the household who are under six years of age. Care is given in the provider’s own home to at least one child who is not related to the caregiver.

"Kinship parent" means a person with whom the department has placed a child to provide a kinship placement.

"Kinship placement" means the placement of the child with a relative of the child, as defined herein, or a placement of a child with a fictive kin, as defined herein.

"Needs Assessment" means an evidence-informed assessment which identifies the needs a child or family has, which, if left unaddressed, will likely increase the chance of reoccurring.

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

"Nonviolent misdemeanor offense" means a misdemeanor offense that does not include any

WV Legislature

of the following:

(A) An act resulting in bodily injury or death;

(B) The use of firearm or other deadly weapon in the commission of the offense;

(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;

(D) A criminal sexual conduct offense; or

(E) Any offense for driving under the influence of alcohol or drugs.

"Out-of-home placement" means a post-adjudication placement in a foster family home, kinship parent home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff secure facility, hardware secure facility, detention facility, or other residential placement other than placement in the home of a parent, custodian, or guardian.

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

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

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

"Regional family support council" means the council established by the regional family support agency to carry out the responsibilities specified in §49-2-601 *et seq.* of this code.

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

"Relative of the child" means an adult of at least 21 years of age who is related to the child, by blood or marriage, within at least three degrees.

"Residential services" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians, or other persons or entities on a continuing or temporary basis. It may include care or treatment, or both, for transitioning adults. Residential services does not include or apply to any juvenile detention

WV Legislature

facility or juvenile correctional facility operated by the Division of Corrections and Rehabilitation, created pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

"Risk and needs assessment" means a validated, standardized actuarial tool which identifies specific risk factors that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce the likelihood of reoffending.

"Scattered-site living arrangement" means a living arrangement where youth, 17 to 26 years of age, live in a setting that allows staff to be available as needed, depending on the youth's level of autonomy. Sites for such living arrangements shall be in community environments to allow the youth full access to services and resources in order to fully develop independent living skills.

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

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

"Standardized screener" means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

"State family support council" means the council established by the Department of Human Services pursuant to §49-2-601 *et seq.* of this code to carry out the responsibilities specified in §49-2-101 *et seq.* of this code.

"Supervised group setting" means a setting where youth, 16 to 21 years of age, live with staff onsite or are available 24 hours per day and seven days per week. In this setting, staff provide face to face daily contact with youth.

"Time-limited reunification services" means individual, group, and family counseling, inpatient, residential, or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care, and therapeutic services for families, including crisis nurseries and transportation to or from those services, provided during 15 of the most recent 22 months a child or juvenile has been in foster or in a kinship placement, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

WV Legislature

"Technical violation" means an act that violates the terms or conditions of probation or a court order that does not constitute a new delinquent offense.

"Truancy diversion specialist" means a school-based probation officer or truancy social worker within a school or schools who, among other responsibilities, identifies truants and the causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to court involvement.

WV Legislature

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

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, court actions, 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.

“Court” means the circuit court of the county with jurisdiction of the case or the judge in vacation unless otherwise specifically provided.

“Court appointed special advocate (CASA) program” means a community organization that screens, trains, and supervises CASA volunteers to advocate for the best interests of children who are involved in abuse and neglect proceedings pursuant to §49-3-102 of this code.

“Extrajudicial Statement” means any utterance, written or oral, which was made outside of court.

“Juvenile referee” means a magistrate appointed by the circuit court to perform the functions expressly prescribed for a referee under the provisions of this chapter.

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

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

“Child protection commissioner” means an individual appointed by the Supreme Court of Appeals to manage portions of a court case filed pursuant to this chapter.

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

“Valid court order” means an order issued by a court of competent jurisdiction relating to a child brought before the court and who is the subject of that order. Prior to the entry of the order the child shall receive the full due process rights guaranteed to that child or juvenile by the Constitutions of the United States and the State of West Virginia.

“Violation of a traffic law of West Virginia” means a violation of chapter 17A, 17B, 17C, or 17D of this code, except a violation of §17C-4-1 or §17C-4-2 of this code relating to hit and run, or §17C-5-1, §17C-5-2, or §17C-5-3 of this code, relating, respectively, to vehicular

WV Legislature

homicide, aggravated vehicular homicide, vehicular homicide in a school zone, vehicular homicide in a construction zone, driving under the influence of alcohol, controlled substances or drugs and reckless driving.

WV Legislature

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

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, state and local agencies, 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.

"Department" or "state department" means the West Virginia Department of Human Services.

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

"Law-enforcement officer" means a law-enforcement officer of the State Police, a municipality or county sheriff's department.

"Secretary" means the Secretary of the West Virginia Department of Human Services.

WV Legislature

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

As used in article six of this chapter:

“Child” means an individual under the age of eighteen years who is not emancipated;

“Clearinghouse” means the West Virginia missing children information clearinghouse;

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

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

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

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

“Missing child report” means information that is:

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

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

“Possible match” means the similarities between an unidentified body of a child and a missing child that would lead one to believe they are the same child;

“Reporter” means the person who reports a missing child; and

“State agency” means an agency of the state, political subdivision of the state or public post-secondary educational institution.

WV Legislature