WEST VIRGINIA CODE CHAPTER 49

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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.

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§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.

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§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 The prior enactments of chapter forty-nine of this code, whether amended and reenacted or repealed by the action of the Legislature during the 2015 regular session, have full force and effect until that time.

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§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.

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§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

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

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§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.

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§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

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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;

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(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;

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(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.

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§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

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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.

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§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.

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§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.

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§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

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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.

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§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

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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:

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(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.

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"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

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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

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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.

“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 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

§49-2-101. Authorization and responsibility; Bureau for Social Services.

(a) The Bureau for Social Services is continued within the department. The bureau is under the immediate supervision of a commissioner.

(b) The Bureau for Social Services is authorized to provide care, support, and protective services for children who are handicapped by dependency, neglect, single parent status, mental or physical disability, or who for other reasons are in need of public service. The bureau is also authorized to accept children for care from their parent or parents, guardian, custodian, or relatives, and to accept the custody of children committed to its care by courts. The bureau or any county office of the department is also authorized to accept temporary custody of children for care from any law-enforcement officer in an emergency situation.

(c) The bureau is responsible for the care of the infant child of an unmarried mother who has been committed to the custody of the department while the infant is placed in the same licensed child welfare agency as his or her mother. The bureau provides care for those children in family homes meeting required standards, at board or otherwise, through a licensed child welfare agency, or in a state institution providing care for dependent or neglected children. If practical, when placing any child in the care of a family or a child welfare agency, the bureau shall select a family holding the same religious belief as the parents or relatives of the child, or a child welfare agency conducted under religious auspices of the same belief as the parents or relatives.

WV Legislature

§49-2-102. Staffing Allocation for Child Protective Services Workers.

Notwithstanding any other provision of this code to the contrary, effective July 1, 2024, the commissioner shall allocate and station child protective services workers by county based on population, referrals, and average caseload. The allocation may not decrease below the bureau's allocation of January 1, 2023. The county population shall be based on the United States Census. The bureau shall report the allocation to the Legislative Oversight Commission on Health and Human Resources Accountability by July 1 each year.

WV Legislature

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

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

WV Legislature

§49-2-104. Education of the public.

[Repealed.]

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

(a) The department shall establish minimum standards for foster-home care to which all certified foster homes must conform by legislative rule. Any home that conforms to the standards of care set by the department shall receive a certificate of operation.

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

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

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

WV Legislature

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

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

WV Legislature

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

An institution or organization incorporated under the laws of another state shall not place a child in a private home in the state without the approval of the department, and the agency so placing the child shall arrange for supervision of the child through its own staff or through a licensed child welfare agency in this state, and shall maintain responsibility for the child until he or she is adopted or discharged from care with the approval of the department.

WV Legislature

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

The department shall develop standards for the care of children. It shall cooperate with, advise, and assist all child welfare agencies, including state institutions, which care for children who have been neglected, have been adjudicated delinquent, or have special needs such as physical, mental, or intellectual disabilities, and shall supervise those agencies. The department, in cooperation with child welfare agencies, shall formulate and make available standards of child care and services for children, to which all child welfare agencies must conform.

WV Legislature

§49-2-110a Bureau of Social Service authority to hire and employ workers who are not social workers in geographical areas of critical shortage.

(a) The Legislature finds that there is a crisis in West Virginia in certain geographical regions of the state, that is caused by an absence of people employed by the Department of Human Services as child protective services workers, youth case workers, and support staff for these positions.

(b) Notwithstanding any other provisions of this code to the contrary, the Bureau of Social Services, pursuant to the provisions of this section, may establish a pilot program to employ persons who do not hold a social worker's license and persons who are not on the social work register to work for the bureau as child protective services workers, youth case workers and support staff, in geographical areas of critical shortage of this state.

(c) For purposes of this pilot program and this section, "geographical areas of critical shortage" means the counties comprising the 14th judicial circuit and the 23rd judicial circuit as of the effective date of the amendments to the section enacted during the 2023 regular session of the Legislature.

(d) Workers hired by the bureau under this section to work in geographical areas of critical shortage may be employed by the bureau and work in said geographical areas as child protective services workers, youth service workers, case managers, clerical staff and in other related positions for the bureau. Wherever possible, workers hired pursuant to this section shall be supervised by a licensed social worker.

(e) The provisions of this section shall operate independently of, and in addition to, any other provisions of law or policy that allow persons to be employed in these jobs, and the provisions of this section do not eliminate any other provisions of law that permit persons to be employed in the jobs described in this section.

(f) In order for a person to be eligible for employment under this section, he or she shall:

(1) Be at least 18 years of age.

(2)(A) Have an associate's degree or higher in social work, human services, sociology, psychology, or social services from an accredited college, university, community and technical college, community college or junior college; or

(B) Be an honorably retired law enforcement officer or be an honorably retired parole officer or honorably retired federal or state probation officer.

(C) Meet any other requirements established by the bureau.

(3) Provide to the bureau three letters of recommendation from persons not related to the applicant.

WV Legislature

(4) Not be an alcohol or drug abuser, as these terms are defined in §27-1A-11 of this code: *Provided*, That an applicant in an active recovery process, which may, in the discretion of the bureau, be evidenced by participation in an acknowledged substance abuse treatment and/or recovery program, may be considered;

(5) Satisfy the requirements of the West Virginia Clearance for Access Registry and Employment Screening Act, §16-49-1 *et seq*. of this code; and

(6) Satisfy the requirements provided in §30-1-24 of this code.

(g) The bureau shall provide training to any and all persons hired and employed hereunder, as the bureau deems appropriate.

(h) The provisions of this section authorizing the hiring of persons shall sunset, expire, and be of no force and effect on or after the 31st day of December 2026, but shall not serve to require the termination of persons hired pursuant to this section.

WV Legislature

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

(a) In order to improve standards of child care, the department shall cooperate with the governing boards of child welfare agencies, assist the personnel of those agencies through advice on progressive methods and procedures of child care and improvement of the service rendered, and assist in the development of community plans of child care. The department, or its duly authorized agent, may visit any child welfare agency to advise the agency on matters affecting the health of children.

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

WV Legislature

§49-2-111a. Performance based contracting for child placing agencies.

(a) For purposes of this section:

(1) “Child” means:

(A) A person of less than 18 years of age; or

(B) A person 18 to 21 years of age who is eligible to receive the extended foster care services.

(2) “Child-placing agency” means an agency licensed by the department to place a child in a foster care home.

(3) “Department” means the Department Human Services.

(4) “Evidence-based” means a program or practice that is cost-effective and includes at least two randomized or statistically controlled evaluations that have demonstrated improved outcomes for its intended population.

(5) “Performance-based contracting” means structuring all aspects of the service contract around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance.

(6) “Promising practice” means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(7) “Research-based” means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(b) No later than July 1, 2021, the department shall enter into performance-based contracts with child placing agencies.

(c) The department shall actively consult with other state agencies and other entities with expertise in performance-based contracting with child placing agencies to develop the requirements of the performance-based contract.

(d) The performance-based contract shall be developed and implemented in a manner that complies with applicable provisions of this code. Contracts for child placing agencies are exempt from §5A-3-1 of this code.

(e) The resulting contracts shall include, but are not limited to, the following:

(1) Adequate capacity to meet the anticipated service needs in the contracted service area of the child placing agency;

WV Legislature

(2) The use of evidence-based, research-based, and promising practices, where appropriate, including fidelity and quality assurance provisions;

(3) Child placing agency data reporting, including data on performance and service outcomes, including, but not limited to:

(A) Safety outcomes;

(B) Permanency outcomes;

(C) Well-being outcomes;

(D) Incentives earned;

(E) Placement of older children;

(F) Placement of children with special needs; and

(G) Recruitment and retention of foster parents; and

(4) A hold harmless period to determine a baseline for evaluation.

(f) Performance-based payment methodologies must be used in child placing agency contracting. Performance measures should relate to successful engagement by a child or parent in services included in their case plan, and resulting improvement in identified problem behaviors and interactions. For the first year of implementation of performance-based contracting, the department may transfer financial risk for the provision of services to the child placing agency only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the child placing agency will receive a defined share of any savings that result from improved performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the child placing agency shall reinvest the savings in enhanced services to better meet the needs of the families and children they serve.

(g) The department shall actively monitor the child placing agency's compliance with the terms of contracts executed under this section.

(h) The use of performance-based contracts under this section shall be done in a manner that does not adversely affect the state's ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services.

(i) The department shall pay child placing agencies contracted to provide adoption services

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to foster families a minimum of $1,000 per child for each adoption finalized.

(j) The rate of payment to foster parents and child placing agencies shall be reviewed by the department, at a minimum of every two years, to determine whether the level of foster care payments facilitates or hinders the efficient placement of foster children with West Virginia families. The department shall remit payments to foster parents on the same week each month to facilitate foster parents' ability to budget and appropriately expend payments for the benefit of the children in their custody.

(k) The department shall report the performance of the child placing agency to the Legislative Oversight Commission on Health and Human Resources Accountability by December 31, annually.

WV Legislature

§49-2-111b. Study of kinship foster care families.

(a) The department shall conduct a study and make recommendations for improving services provided for kinship foster care families. This study shall include at a minimum:

(1) A review of best practices in other states;

(2) A proposal for an alternate system of regulation for kinship foster care that includes the same reimbursement as other foster care families as well as a reasonable time period for obtaining certification;

(3) An evaluation of what training and supports are needed to ensure that kinship care homes are successful.

(b) The results of this shall be shared with all members of the Legislature by October 1, 2019.

WV Legislature

§49-2-111c. Priorities for use of funds.

(a) Subject to appropriations by the Legislature, the department shall:

(1) Enhance and increase efforts to provide services to prevent the removal of children from their homes;

(2) Identify relatives and fictive kin of children in need of placement outside of the home;

(3) Train kinship parents to become certified foster parents;

(4) Expand a tiered foster care system that provides higher payments for foster parents providing care to, and child placing agencies providing services to, foster children who have severe emotional, behavioral, or intellectual problems or disabilities, with particular emphasis upon removing children in congregate care and placing them with suitable foster parents; and

(b) (1) The department shall develop and implement a web-based communication system which shall either be incorporated into the existing child welfare information technology system or be developed and implemented through the purchase of additional products that can be used in conjunction with the existing child welfare technology system. The web-based communication system shall communicate with and pull information from the existing child welfare information technology system. The components of the system may be implemented incrementally, except that §49-2-111c(b)(2)(B) of this code, shall be implemented on or before July 1, 2025, with the project completed on or before July 1, 2026.

(2) The system shall:

(A) Ensure that permission access to utilize the system about a foster child is granted to only those parties with legal responsibilities to care for and support the foster child;

(B) Facilitate communications between those individuals involved in the child welfare system, including, but not limited to, foster parent or kinship parent requests and responses to requests to staff of the Bureau for Social Services and their contractual designees;

(C) Provide information regarding visitation, appointments, travel, and other services available to the foster child;

(D) Provide information regarding court hearings, meetings with guardian ad litem, multidisciplinary team (MDT) meetings, and provide other communications that may improve care for the foster child amongst designated parties with legal responsibilities to care for the foster child;

(E) Provide health records for the foster child to the foster parent or kinship parent by connecting with existing health care systems;

WV Legislature

(F) Have the capacity to archive communications for the purpose of running reports on responsiveness by parties in the child welfare system; and

(G) Be created to prevent the input of the redundant information.

(3) On or before July 1, 2026, and quarterly thereafter, the department shall analyze and evaluate the average time it takes a child protective service worker to update the web-based communication system with the information required in this section. The department shall also evaluate the child protective service worker's response time to requests made in the web-based communications system from foster parents and kinship parents. This analysis shall be shared with the Foster Care Ombudsman and presented to the Legislative Oversight Commission on Health and Human Resources Accountability on or before July 1, 2026, and annually thereafter.

(4) On or before December 31, 2024, the Department of Human Services shall submit a report to the Legislative Oversight Commission on Health and Human Resources setting forth an overview of the status of implementation of the web-based communication system set forth in this section. The report shall contain, at a minimum, timelines for completion of the web-based communication system and projected expenditures.

WV Legislature

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

Before issuing a charter for the incorporation of any organization having as its purpose the receipt of children for care or for placement in family homes, the Secretary of State shall provide a copy of the petition, together with any other information in his or her possession pertaining to the proposed corporation, to the secretary.

WV Legislature

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

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

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

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

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

(e) This section does not apply to:

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

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

(3) Summer recreation camps operated for children attending sessions for periods not exceeding 30 days;

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

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

(6) 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;

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through 12th grade students when the program is monitored by the West Virginia Department of Education;

WV Legislature

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national congressionally chartered organization or is an out-of-school time, summer recreation camp, or day camp program operated by a county parks and recreation commission, boards, and municipalities and meets all of the following requirements:

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

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

(C) The program's primary source of funding is not from fees for service except for programs operated by county parks and recreation commissions, boards, and municipalities; and

(D) The program has a formalized monitoring system in place; or

(9) Any kindergarten, preschool, or school education program which is operated by a private, parochial, or church school that is recognized by the West Virginia Department of Education under Policy 2330.

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

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

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

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

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

(A) A designated relocation site and evacuation;

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

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

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

(E) Coordination with local emergency management officials; and

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

(2) A child-care service shall update the evacuation plan by December 31 of each year. If a child-care service fails to update the plan, no action shall be taken against the child-care services license or registration until notice is provided and the child-care service is given 30 days after the receipt of notice to provide an updated plan.

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

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

(j) A residential child-care center which has entered into a contract with the department to provide services to a certain number of foster children, shall accept any foster child who meets the residential child-care center's program criteria, if the residential child-care center has not met its maximum capacity as provided for in the contract. Any residential child-care center which has entered into a contract with the department may not discharge any child in its program, except as provided in the contract, including that if the youth does not meet the residential treatment level and target population, the provider shall request a MDT and work toward an alternative placement.

WV Legislature

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

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

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

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

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

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

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

(3) Discipline;

(4) Fire and environmental safety;

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

(6) Health, sanitation and nutrition.

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

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

WV Legislature

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

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

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

(c) A provisional license or approval may be issued when a licensee is not in compliance with the legislative rules promulgated by the secretary but does not pose a significant risk to the rights, well-being, health and safety of a consumer. It shall expire not more than six months from date of issuance, and not be consecutively reissued unless the provisional recommendation is that of the State Fire Marshal.

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

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

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

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

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

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

(2) Prohibit intake of any children; or

(3) Reduce the number of children which the agency, facility or home operated by the

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agency is licensed, approved, certified or registered to receive.

WV Legislature

§49-2-115a. Head Start program licenses.

(a) A Head Start program in good standing with the United States Department of Health and Human Services pursuant to 42 USC § 9381 *et seq*. may request to be deemed a licensee to operate a child care program for the sole purpose of utilizing the West Virginia Clearance for Access: Registry and Employment Screenings program. At the discretion of the secretary, a deemed license may not permit the licensee to access the other services provided by the Bureau for Family Assistance as it relates to the specific deemed child care license.

(b) The section may not be construed to prevent the department from investigating complaints regarding the health, safety, or welfare of children.

(c) The department shall propose a legislative rule for promulgation by July 1, 2022, to effectuate this section.

WV Legislature

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

(a) The secretary shall enforce this article.

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

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

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

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

(f) The secretary may enter any unlicensed, unregistered or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article. Those entries shall be made with a law-enforcement officer present. The secretary may enter upon the premises of any unregistered residence only after two attempts by the secretary to bring this facility into compliance.

WV Legislature

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

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

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

WV Legislature

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

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

WV Legislature

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

(a) The secretary shall provide supervision to ascertain compliance with the rules promulgated pursuant to this chapter through regular monitoring, visits to facilities, documentation, evaluation and reporting. The secretary is responsible for training and education, within fiscal limitations, specifically for the improvement of care in family child care homes and facilities. The secretary shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible.

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

WV Legislature

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

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

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

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

WV Legislature

§49-2-121. Rule-making.

(a) The secretary shall promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code regarding the licensure, approval, certification, and registration of child care facilities and the implementation of this article.

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

(c) The rules shall incorporate, by reference, the requirements of the Integrated Pest Management Program established by legislative rule by the Department of Agriculture under §19-16A-4 of this code.

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

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

WV Legislature

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

(a) The secretary shall submit on or before January 1, of each year a report to the Governor and the Legislative Oversight Commission on Health and Human Resources Accountability, concerning the regulation of child welfare agencies, child placing agencies, child care centers, family child care facilities, family child care homes, informal family child care homes, relative family child care homes and child care facilities during the year. The report shall include at a minimum, data on the number of children and staff at each facility (except family child care, informal family child care homes and relative family child care), applications received, types of licenses, approvals and registrations granted, denied, made provisional or revoked and any injunctions obtained or facility closures ordered.

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

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

WV Legislature

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

A certificate of need, as provided in §16-2D-1 *et seq.* of this code, is not required by an entity proposing behavioral health care facilities or behavioral health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home.

WV Legislature

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

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

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

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

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

(1) The current practices of placing children out-of-home and into in-residential placements,

with special emphasis on out-of-state placements;

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

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

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

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

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

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

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

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

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

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

(12) Ways to certify out-of-state providers to ensure that children who must be placed out-of-state receive high quality services consistent with this state’s standards of licensure and rules of operation; and

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

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

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

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

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

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

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

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

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§49-2-126. The Foster Child Bill of Rights.

(a) Foster children and children in a kinship placement are active and participating members of the child welfare system and have the following rights:

(1) The right to live in a safe and healthy environment, and the least restrictive environment possible;

(2) The right to be free from physical, sexual, or psychological abuse or exploitation including being free from unwarranted physical restraint and isolation.

(3) The right to receive adequate and healthy food, appropriate and seasonally necessary clothing, and an appropriate travel bag;

(4) The right to receive medical, dental, and vision care, mental health services, and substance use treatment services, as needed;

(5) The right to be placed in a kinship placement, when such placement meets the objectives set forth in this article;

(6) The right, when placed with a foster of kinship family, to be matched as closely as possible with a family meeting the child's needs, including, when possible, the ability to remain with siblings;

(7) The right, as appropriate to the child's age and development, to be informed on any medication or chemical substance to be administered to the child;

(8) The right to communicate privately, with caseworkers, guardians ad litem, attorneys, Court Appointed Special Advocates (CASA), the prosecuting attorney, and probation officers;

(9) The right to have and maintain contact with siblings as may be reasonably accommodated, unless prohibited by court order, the case plan, or other extenuating circumstances;

(10) The right to contact the department or the foster care ombudsman, regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats, retaliation, or punishment for making complaints;

(11) The right to maintain contact with all previous caregivers and other important adults in his or her life, if desired, unless prohibited by court order or determined by the parent, according to the reasonable and prudent parent standard, not to be in the best interests of the child;

(12) The right to participate in religious services and religious activities of his or her choice to the extent possible;

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(13) The right to attend school, and, consistent with the finances and schedule of the foster or kinship family, to participate in extracurricular, cultural, and personal enrichment activities, as appropriate to the child's age and developmental level;

(14) The right to work and develop job skills in a way that is consistent with the child's age and developmental level;

(15) The right to attend Independent Living Program classes and activities if the child meets the age requirements;

(16) The right to attend court hearings and speak directly to the judge, in the court's discretion;

(17) The right not to be subjected to discrimination or harassment;

(18) The right to have access to information regarding available educational options;

(19) The right to receive a copy of, and receive an explanation of, the rights set forth in this section from the child's guardian ad litem, caseworker, and attorney;

(20) The right to receive care consistent with the reasonable and prudent foster parent standard; and

(21) The right to meet with the child's department case worker no less frequently than every 30 days.

(b) The rights provided in this section do not create an independent cause of action. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: *Provided*, That the summary required by this section may not include any personally identifying information of a person named in a report, or a person submitting a report to, the ombudsman.

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§49-2-127. The Foster and Kinship Parent Bill of Rights.

(a) Foster parents and kinship parents play an integral, indispensable, and vital role in the state's effort to care for children displaced from their homes, and such parents and persons have the following rights:

(1) The right to be treated professionally and ethically as the primary provider of foster or kinship care in accordance with the terms of the agreement between the foster or kinship parent and the child placing agency and the department;

(2) The right to maintain the parent's or parents' own family values and beliefs, so long as the values and beliefs of the child are not infringed upon;

(3) The right to receive training, as provided in the agreement with the child placing agency and the department at appropriate intervals;

(4) The right to have an emergency contact 24 hours per day, seven days per week, as set forth in the agreement between the foster or kinship parent and the child placing agency and the department;

(5) The right, prior to the placement of a child, to be notified by the department and the child placing agency of any known issues relative to the child that may jeopardize the health and safety of the foster or kinship family or the child, or alter the manner in which foster or kinship care should be administered;

(6) The right to receive from the department and the child placing agency, prior to placement of a child, all known information relating to the child's behavior, family background, health, history, or special needs and to receive updates relevant to the care of the child as information becomes available;

(7) The right to be provided with a written copy of the individual treatment and service plan concerning the child in the foster or kinship parent's home and to discuss such plan with the case manager, and to receive reasonable notice of any changes to that plan, including timely notice of the need to remove a child from the foster or kinship home and the reasons for the removal;

(8) The right to timely and reasonable notice of the department's case planning and decision-making process regarding the child, as provided in §49-4-101 *et seq*. of this code, and the right to participate in such process, in the discretion of the court;

(9) The right to communicate with professionals who work with the child, including, but not limited to, therapists, physicians, and teachers, as permitted by the case plan or the court;

(10) The right to be notified, in advance, by the department or the court, of any hearing or review where the case plan or permanency of the child is an issue, including initial and periodic reviews held by the court and permanency plan hearings: *Provided,* That the right

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of a foster or kinship parent to attend any hearing is in the discretion of the court;

(11) The right to be provided information regarding the final outcome of an investigation of complaints concerning the operation of a foster or kinship home and to receive an explanation of a corrective action plan or policy violation relating to foster or kinship parents;

(12) The right to be provided with information on how to contact the foster care ombudsman, and to contact the foster care ombudsman's office, regarding alleged violations of rights, to speak to representatives of these offices confidentially, and to be free from threats, retaliation, or punishment for making complaints;

(13) The right to write a letter or submit a report to the court regarding a violation of the rights provided in this section or §49-2-126 of this code, or any concerns over the conduct or performance of the guardian ad litem, a representative of the department, or a representative of the child placing agency, which the court may act upon as it deems in its discretion to be appropriate: *Provided,* That the court may require the clerk to send copies of a letter or report, submitted to the court pursuant to this subdivision, to the parties in the case prior to the court's review or consideration of such communications;

(14) The right to be considered, where appropriate and consistent with the best interests of the child, as a permanent parent or parents for a child who is available for adoption or legal guardianship;

(15) The right to move to intervene in the pending case, without fear of retaliation, once parental rights have been terminated; and

(16) The right to receive, from the department and the child placing agency, a written copy of the rights set forth in this section and a copy of the contract between the department and the child placing agency.

(b) The rights provided in this section do not create an independent cause of action. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: *Provided,* That the summary required by this section may not include any personally identifying information of a person named in a report or a person submitting a report to the ombudsman.

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§49-2-127a. Foster and kinship parent duties; foster parent and kinship parent agreements.

(a) The West Virginia Legislature finds that foster and kinship parents providing care for children who are in the legal custody of the department have duties and contractual rights. The duties and contractual rights shall be set forth in an agreement between the department and the child placing agency and the foster or kinship parent. The duties of the foster or kinship parent shall include, but are not limited to:

(1) The duty not to violate the rights of the child, provided in §49-2-126 of this code;

(2) The duty to provide all children in the parent's or parents' care with appropriate food, clothing, shelter, supervision, medical attention, and educational opportunities using the reasonable and prudent foster parent standard as defined in §49-2-128 of this code;

(3) The duty to complete the training required by the department and the child placing agency and the foster or kinship parent;

(4) The duty to support reunification with the biological family unless it has been determined not to be appropriate by the court;

(5) The duty not to divulge any information concerning the child's case or the child's family to anyone except for the child's caseworker, the child's guardian ad litem, the child's attorney, the child's Court Appointed Special Advocate (CASA) worker, the prosecuting attorney, the probation officer, the multidisciplinary team, the foster care ombudsman, or the child's school or health care provider;

(6) The duty to provide information to the caseworker and the guardian ad litem regarding the child's progress, and to attend multi-disciplinary team meetings, case planning sessions, court hearings, and to advise the court of any issues or concerns, in the court's discretion; and

(7) The duty to teach all children placed in their home age appropriate life skills.

(b) The duties of the department and the child placing agency shall include, but are not limited to:

(1) The duty not to infringe upon the rights of the child, provided in §49-2-126;

(2) The duty not to infringe upon the rights of the kinship or foster parent, provided in in §49-2-127; and

(3) The duty to abide by the provisions of the agreement required by this section.

(c) The terms of the agreement shall include the rights of the foster or kinship parent provided in §49-2-127 of this code. The terms of the agreement shall also include, but not be

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limited to:

(1) Provisions addressing what child care will be provided while the foster or kinship parent attends required training;

(2) Provisions informing the foster or kinship parent of applicable laws and guidelines regarding the responsibilities of the foster or kinship parent and provisions requiring that the foster or kinship parent receive regular updates on changes to such laws and guidelines in a timely manner;

(3) Provisions regarding required and available training for the foster or kinship parent;

(4) Provisions addressing payment to the foster or kinship parent;

(5) Provisions naming and addressing the emergency 24-hour contact provided by the child placing agency and the department;

(6) Provisions addressing travel, including out-of-state and overnight travel;

(7) Provisions addressing child care for the child;

(8) Provisions addressing when a placement may be terminated by the foster or kinship parent, the child placing agency, or the department;

(9) Provisions addressing medical care for the child, including how to obtain medical consent for procedures; and

(10) Provisions addressing how complaints against the foster or kinship parent will be handled and adjudicated, including provisions for appeal and review of the adjudication.

(d) The agreement may contain such other terms and provisions, not inconsistent with this article, as may be negotiated by the parties and as may be in the best interests of the child.

(e) The requirements of this section apply to agreements, entered into on or after the effective date of this section. Agreements entered into pursuant to this section shall expire on July 1 of each year and shall be renewed by the parties as necessary.

(f) The duties and requirements provided in this section do not create an independent cause of action, including a cause of action for breach of contract. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: *Provided,* That the summary required by this section may not include any personally identifying information of a person named in a report or a person submitting a report to the

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ombudsman.

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§49-2-128. Reasonable and prudent foster parent standard.

(a) As used in this section, the following terms have the following meanings:

"Age-appropriate" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity. Age-appropriateness is based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for an age or age group.

"Caregiver" means a foster parent, kinship parent, or a designated official in a residential treatment facility.

"Reasonable and prudent foster parent standard" means the standard characterized parental decisions that maintain the child's health, safety, and best interests, while at the same time encouraging the child's emotional and developmental growth, that a caregiver shall use when determining whether to allow a child to participate in extracurricular, enrichment, and social activities.

(b) Each child who comes into care under this chapter is entitled to participate in age-appropriate extracurricular, enrichment, and social activities.

(c) Caregivers shall use a reasonable and prudent foster parent standard in determining whether to give permission for a child in out-of-home care to participate in extracurricular, enrichment, and social activities. When using the reasonable and prudent foster parent standard, the caregiver shall consider:

(1) The child's age, maturity, and developmental level, to maintain the overall health and safety of the child;

(2) The potential risk factors and the appropriateness of the extracurricular, enrichment, and social activity;

(3) The best interest of the child based on information known to the caregiver;

(4) The importance of encouraging the child's emotional and developmental growth;

(5) The importance of providing the child with the most family-like living experience possible; and

(6) The behavioral history of the child and the child's ability to safely participate in the proposed activity, as with any other child.

(d) Child placing agencies and residential treatment facilities shall have policies consistent with this section and shall promote and protect the ability of children to participate in age-appropriate extracurricular, enrichment, and social activities.

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(e) A foster or kinship parent may use persons to care for or babysit for the child or permit overnight stays outside of the home using the reasonable and prudent foster parent standard.

(f) There is a rebuttable presumption that a caregiver has acted as a reasonable and prudent foster parent.

(g) A caregiver is not liable for harm caused to a child in his or her care who participates in an activity approved by the caregiver, provided that the caregiver has acted as a reasonable and prudent foster parent, unless the foster parent commits an act or omission that is an intentional tort or conduct that is willful, wanton, grossly negligent, reckless, or criminal.

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§49-2-129. Transitional living services, scattered-site living arrangements, and supervised group settings; eligibility criteria.

(a) The department shall establish minimum standards, by legislative rule, for transitional living services, such as scattered-site living arrangements and supervised group settings, to which all child placing agencies or child welfare agencies who provide this service must conform.

(b) Agencies shall establish eligibility criteria for serving transitioning children and adults and shall require, at a minimum, the following:

(1) That a transitioning child or adult receiving a transitional living placement is between 16 and 26 years of age;

(2) Written permission from the child's parents or guardian for a child less than 18 years of age to enter a scattered-site living arrangement;

(3) A written service agreement with a transitioning adult entering a transitional living arrangement;

(4) A determination by an agency that a transitioning child or adult has shown that he or she is stable, mature, and responsible enough for entry into the determined level of transitional living arrangement;

(5) A life skills assessment by an agency of the transitioning child or adult, prior to placing him or her in a transitional living arrangement, and an annual reassessment; and

(6) A written transition plan, developed with the transitioning child or adult, that provides an educational, training, or employment program or a plan for the child or adult to pursue employment while in transitional living.

(c) The agency and transitioning child or adult shall determine if a roommate is appropriate for the child or adult prior to placement in a transitional living setting. The roommate must be able to support himself or herself and contribute at least a pro rata share of the living expenses for the setting.

(d) An agency shall document face-to-face contact and hours spent with a transitioning child or adult in a transitional living setting in the service plan that meet the child's or adult's needs and program level.

(e) After a child or adult is in a transitional living placement, an agency shall assess the child's or adult's progress in acquiring basic living skills at a minimum of once every six months.

(f) An agency shall develop and implement policies and procedures to ensure that any child or adult in a transitional living setting receives training and guidance on appropriate health

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screening and services, including medical and dental screening and services.

(g) An agency shall develop policies and procedures for assisting a transitioning child or adult in searching for an appropriate dwelling that will be used as a scattered-site living setting, that meets the following criteria:

(1) The dwelling is safe and affordable;

(2) The dwelling has a working telephone or other means of communication in an emergency;

(3) The dwelling has appropriate equipment for indoor cooking; and

(4) The dwelling has an appropriate water source for cooking, cleaning, and bathing.

(h) The department shall promulgate legislative rules, including emergency rules if necessary, to implement the provisions of this section.

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§49-2-130. Limitation of liability; mandatory errors and omissions insurance.

(a) Every child welfare agency shall obtain a policy of insurance in an amount not less than $1 million per incident insuring the person or entity and every employee, against loss from the liability imposed by law for damages arising from any error or omission in the provision of child placement services.

(b) A child welfare agency providing programs or services is not liable for civil damages in excess of $1,000,000, per incident, unless the damages or injuries are intentionally or maliciously inflicted.

(c) Every person or entity required by this section to obtain a policy of insurance shall furnish proof of the existence of the policy to the department on or before January 1 of each calendar year.

(d) Any person or entity who fails to secure a policy of insurance before providing child placement services is not entitled to the limited liability created by subsection (b) of this section.

(e) An act of sexual assault or sexual abuse shall constitute an incident.

WV Legislature

Part II. Home-based Family Preservation Act

§49-2-201. Findings and purpose.

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

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

(a) The Legislature finds that:

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

(2) A child care program quality rating and improvement system provides incentives and resources to improve the quality child care programs; and

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

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

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

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

WV Legislature

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

(a) The Secretary of the Department of Human Services shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement a quality rating and improvement system. The quality rating and improvement system shall be applicable to licensed child care centers and facilities and registered family child care homes. If other types of child care settings, such as school-age child care programs become licensed after the implementation of a statewide quality rating and improvement system, the secretary may develop quality criteria and incentives that will allow the other types of child care settings to participate in the quality rating and improvement system. The rules shall include, but are not limited to, the following:

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

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

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

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

(B) The use of valid and reliable observation and assessment tools, such as environmental rating scales for early childhood, infant and toddler, school-age care and family child care as

WV Legislature

appropriate for the particular setting and age group;

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

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

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

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

WV Legislature

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

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

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

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

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

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

(D) Additional infant and toddler specialists to provide high level professional development for staff caring for infants and to provide on-site assistance with infant and toddler issues;

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

(F) Additional staff necessary for program administration;

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

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

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

WV Legislature

organizing techniques; and

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

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

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

(C) The system shall allow access by Department of Human Services subsidy and licensing staff, child care resource and referral agencies, the agencies that provide training and scholarships, evaluators and the child care programs;

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

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

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

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

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

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

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

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

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

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

WV Legislature

types of child care programs having less children and child care programs rated at lower tiers; and

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

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

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

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

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

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

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

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

WV Legislature

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

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

WV Legislature

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

(a) The Children's Fund, created for the sole purpose of awarding grants, loans and loan guarantees for child abuse and neglect prevention activities by enactment of chapter twenty-seven, Acts of the Legislature, 1984, as last amended and reenacted by chapter one hundred fifty-nine, Acts of the Legislature, 1999, is hereby continued and renamed the West Virginia Children's Trust Fund. The fund shall be administered by the Commissioner of the Bureau for Children and Families. Gifts, bequests or donations for this purpose, in addition to appropriations to the fund, shall be deposited in the State Treasury in a special revenue account under the control of the Secretary of the Department of Human Services or his or her designee.

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

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

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

WV Legislature

Part V. Children with Special Needs

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

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

WV Legislature

§49-2-502. Powers of the secretary.

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

(1) Locate children with special health care needs requiring medical, surgical or other corrective treatment and provide competent diagnosis to determine the treatment required.

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

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

WV Legislature

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

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

The report shall be solely for the use of the Department of Human Services and shall not be open for public inspection.

WV Legislature

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

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

WV Legislature

§49-2-505. Cost of treatment.

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

WV Legislature

Part VI. West Virginia Family Support Program

§49-2-601. Findings; intent.

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

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

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

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

(3) Services and support for families should be individualized and flexible, should focus on the entire family and should promote the inclusion of people with developmental disabilities in all aspects of school and community life.

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

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

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

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

WV Legislature

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

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

(b) The family support program may provide funds to families to purchase goods and services included in the family service plan. Those goods and services related to the care of the developmentally disabled person may include, but are not limited to:

(1) Respite care;

(2) Personal and attendant care;

(3) Child care;

(4) Architectural and vehicular modifications;

(5) Health-related costs not otherwise covered;

(6) Equipment and supplies;

(7) Specialized nutrition and clothing;

(8) Homemaker services;

(9) Transportation;

(10) Utility costs;

(11) Integrated community activities; and

(12) Training and technical assistance.

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

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

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

WV Legislature

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

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

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

WV Legislature

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

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

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

WV Legislature

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

(a) The administering agency for the family support program is the Department of Human Services.

(b) The Department of Human Services shall initially implement the family support program through contracts with an agency within four of the state's behavioral health regions, with the four regions to be determined by the Department of Human Services in consultation with the state family support council. These regional family support agencies of the family support program will be responsible for implementing this article and subsequent policies for the families of persons with developmental disabilities residing within their respective regions.

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

(1) Development of annual budgets;

(2) Program specifications;

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

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

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

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

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

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

WV Legislature

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

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

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

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

(d) Members of the state and regional councils who are a member of the family or the primary caregiver of a developmentally disabled person shall be reimbursed for travel and lodging expenses incurred in attending official meetings of their councils. Child care expenses related to the developmentally disabled person shall also be reimbursed. Members of regional councils who are eligible for expense reimbursement shall be reimbursed by their respective regional family support agencies.

WV Legislature

§49-2-701. Caregiver consent for minor's health care; treatment.

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

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

WV Legislature

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

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

WV Legislature

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

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

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

(2) The caregiver's birth date;

(3) The relationship of the caregiver to the minor;

(4) The minor's name;

(5) The minor's birth date;

(6) The length of time the minor has resided with the caregiver;

(7) The caregiver's signature under oath affirming the truth of the matter asserted in the affidavit;

(8) The signature of the minor's parent, guardian or legal custodian consenting to the caregiver's authority over the minor's health care. The signature of the minor's parent, guardian or legal custodian is not necessary if the affidavit includes the following:

(A) A statement that the caregiver has attempted, but has been unable to obtain, the signature of the minor's parent, guardian or legal custodian;

(B) A statement that the minor's parent, guardian or legal custodian has not refused to give consent for health care and treatment of the minor child; and

(C) A description, in detail, of the attempts the caregiver made to obtain the signature of the minor's parent, guardian or legal custodian; and

(9) A statement, as follows:

"General Notices:

This declaration does not affect the rights of the minor's parent, guardian or legal custodian regarding the care, custody and control of the minor, other than with respect to health care, and does not give the caregiver legal custody of the minor.

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

A person who relies in good faith on this affidavit of caregiver consent for a minor's health care has no obligation to conduct any further inquiry or investigation and is not subject to

WV Legislature

civil or criminal liability or to professional disciplinary action because of that reliance."

WV Legislature

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

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

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

WV Legislature

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

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

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

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

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

WV Legislature

§49-2-706. Exceptions to applicability.

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

WV Legislature

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

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

WV Legislature

§49-2-708. Rule-making authority.

(a) The Secretary of the Department of Human Services is authorized to propose rules for legislative approval necessary to implement this article in accordance with §29A-3-1 *et seq*. of this code.

(b) The rules:

(1) Shall create a three year certification period for a foster home, unless a substantial change occurs. A home safety assessment is performed at least annually. The department has sole authority to determine if a substantial change has occurred;

(2) Shall require that a criminal background check be conducted at the time of the recertification;

(3) May not prevent the placement or cause the removal of a foster child for cosmetic damage to a residence. "Cosmetic damages" means damage that does not affect the safety or wellbeing of a child;

(4) Shall permit the use of dedicated sleeping spaces as appropriate for the child's needs and age, and similar to the sleeping spaces for other household members; and

(5) Shall review and update the legislative rules while considering normalcy and the reasonable and prudent parent standard.

(c) Notwithstanding the time frames in §29A-3-1 *et seq.*, of this code the department shall revise the foster care legislative rules and shall submit for review and approval to the Rule-Making Review Committee by October 31, 2019.

WV Legislature

Part VIII. Reports of Children Suspected of Abuse

§49-2-801. Purpose.

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

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

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

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

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

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

WV Legislature

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

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

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

(c) Each local child protective services office shall:

(1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all reports under the names of the children, the family, and any person substantiated as being an abuser or neglecter by investigation of the Department of Human Services, with use of cross-filing of the person's name limited to the internal use of the department: *Provided*, That local child protective services offices shall disclose the names of alleged abusers pursuant to §49-2-802(c)(4) of this code;

(2) Provide or arrange for emergency children's services to be available at all times;

(3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within 14 days there shall be a face-to-face interview with the child or children and the development of a protection plan, if necessary, for the safety or health of the child, which may involve law-enforcement officers or the court;

(4) Make efforts as soon as practicable to determine the military status of parents whose children are subject to abuse or neglect allegations. If the office determines that a parent or guardian is in the military, the department shall notify a Department of Defense family advocacy program that there is an allegation of abuse and neglect that is screened in and open for investigation that relates to that military parent or guardian;

(5) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within 72 hours there shall

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be a face-to-face interview with the child or children and the development of a protection plan, which may involve law-enforcement officers or the court; and

(6) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family court may refer allegations of child abuse and neglect to the local child protective services office for investigation of the allegations as defined by this chapter and require the local child protective services office to submit a written report of the investigation to the referring circuit court or family court within the time frames set forth by the circuit court or family court.

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

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

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

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

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

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

(B) The circuit court of the county in which the local child protective services office conducting the investigation is located if the person served is a nonresident.

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

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

(B) The inquiry is relevant to that purpose;

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

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

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

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

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

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§49-2-802a. Information to be provided at the outset of a child protective services investigation.

(a) Notwithstanding any other provision to the contrary, immediately upon initiating an investigation of a parent or other person having legal custody of a child, the department shall, upon first contact with the individual, provide the individual with a copy of A Parent's Guide to Working with Child Protective Services (Guide).

(b) The Guide shall include a short and plain statement to include, but not be limited to, the following:

(1) Steps that the department will take to investigate signs of abuse and neglect;

(2) Steps that may need to be taken to make a safer or healthier home for the child;

(3) An overview of the court process;

(4) The confidentiality of maltreatment reports and case appeals;

(5) Child visitation; and

(6) Case appeals.

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

(a) Any medical, dental, or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children, or commercial film or photographic print processor who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Human Services. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report under this article who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made: *Provided*, That notifying a person in charge, supervisor, or superior does not exempt a person from his or her mandate to report suspected abuse or neglect.

(b) County boards of education and private school administrators shall provide all employees with a written statement setting forth the requirements contained in this section and shall obtain and preserve a signed acknowledgment from school employees that they have received and understand the reporting requirement.

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

(d) The provisions of this section are not applicable to persons under the age of 18.

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

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

WV Legislature

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

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

(1) Indicators of child abuse and neglect;

(2) Tactics used by sexual abusers;

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

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

WV Legislature

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

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

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

Any person or official who is required pursuant to section eight hundred three of this article to report cases of suspected child abuse or neglect and who has reasonable cause to suspect that a child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner or coroner. Upon the receipt of that report, the medical examiner or coroner shall cause an investigation to be made and report his or her findings to the police, the appropriate prosecuting attorney, the local child protective service agency and, if the institution making a report is a hospital, to the hospital.

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§49-2-808. Photographs and X rays.

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

WV Legislature

§49-2-809. Reporting procedures.

(a) Reports of child abuse and neglect pursuant to this article shall be made immediately to the Bureau for Social Services. Reports of child abuse and neglect shall be made to the Bureau of Social Services via a 24-hour, seven-day-a week hotline (centralized intake) that shall be maintained by the Bureau of Social Services to receive calls reporting suspected or known child abuse or neglect or such reports may be made via web-based reporting (email, electronic fax, fillable form, or other electronic form) that sends the reports to a live person to handle the reports immediately. Both systems shall give the reporter a specific case identifier immediately upon making a report.

(b) If a report of child abuse and neglect is made in any fashion other than specified in subsection (a) of this section, then Bureau of Social Services is still required to act upon such report as if the report were made to centralized intake.

(c) A copy of any report of serious physical abuse, sexual abuse, or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney, or the coroner or medical examiner’s office. All reports under this article are confidential. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

(d) The department shall annually submit a report in an electronic format, via the legislative webpage, on July 1 to the Joint Committee on Government and Finance, which shall contain: How many calls were made to centralized intake on a per county basis, how many calls were referred to centralized intake on a per county basis, how many calls were screened out centralized intake on a per county basis, and the time from referral to investigation on a per county basis.

(e) All reports made to centralized intake by email, fax, fillable form, or other electronic form from a reporter, shall be retained in the Comprehensive Child Welfare Information System in its original format for at least 12 months.

(f) Audio files recorded from reports made to centralized intake shall be retained in the Comprehensive Child Welfare Information System for at least 12 months.

(g) Any such person receiving a report pursuant to subsection (b) of this section shall make a written record in the Comprehensive Child Welfare Information system detailing the report and retain that record in an appropriate format for a period of at least 12 months.

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§49-2-810. Immunity from liability.

Any person, official, or institution participating in good faith in any act permitted or required by this article is immune from any civil or criminal liability that otherwise might result by reason of those actions, including individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation or legal intervention pursuant to a good faith report of child abuse or neglect.

WV Legislature

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

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

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

(a) Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section eight hundred nine of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction, shall be confined in jail not more than ninety days or fined not more than $5,000, or both fined and confined.

(b) Any person, official or institution required by this article to report a case involving a child known or suspected to be sexually assaulted or sexually abused, or student known or suspected to have been a victim of any non-consensual sexual contact, sexual intercourse or sexual intrusion on school premises, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months or fined not more than $10,000, or both.

WV Legislature

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

The Department of Human Services shall maintain a statewide child abuse and neglect statistical index of all substantiated allegations of child abuse or neglect cases to include information contained in the reports required under this article and any other information considered appropriate by the Secretary of the Department of Human Services. Nothing in the statistical data index maintained by the Department of Human Services may contain information of a specific nature that would identify individual cases or persons. Notwithstanding section two hundred one, article four of this chapter, the Department of Human Services shall provide copies of the statistical data maintained pursuant to this subsection to the State Police child abuse and neglect investigations unit to carry out its responsibilities to protect children from abuse and neglect.

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§49-2-814. Task Force on Prevention of Sexual Abuse of Children.

(a) This section may be referred to as "Erin Merryn's Law".

(b) The Task Force on Prevention of Sexual Abuse of Children is established. The task force consists of the following members:

(1) The Chair of the West Virginia Senate Committee on Health and Human Resources, or his or her designee;

(2) The Chair of the House of Delegates Committee on Health and Human Resources, or his or her designee;

(3) The Chair of the West Virginia Senate Committee on Education, or his or her designee;

(4) The Chair of the House of Delegates Committee on Education, or his or her designee;

(5) One citizen member appointed by the President of the Senate;

(6) One citizen member appointed by the Speaker of the House of Delegates;

(7) One citizen member, who is a survivor of child sexual abuse, appointed by the Governor;

(8) The President of the State Board of Education, or his or her designee;

(9) The State Superintendent of Schools, or his or her designee;

(10) The Secretary of the Department of Human Services, or his or her designee;

(11) The Director of the Prosecuting Attorney's Institute, or his or her designee;

(12) One representative of each statewide professional teachers' organization, each selected by the leader of his or her respective organization;

(13) One representative of the statewide school service personnel organization, selected by the leader of the organization;

(14) One representative of the statewide school principals' organization, appointed by the leader of the organization;

(15) One representative of the statewide professional social workers' organization, appointed by the leader of the organization;

(16) One representative of a teacher preparation program of a regionally accredited institution of higher education in the state, appointed by the Chancellor of the Higher Education Policy Commission;

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(17) The Chief Executive Officer of the Center for Professional Development, or his or her designee;

(18) The Director of Prevent Child Abuse West Virginia, or his or her designee;

(19) The Director of the West Virginia Child Advocacy Network, or his or her designee;

(20) The Director of the West Virginia Coalition Against Domestic Violence, or his or her designee;

(21) The Director of the West Virginia Foundation for Rape Information and Services, or his or her designee;

(22) The Administrative Director of the West Virginia Supreme Court of Appeals, or his or her designee;

(23) The Executive Director of the West Virginia Sheriffs' Association, or his or her designee;

(24) One representative of an organization representing law enforcement, appointed by the Superintendent of the West Virginia State Police; and

(25) One practicing school counselor appointed by the leader of the West Virginia School Counselors Association.

(c) To the extent practicable, members of the task force shall be individuals actively involved in the fields of child abuse and neglect prevention and child welfare.

(d) At the joint call of the House of Delegates and Senate Education Committee Chairs, the task force shall convene its first meeting and by majority vote of members present elect presiding officers. Subsequent meetings shall be at the call of the presiding officer.

(e) The task force shall make recommendations for decreasing incidence of sexual abuse of children in West Virginia. In making those recommendations, the task force shall:

(1) Gather information regarding sexual abuse of children throughout the state;

(2) Receive related reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(3) Create goals for state education policy that would prevent sexual abuse of children;

(4) Create goals for other areas of state policy that would prevent sexual abuse of children; and

(5) Submit a report with its recommendations to the Governor and the Legislature.

(f) The recommendations may include proposals for specific statutory changes and methods

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to foster cooperation among state agencies and between the state and local governments. The task force shall consult with employees of the Bureau for Children and Family Services, the Division of Justice and Community Services, the West Virginia State Police, the State Board of Education, and any other state agency or department as necessary to accomplish its responsibilities under this section.

(g) Task force members serve without compensation and do not receive expense reimbursement.

WV Legislature

§49-2-901. Policy; cooperation.

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

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

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

(b) When any juvenile is ordered by the court to be transferred from the custody of one of these agencies into the custody of the other, the Department of Human Services and the Division of Juvenile Services shall cooperate with each other to the maximum extent necessary in order to ease the child's transition and to reduce unnecessary cost, duplication and delay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Prevent juvenile delinquency;

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

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

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

Working in collaboration with the Department of Human Services, the Division of Juvenile Services shall employ a comprehensive strategy for the social and rehabilitative programming and treatment of juveniles, consistent with the principles adopted by the Office of Juvenile Justice and Delinquency Prevention of the Office of Justice Programs of the

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United States Department of Justice.

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

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

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

(a) All persons employed at a juvenile detention or corrections facility shall be employed at a salary and with benefits consistent with the approved plan of compensation of the Division of Personnel, created under section five, article six, chapter twenty-nine of this code; all employees will also be covered by the policies and procedures of the West Virginia Public Employees Grievance Board, created under article two, chapter six-c of this code and the classified service protection policies of the Division of Personnel.

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

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

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

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

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

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

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

(a) As a part of the disposition for a juvenile who has been adjudicated delinquent, and who has been determined by a risk and needs assessment to be high risk or who has committed an act or acts of violence, the court may, upon its own motion or upon request of counsel, order the juvenile to be delivered into the custody of the Director of the Division of Juvenile Services, who shall cause the juvenile to be transferred to a juvenile diagnostic center for a period not to exceed thirty days. During this period, the juvenile shall undergo examination, diagnosis, classification and a complete medical examination and shall at all times be kept apart from the general juvenile inmate population in the director's custody.

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

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

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

(a) The State Board of Education is authorized to provide for adequate and appropriate education opportunities for juveniles placed in secure predispositional or post dispositional centers operated by or under contract with the Division of Juvenile Services.

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

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

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

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

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

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

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

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

(b) Nothing in this section may be construed as to make a juvenile correctional officer employed by the Division of Juvenile Services a law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code.

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

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

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

(c) The administrator or designee shall deliver to the juvenile at the time he or she leaves the facility, or as soon as practicable after departure, all personal property, moneys and earnings then credited to the juvenile, or in case of the death of the juvenile before authorized release from the facility, the administrator or designee shall deliver the property to the juvenile's personal representative. If a conservator is appointed for the juvenile while he or she is domiciled at the facility, the administrator or designee shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the juvenile that are in the custody of the administrator.

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

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

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

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

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

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

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

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

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

(5) Any funds confiscated considered contraband.

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

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

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

(3) Rental of videos;

(4) Payment of video license;

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

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

(7) Any special activities or rewards for residents.

(d) The facility shall compile a monthly report that specifically documents juvenile benefit

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fund receipts and expenditures and submit the reconciled monthly bank statements to the Division of Juvenile Services Assistant Director of Budget and Finance.

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§49-2-912. Youth reporting centers.

(a) The Division of Juvenile Services shall operate community-based youth reporting centers to provide services to youth involved in the juvenile justice system as an alternative to detention, corrections or out-of-home placement.

(b) Based upon identifiable need, the Division of Juvenile Services shall operate a total of at least fifteen youth reporting centers by July 1, 2016.

(c) Based upon identifiable need, the Division of Juvenile Services shall operate a total of at least nineteen youth reporting centers by July 1, 2018.

(d) The Division of Juvenile Services shall promulgate guidelines, policies and procedures regarding referrals, assessments, case management, services, education and connection to services in the community.

(e) The Division of Juvenile Services shall collaborate with county boards of education to provide education services to certain youth referred to youth reporting centers, whenever feasible.

(f) The Division of Juvenile Services may convene local or regional advisory boards for youth reporting centers.

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§49-2-913. Juvenile Justice Reform Oversight Committee.

(a) The Juvenile Justice Reform Oversight Committee is hereby created to oversee the implementation of reform measures intended to improve the state's juvenile justice system.

(b) The committee shall be comprised of seventeen members, including the following individuals:

(1) The Governor, or his or her designee, who shall preside as chair of the committee;

(2) Two members from the House of Delegates, appointed by the Speaker of the House of Delegates, who shall serve as nonvoting, ex officio members;

(3) Two members from the Senate, appointed by the President of the Senate, who shall serve as nonvoting, ex officio members;

(4) The Secretary of the Department of Human Services, or his or her designee;

(5) The Director of the Division of Juvenile Services, or his or her designee;

(6) The Superintendent of the State Board of Education, or his or her designee;

(7) The Administrative Director of the Supreme Court of Appeals, or his or her designee, who shall serve as nonvoting, ex officio member;

(8) The Director of the Division of Probation Services, or his or her designee;

(9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of Appeals, who shall serve as nonvoting, ex officio members;

(10) One community member juvenile justice stakeholder, appointed by the Governor;

(11) One juvenile crime victim advocate, appointed by the Governor;

(12) One member from the law-enforcement agency, appointed by the Governor;

(13) One member from a county prosecuting attorney's office, appointed by the Governor; and

(14) The Director of the Juvenile Justice Commission.

(c) The committee shall perform the following duties:

(1) Guide and evaluate the implementation of the provisions adopted in the year 2015 relating to juvenile justice reform;

(2) Obtain and review the juvenile recidivism and program outcome data collected pursuant

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to section one hundred six, article five of this chapter;

(3) Calculate any state expenditures that have been avoided by reductions in the number of youth placed in out-of-home placements by the Division of Juvenile Services or the Department of Human Services as reported under section one hundred six, article five of this chapter; and

(4) Institute a uniform process for developing and reviewing performance measurement and outcome measures through data analysis. The uniform process shall include:

(A) The performance and outcome measures for the court, the Department of Human Services and the Division of Juvenile Services; and

(B) The deadlines and format for the submission of the performance and outcome measures; and

(5) Ensure system accountability and monitor the fidelity of implementation efforts or programs;

(6) Study any additional topics relating to the continued improvement of the juvenile justice system; and

(7) Issue an annual report to the Governor, the President of the Senate, the Speaker of the House of Delegates and the Chief Justice of the Supreme Court of Appeals of West Virginia on or before November 30th of each year, starting in 2016, which shall include:

(A) An assessment of the progress made in implementation of juvenile justice reform efforts;

(B) A summary of the committee's efforts in fulfilling its duties as set forth in this section; and

(C) An analysis of the recidivism data obtained by the committee under this section;

(D) A summary of the averted costs calculated by the committee under this section and a recommendation for any reinvestment of the averted costs to fund services or programs to expand West Virginia's continuum of alternatives for youth who would otherwise be placed in out-of-home placement;

(E) Recommendations for continued improvements to the juvenile justice system.

(d) The Division of Justice and Community Services shall provide staff support for the committee. The committee may request and receive copies of all data, reports, performance measures and other evaluative material regarding juvenile justice submitted from any agency, branch of government or political subdivision to carry out its duties.

(e) The committee shall meet within ninety days after appointment and shall thereafter meet

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at least quarterly, upon notice by the chair. Eight members shall be considered a quorum.

(f) After initial appointment, members appointed to the committee by the Governor, the President of the Senate, the Speaker of the House of Delegates or the Chief Justice of the Supreme Court of Appeals, pursuant to subsection (b) of this section, shall serve for a term of two years from his or her appointment and shall be eligible for reappointment to that position. All members appointed to the committee shall serve until his or her successor has been duly appointed.

(g) The committee shall sunset on December 31, 2020, unless reauthorized by the Legislature.

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§49-2-1001. Purpose; intent.

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

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

(a) The Department of Human Services and the Division of Juvenile Services of the Department of Military Affairs and Public Safety shall establish programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the child welfare and juvenile justice system. The development, maintenance and expansion of programs and services may include, but not be limited to, the following:

(1) Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, 24-hour intake screening, volunteer and crisis home programs, day treatment and any other designated community-based diagnostic, treatment or rehabilitative service;

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

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

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

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

(6) Expanded use of professional and paraprofessional personnel and volunteers to work effectively with youth;

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

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

(9) Transitional programs designed to assist juveniles who are in the custody of the state

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upon reaching the age of eighteen years.

(b) By January 1, 2017, the department and the Division of Juvenile Services shall allocate at least fifty percent of all community services funding, as defined in section two hundred six, article one of this chapter, either provided directly or by contracted service providers, for the implementation of evidence-based practices, as defined in section two hundred six, article one of this chapter.

(c) (1) The Department of Human Services shall establish an individualized program of rehabilitation for each status offender referred to the department and to each alleged juvenile delinquent referred to the department after being allowed a pre-adjudicatory community supervision period by the juvenile court, and for each adjudicated juvenile delinquent who, after adjudication, is referred to the department for investigation or treatment or whose custody is vested in the department.

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

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

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

(d) (1) The individualized program of rehabilitation required by the provisions of subsection (c) of this section shall, for any juvenile in out-of-home placement, include a plan to return the juvenile to his or her home setting and transition the juvenile into community services to continue his or her rehabilitation.

(2) Planning for the transition shall begin upon the juvenile's entry into the residential facility. The transition process shall begin thirty days after admission to the residential facility and conclude no later than three months after admission.

(3) The Department of Human Services staff shall, during its monthly site visits at contracted residential facilities, ensure that the individualized programs of rehabilitation include a plan for transition in accordance with this subsection.

(4) If further time in residential placement is necessary and the most effective method of attaining the rehabilitation goals identified by the rehabilitation individualized plan created under subsection (c) of this section, then the department shall provide information to the multidisciplinary team to substantiate that further time in a residential facility is necessary.

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The court, in consultation with the multidisciplinary team, may order an extension of time in residential placement prior to the juvenile's transition to the community if the court finds by clear and convincing evidence that an extension is in the best interest of the child. If the court finds that the evidence does not support an extension, the court shall order that the transition to community services proceed.

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

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

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

(b) Rehabilitative programs and services shall be provided by or through each facility and may include, but not be limited to, medical, educational, vocational, social and psychological guidance, training, counseling, substance abuse treatment and other rehabilitative services. The Department of Human Services shall provide to each status offender committed to the facility a program of treatment and services consistent with the individualized program of rehabilitation developed for the juvenile. In the case of any other juvenile residing at the facility, the department shall provide those programs and services as may be proper in the circumstances including, but not limited to, any programs or services directed to be provided by the court.

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

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

(e) The Department of Human Services may enter into cooperative arrangements and agreements with private agencies or with agencies of the state and its political subdivisions to fulfill its duties under this section: *Provided*, That after January 1, 2016, the department shall not enter into an agreement with the Division of Juvenile Services to house juvenile status offenders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Developing and implementing a system for monitoring case progress and tracking case outcomes for team components.

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

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

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

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

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

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

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

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

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

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Part I. General Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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§49-4-107. Penalties.

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

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§49-4-108. Payment of services.

(a) At any time during any proceedings brought pursuant to this chapter, the court may upon its own motion, or upon a motion of any party, order the Department of Human Services to pay the Medicaid rates for professional services rendered by a health care professional to a child or other party to the proceedings. Professional services include, but are not limited to, treatment, therapy, counseling, evaluation, report preparation, consultation, and preparation of expert testimony. A health care professional shall be paid by the Department of Human Services upon completion of services and submission of a final report or other information and documentation as required by the policies implemented by the Department of Human Services: *Provided*, That if the service is covered by Medicaid, being rendered to a child, and is not provided within 30 days, the court may order the service to be provided to the child by a provider at a rate higher than the Medicaid rate. The department may object and request to be heard, after which the court shall issue findings of fact and conclusions of law supporting its decision.

(b) At any time during any proceeding brought pursuant to this chapter, the court may upon its own motion, or upon a motion of any party, order the Department of Human Services to pay for socially necessary services rendered by an entity who has agreed to comply with §9-2-6(20) of this code. The Department of Human Services shall set the reimbursement rates for the socially necessary services: *Provided*, That if services being rendered to a child are not provided within 30 days, the court may order a service to be provided to the child by a provider at a rate higher than the department established rate. The department may object and request to be heard, after which the court shall issue findings of fact and conclusions of law supporting its decision.

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

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

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

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

(a) For each child who remains in foster care as a result of a juvenile proceeding or as a result of a child abuse and neglect proceeding, the circuit court with the assistance of the multidisciplinary treatment team shall conduct quarterly status reviews in order to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safety maintained in the home or placed for adoption or legal guardianship. Quarterly status reviews shall commence three months after the entry of the placement order. The permanency hearing provided in subsection (c) of this section may be considered a quarterly status review.

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

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

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

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

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

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

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

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

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

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

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

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

(c) When a child has been residing in a foster home for a period in excess of six consecutive months in total and for a period in excess of thirty days after the parental rights of the child's biological parents have been terminated and the foster parents have not made an

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application to the department to establish an intent to adopt the child within thirty days of parental rights being terminated, the department may terminate the foster care arrangement if another, more beneficial, long-term placement of the child is developed. If the child is twelve years of age or older, the child shall be provided the option of remaining in the existing foster care arrangement if the child so desires and if continuation of the existing arrangement is in the best interest of the child.

(d)(1) When a child is placed into foster care or becomes eligible for adoption and a sibling or siblings have previously been placed in foster care or have been adopted, the department shall notify the foster parents or adoptive parents of the previously placed or adopted sibling or siblings of the child's availability for foster care placement or adoption to determine if the foster parents or adoptive parents are desirous of seeking a foster care arrangement or adoption of the child.

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

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

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

(2) If the department is of the opinion based upon available evidence that residing in the same home would have a harmful physical, mental or psychological effect on one or more of the sibling children or if the child has a physical or mental disability which the existing foster home can better accommodate, or if the department can document that the reunification of the siblings would not be in the best interest of one or all of the children, the department may petition the circuit court for an order allowing the separation of the siblings to continue.

(3) If the child is twelve years of age or older, the department shall provide the child the

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option of remaining in the existing foster care arrangement if remaining is in the best interests of the child. In any proceeding brought by the department to maintain separation of siblings, the separation may be ordered only if the court determines that clear and convincing evidence supports the department's determination.

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

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

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

(a) From funds appropriated to the Department of Human Services, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children. An adoption subsidy shall be available for children who are legally free for adoption and who are dependents of the department. A legal guardianship subsidy may not require the surrender or termination of parental rights. For either subsidy, the children must be in special circumstances because one or more of the following conditions inhibit their adoption or legal guardianship placement:

(1) They have a physical or mental disability;

(2) They are emotionally disturbed;

(3) They are older children;

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

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

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

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

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

(4) The amount of the subsidy may in no case exceed that which would be allowable for the child under foster family care or, in the case of a service, the reasonable fee for the service rendered.

(5) The department shall provide either Medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement, and who the department determines cannot be placed without medical assistance.

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(c) The department shall certify the child as eligible for a subsidy to obtain adoption or a legal guardianship if it is in the best interest of the child.

(d) All records regarding subsidized adoptions or legal guardianships are to be held in confidence; however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or person receiving funds for the child.

(e) A payment may not be made to adoptive parents or legal guardians of child:

(1) Who has attained 18 years of age, unless the department determines that the child has a special need which warrants the continuation of assistance or the child is continuing his or her education or actively engaging in employment;

(2) Who has obtained 21 years of age;

(3) Who has not attained 18 years of age, if the department determines that the adoptive parent or legal guardian is no longer supporting the child by performing actions to maintain a familial bond with the child.

(f) Adoptive parents and legal guardians who receive subsidy payments pursuant to this section shall keep the department informed of circumstances which would, pursuant to §49-4-112(e) of this code, make them ineligible for the payment.

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

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

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

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

(a)(1) Whenever a child welfare agency licensed to place children for adoption or the Department of Human Services has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child, pursuant to article twenty-two, chapter forty-eight of this code.

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

(3) For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the placement of the child prior to the consideration of any other prospective adoptive parents. A circuit judge may determine the placement of a child for adoption by a grandparent or grandparents is in the best interest of the child without the grandparent or grandparents completing or passing a home study evaluation.

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

(b)(1) Whenever the mother has executed a relinquishment, pursuant to this section, and the legal, determined, putative, outsider father, or unknown father, as those terms are defined pursuant to part one, article twenty-two, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or the department may, by verified petition, seek to have the father's rights terminated based upon the grounds of abandonment or neglect of the child. Abandonment may be established in accordance with section three hundred six, article twenty-two, chapter forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper

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means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of the child.

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

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

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

(3) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person is allowed thirty days from the date of the first publication or mailing of the service on a personal representative or guardian ad litem in which to appear and defend the parental rights.

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(d) A petition under this section may be instituted in the county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental rights is guilty of the allegations set forth in the petition, the court shall enter an order terminating his or her parental rights and shall award the legal and physical custody and control of the child to the petitioner.

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§49-4-115. Emancipation.

(a) A child over the age of sixteen may petition a court to be declared emancipated. The parents or custodians shall be made respondents and, in addition to personal service thereon, there shall be publication as a Class II legal advertisement in compliance with article three, chapter fifty-nine of this code.

(b) Upon a showing that the child can provide for his or her physical and financial well-being and has the ability to make decisions for himself or herself, the court may for good cause shown declare the child emancipated. The child shall thereafter have full capacity to contract in his or her own right and the parents or custodians have no right to the custody and control of the child or duty to provide the child with care and financial support.

(c) A child over the age of sixteen years who marries is emancipated by operation of law. An emancipated child has all of the privileges, rights and duties of an adult, including the right of contract, except that the child remains a child as defined for the purposes of part ten, article two, or part seven, article four of this chapter.

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§49-4-116. Voluntary placement; petition; requirements; attorney appointed; court hearing; orders.

(a) Within ninety days of the date of the signatures to a voluntary placement agreement, after receipt of physical custody, the department shall file with the court a petition for review of the placement. The petition shall include:

(1) A statement regarding the child's situation; and,

(2) The circumstance that gives rise to the voluntary placement.

(b) If the department intends to extend the voluntary placement agreement, the department shall file with the court a copy of the child's case plan.

(c) The court shall appoint an attorney for the child, who shall receive a copy of the case plan as provided in subsection (b) of this section.

(d) The court shall schedule a hearing and give notice of the time and place and right to be present at the hearing to:

(1) The child's attorney;

(2) The child, if twelve years of age or older;

(3) The child's parents or guardians;

(4) The child's foster parents;

(5) Any preadoptive parent or relative providing care for the child; and

(6) Any other persons as the court may in its discretion direct.

The child's presence at the hearing may be waived by the child's attorney at the request of the child or if the child would suffer emotional harm.

(e) At the conclusion of the proceedings, but no later than ninety days after the date of the signatures to the voluntary placement agreement, the court shall enter an order:

(1) Determining whether or not continuation of the voluntary placement is in the best interests of the child;

(2) Specifying under what conditions the child's placement will continue;

(3) Specifying whether or not the department is required to and has made reasonable efforts to preserve and to reunify the family; and

(4) Providing a plan for the permanent placement of the child.

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§49-4-117. Information provided in certain adoptions.

In any case where parental rights have been terminated under chapter 49 of this code, the Department of Human Services shall provide a certificate containing the information required by §48-22-502(a)(5) of this code to any person, or the attorney of any person, petitioning to adopt the child or children.

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§49-4-201. Accepting possession of certain relinquished children.

(a) A hospital or health care facility operating in this state, or a fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment that has been designated a safe-surrender site under §49-4-206 of this code, shall, without a court order, take possession of a child if the child is voluntarily delivered to the hospital, health care facility, fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment by the child's parent within 30 days of the child's birth, and the parent did not express an intent to return for the child.

(b) A hospital, health care facility, fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment that takes possession of a child under this article shall perform any act necessary to protect the physical health or safety of the child. In accepting possession of the child, the hospital, health care facility, fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment may not require the person to identify himself or herself and shall otherwise respect the person's desire to remain anonymous.

(c) Hospitals, health care facilities, fire departments, emergency medical service facilities, police departments, 911 call center, and sheriff's detachments designated as safe-surrender sites under §49-4-206 of this code may install and operate newborn safety devices as defined in this section.

(d) "Newborn safety device" means a device:

(1) Designed to permit a person to anonymously place a child under 30 days of age in the device with the intent to leave the child, and for a licensed emergency medical services provider to remove the child from the device and take custody of him or her;

(2) Equipped with an adequate dual alarm system connected to the physical location where the device is physically installed. The dual alarm system shall:

(A) Be tested at least one time per week to ensure the alarm system is in working order;

(B) Be visually checked at least two times per day to ensure the alarm system is in working order;

(C) Notify a centralized location in the facility within 30 seconds of a child being placed in the device; and

(D) Trigger a 911 call if staff at the facility do not respond within 15 minutes after a child is placed in the device.

(3) Be approved by and physically located, with outside access, at a participating hospital or medical facility, or a fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment that has been designated a safe-surrender site under

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§49-4-206 of this code that:

(A) Is licensed or otherwise legally operating in this state; and

(B) Is staffed continuously on a 24-hour basis every day by a licensed emergency medical services provider; and

(4) Is located in an area that is conspicuous and visible to a hospital, a medical facility, or a fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment.

(e) A person who relinquishes a child in a newborn safety device may remain anonymous and shall not be pursued, and the relinquishment of a child pursuant to the provisions of this section shall not, in and of itself, be considered child abuse and neglect as that term is defined in §49-1-201 of this code.

(f) Any emergency medical services provider who physically retrieves a child from a newborn safety device shall immediately arrange for the child to be taken to the nearest hospital emergency room and shall have implied consent to any and all appropriate medical treatment.

(g) By placing a child in a newborn safety device, the person:

(1) Waives the right to notification required by subsequent court proceedings; and

(2) Waives legal standing to make a claim of action against any person who accepts physical custody of the child.

(h) An emergency medical services provider with the duty granted in this article whose actions are taken in good faith is immune from criminal or civil liability, unless his or her actions were the result of gross negligence or willful misconduct. The grant of immunity in this section extends to all employees and administrators of the emergency medical services provider.

(i) The provisions of subsection (e) of this section shall not apply when indicators of child physical abuse or child neglect are present.

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§49-4-202. Notification of possession of relinquished child; department responsibilities.

(a) (1) Not later than the close of the first business day after the date on which a hospital or health care facility takes possession of a child pursuant to §49-4-201 of this code, the hospital or health care facility shall notify the Child Protective Services Division that it has taken possession of the child and shall provide the division any information provided by the parent delivering the child. The hospital or health care facility shall refer any inquiries about the child to the Child Protective Services Division.

(2) Upon taking possession of a child pursuant to §49-4-201 of this code, a fire department shall:

(A) Deliver the child to the nearest hospital or health care facility as soon as possible, but transport may begin no later than 30 minutes upon taking possession of a child; and

(B) Notify the Child Protective Services Division within two hours of taking possession of a child:

(i) That it has delivered the child and identify the hospital or health care facility to which it delivered the child; and

(ii) Provide the division any information provided by the parent delivering the child.

(3) The fire department shall refer any inquiries about the child to the Child Protective Services Division.

(b) The Department of Human Services shall assume the care, control, and custody of the child as of the time of delivery of the child to the hospital, health care facility, or fire department, and may contract with a private child care agency for the care and placement of the child after the child leaves the hospital, health care facility, or fire department.

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§49-4-203. Filing petition after accepting possession of relinquished child.

A child of whom the Department of Human Services assumes care, control and custody under this article is a relinquished child and to be treated in all respects as a child taken into custody pursuant to §49-4-303. Upon taking custody of a child under this article, the department, with the cooperation of the county prosecuting attorney, shall cause a petition to be presented pursuant to §49-4-602. The department and county prosecuting attorney may not identify in the petition the parent(s) who utilized this article to relinquish his or her child. Thereafter, the department shall proceed in compliance with part six, of this article.

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§49-4-204. Immunity from certain prosecutions.

A parent who relinquishes his or her child in good faith within thirty days of the child's birth under this article is immune from prosecution under subsection (a), section four, article eight-d, chapter sixty-one of this code.

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§49-4-205. Adoption eligibility.

The child is eligible for adoption as an abandoned child under chapter forty-eight of the code.

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§49-4-206. Designation of local fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment as a safe-surrender site; posting requirement.

The governing entity of a local fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment that is staffed 24 hours a day, seven days a week, may designate the premises of its fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment as a safe-surrender site to accept physical custody of a child who is 30 days old or younger from a parent of the child and who surrenders the child pursuant to §49-4-201 of this code. A local fire department, emergency medical service facility, police department, 911 call center, or sheriff's detachment that is designated a safe-surrender site shall post a sign that notifies the public that it is a location where a child 30 days old or younger may be safely surrendered pursuant to this article.

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Part III. Emergency Custody of Children Prior To Petition

§49-4-301. Custody of a neglected child by law enforcement in emergency situations; protective custody; requirements; notices; petition for appointment of special guardian; discharge; immunity.

(a) A child believed to be a neglected child or an abused child may be taken into custody without the court order otherwise required by section six hundred two of this article by a law-enforcement officer if:

(1) The child is without supervision or shelter for an unreasonable period of time in light of the child's age and the ability to care for himself or herself in circumstances presenting an immediate threat of serious harm to that child; or

(2) That officer determines that the child is in a condition requiring emergency medical treatment by a physician and the child's parents, parent, guardian or custodian refuses to permit the treatment, or is unavailable for consent. A child who suffers from a condition requiring emergency medical treatment, whose parents, parent, guardian or custodian refuses to permit the providing of the emergency medical treatment, may be retained in a hospital by a physician against the will of the parents, parent, guardian or custodian, as provided in subsection (c) of this section.

(b) A child taken into protective custody pursuant to subsection (a) of this section may be housed by the department or in any authorized child shelter facility. The authority to hold the child in protective custody, absent a petition and proper order granting temporary custody pursuant to section six hundred two of this article, terminates by operation of law upon the happening of either of the following events, whichever occurs first:

(1) The expiration of ninety-six hours from the time the child is initially taken into protective custody; or

(2) The expiration of the circumstances which initially warranted the determination of an emergency situation.

No child may be considered in an emergency situation and custody withheld from the child's parents, parent, guardian or custodian presenting themselves, himself or herself in a fit and proper condition and requesting physical custody of the child. No child may be removed from a place of residence as in an emergency under this section until after:

(1) All reasonable efforts to make inquiries and arrangements with neighbors, relatives and friends have been exhausted; or if no arrangements can be made; and

(2) The state department may place in the residence a home services worker with the child for a period of not less than twelve hours to await the return of the child's parents, parent, guardian or custodian.

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Prior to taking a child into protective custody as abandoned at a place at or near the residence of the child, the law-enforcement officer shall post a typed or legibly handwritten notice at the place the child is found, informing the parents, parent, guardian or custodian that the child was taken by a law-enforcement officer, the name, address and office telephone number of the officer, the place and telephone number where information can continuously be obtained as to the child's whereabouts, and if known, the worker for the state department having responsibility for the child.

(c) A child taken into protective custody pursuant to this section for emergency medical treatment may be held in a hospital under the care of a physician against the will of the child's parents, parent, guardian or custodian for a period not to exceed ninety-six hours. The parents, parent, guardian or custodian may not be denied the right to see or visit with the child in a hospital. The authority to retain a child in protective custody in a hospital as requiring emergency medical treatment terminates by operation of law upon the happening of either of the following events, whichever occurs first:

(1) When the condition, in the opinion of the physician, no longer required emergency hospitalization, or;

(2) Upon the expiration of ninety-six hours from the initiation of custody, unless within that time, a petition is presented and a proper order obtained from the circuit court.

(d) Prior to assuming custody of a child from a law-enforcement officer, pursuant to this section, a physician or worker from the department shall require a typed or legibly handwritten statement from the officer identifying the officer's name, address and office telephone number and specifying all the facts upon which the decision to take the child into protective custody was based, and the date, time and place of the taking.

(e) Any worker for the department assuming custody of a child pursuant to this section shall immediately notify the parents, parent, guardian or custodian of the child of the taking of the custody and the reasons therefor, if the whereabouts of the parents, parent, guardian or custodian are known or can be discovered with due diligence; and if not, notice and explanation shall be given to the child's closest relative, if his or her whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry shall be made of relatives and neighbors, and if a relative or appropriate neighbor is willing to assume custody of the child, the child will temporarily be placed in custody.

(f) No child may be taken into custody under circumstances not justified by this section or pursuant to section six hundred two of this article without appropriate process. Any retention of a child or order for retention of a child not complying with the time limits and other requirements specified in this article shall be void by operation of law.

(g) Petition for appointment of special guardian. -- Upon the verified petition of any person showing:

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(1) That any person under the age of eighteen years is threatened with or there is a substantial possibility that the person will suffer death, serious or permanent physical or emotional disability, disfigurement or suffering; and

(2) That disability, disfigurement or suffering is the result of the failure or refusal of any parent, guardian or custodian to procure, consent to or authorize necessary medical treatment, the circuit court of the county in which the person is located may direct the appointment of a special guardian for the purposes of procuring, consenting to and giving authorization for the administration of necessary medical treatment. The circuit court may not consider any petition filed in accordance with this section unless it is accompanied by a supporting affidavit of a licensed physician.

(h) Notice of petition. -- So far as practicable, the parents, guardian or custodian of any person for whose benefit medical treatment is sought shall be given notice of the petition for the appointment of a special guardian under this section. Notice is not necessary if it would cause a delay that would result in the death or irreparable harm to the person for whose benefit medical treatment is sought. Notice may be given in a form and manner as may be necessary under the circumstances.

(i) Discharge of special guardian. – Upon the termination of necessary medical treatment to any person under this section, the circuit court order the discharge of the special guardian from any further authority, responsibility or duty.

(j) Immunity from civil liability. -- No person appointed special guardian in accordance with this article is civilly liable for any act done by virtue of the authority vested in him or her by order of the circuit court.

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§49-4-302. Authorizing a family court judge to order custody of a child in emergency situations; requirements; orders; investigative reports; notification required.

(a) Notwithstanding the jurisdictional limitations contained in section two, article two-a, chapter fifty-one of this code, family court judges are authorized to order the department to take emergency custody of a child who is in the physical custody of a party to an action or proceeding before the family court, if the family court judge finds that there is clear and convincing evidence that:

(1) There exists an imminent danger to the physical well-being of the child as defined in section two hundred one, article one of this chapter;

(2) The child is not the subject of a pending action before the circuit court alleging abuse and neglect of the child; and

(3) There are no reasonable available alternatives to the emergency custody order.

(b) An order entered pursuant to subsection (a) of this section must include specific written findings.

(c) A copy of the order issued pursuant to subsection (a) of this section shall be transmitted forthwith to the department, the circuit court and the prosecuting attorney.

(d) Upon receipt of an order issued pursuant to subsection (a) of this section, the department shall immediately respond and assist the family court judge in emergency placement of the child.

(e)(1) Upon receipt of an order issued pursuant to subsection (a) of this section, the circuit court shall cause to be entered and served, an administrative order in the name of and regarding the affected child, directing the department to submit, within ninety-six hours from the time the child was taken into custody, an investigative report to both the circuit and family court.

(2) The investigative report shall include a statement of whether the department intends to file a petition pursuant to section six hundred two of this article.

(f)(1) An order issued pursuant to subsection (a) of this section terminates by operation of law upon expiration of ninety-six hours from the time the child is initially taken into protective custody unless a petition is filed with the circuit court under section six hundred two of this article within ninety-six hours from the time the child is initially taken into protective custody.

(2) The filing of a petition within ninety-six hours from the time the child is initially taken into protective custody extends the emergency custody order issued pursuant to subsection (a) of this section until a preliminary hearing is held before the circuit court, unless the

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circuit court orders otherwise.

(g)(1) Any worker for the department assuming custody of a child pursuant to this section shall immediately notify the parents, parent, grandparents, grandparent, guardian or custodian of the child of the taking of the custody and the reasons therefor if the whereabouts of the parents, parent, grandparents, grandparent, guardian or custodian are known or can be discovered with due diligence and, if not, a notice and explanation shall be given to the child's closest relative if his or her whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry shall be made of relatives and neighbors and, if an appropriate relative or neighbor is willing to assume custody of the child, the child will temporarily be placed in that person's custody.

(2) In the event no other reasonable alternative is available for temporary placement of a child pursuant to subdivision (1) of this subsection, the child may be housed by the department in an authorized child shelter facility.

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§49-4-303. Emergency removal by department before filing of petition; conditions; referee; application for emergency custody; order.

Prior to the filing of a petition, a child protective service worker may take the child or children into his or her custody (also known as removing the child) without a court order when:

(1) In the presence of a child protective service worker a child or children are in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section two hundred one, article one of this chapter; and

(2) The worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered.

After taking custody of the child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or referee of the county where custody was taken and immediately apply for an order. If no judge or referee is available, the worker shall appear before a circuit judge or referee of an adjoining county, and immediately apply for an order. This order shall ratify the emergency custody of the child pending the filing of a petition.

The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a referee. He or she serves at the will and pleasure of the appointing court, and shall perform the functions prescribed for the position by this subsection.

The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody. If at the time the child or children are taken into custody by the worker he or she knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians.

The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon the sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided in subsection (b), section six hundred three of this article.

If a referee issues an order, the referee shall by telephonic communication have that order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall, on the next judicial day, enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children is vested in the department until the expiration of the next two judicial days, at which time any child taken into emergency

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custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under section six hundred two of this article.

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§49-4-401. Purpose; system to be a complement to existing programs.

(a) This article:

(1) Provides a system for evaluation of and coordinated service delivery for children who may be victims of abuse or neglect and children undergoing certain status offense and delinquency proceedings;

(2) Establishes, as a complement to other programs of the Department of Human Services, a multidisciplinary screening, advisory and planning system to assist courts in facilitating permanency planning, following the initiation of judicial proceedings, to recommend alternatives and to coordinate evaluations and in-community services; and

(3) Ensures that children are safe from abuse and neglect and to coordinate investigation of alleged child abuse offenses and competent criminal prosecution of offenders to ensure that safety, as determined appropriate by the prosecuting attorney.

(b) Nothing in this article precludes any multidisciplinary team from considering any case upon the consent of the members of the team.

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§49-4-402. Multidisciplinary investigative teams; establishment; membership; procedures; coordination among agencies; confidentiality.

(a) The prosecuting attorney of each county shall establish a multidisciplinary investigative team in that county. The multidisciplinary team shall be headed and directed by the prosecuting attorney, or his or her designee, and includes as permanent members:

(1) The prosecuting attorney, or his or her designee;

(2) A local child protective services caseworker from the Department of Human Services;

(3) A local law-enforcement officer employed by a law-enforcement agency in the county;

(4) A child advocacy center representative, where available;

(5) A health care provider with pediatric and child abuse expertise, where available;

(6) A mental health professional with pediatric and child abuse expertise, where available;

(7) An educator; and

(8) A representative from a licensed domestic violence program serving the county.

The Department of Human Services and any local law-enforcement agency or agencies selected by the prosecuting attorney shall appoint their representatives to the team by submitting a written designation of the team to the prosecuting attorney of each county within thirty days of the prosecutor's request that the appointment be made. Within fifteen days of the appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the county is situated of the names of the representatives so appointed. Any other person or any other appointee of an agency who may contribute to the team's efforts to assist a minor child as may be determined by the permanent members of the team may also be appointed as a member of the team by the prosecutor with notification to the chief judge.

(b) Any permanent member of the multidisciplinary investigative team shall refer all cases of accidental death of any child reported to their agency and all cases when a child dies while in the custody of the state for investigation and review by the team. The multidisciplinary investigative team shall meet at regular intervals at least once every calendar month.

(c) The investigative team shall be responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect and shall make a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution.

(d) State, county and local agencies shall provide the multidisciplinary investigative team with any information requested in writing by the team as allowable by law or upon receipt of

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a certified copy of the circuit court's order directing the agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with this article remains confidential. For purposes of this section, the term "confidential" shall be construed in accordance with article five of this chapter.

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§49-4-403. Multidisciplinary treatment planning process; coordination; access to information.

(a)(1) A multidisciplinary treatment planning process for cases initiated pursuant to part six and part seven of article four of this chapter shall be established within each county of the state, either separately or in conjunction with a contiguous county, by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code. In each circuit, the department shall coordinate with the prosecutor's office, the public defender's office or other counsel representing juveniles to designate, with the approval of the court, at least one day per month on which multidisciplinary team meetings for that circuit shall be held: *Provided*, That multidisciplinary team meetings may be held on days other than the designated day or days when necessary. The Division of Juvenile Services shall establish a similar treatment planning process for delinquency cases in which the juvenile has been committed to its custody, including those cases in which the juvenile has been committed for examination and diagnosis.

(2) This section does not require a multidisciplinary team meeting to be held prior to temporarily placing a child or juvenile out-of-home under exigent circumstances or upon a court order placing a juvenile in a facility operated by the Division of Juvenile Services.

(b) The case manager in the Department of Human Services for the child, family or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a treatment team in each case when it is required pursuant to this article.

(1) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(2) Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing. This subsection does not prevent the respective agencies from designating a person other than the case manager as a facilitator for treatment team meetings. Written notice shall be provided to all team members of the availability to participate by videoconferencing.

(c) The treatment team shall coordinate its activities and membership with local family resource networks and coordinate with other local and regional child and family service

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planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) The multidisciplinary treatment team shall be afforded access to information in the possession of the Department of Human Services, Division of Juvenile Services, law-enforcement agencies and other state, county and local agencies. Those agencies shall cooperate in the sharing of information as may be provided in article five of this chapter or any other relevant provision of law. Any multidisciplinary team member who acquires confidential information may not disclose the information except as permitted by the provisions of this code or court rules.

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§49-4-404. Court review of service plan; hearing; required findings; order; team member's objections.

(a) In any case in which a multidisciplinary treatment team develops an individualized service plan for a child or family pursuant to this article, the court shall review the proposed service plan to determine if implementation of the plan is in the child's best interests. If the multidisciplinary team cannot agree on a plan or if the court determines not to adopt the team's recommendations, it shall, upon motion or sua sponte, schedule and hold within ten days of the determination, and prior to the entry of an order placing the child in the custody of the department or in an out-of-home setting, a hearing to consider evidence from the team as to its rationale for the proposed service plan. If, after a hearing held pursuant to this section, the court does not adopt the teams's recommended service plan, it shall make specific written findings as to why the team's recommended service plan was not adopted.

(b) In any case in which the court decides to order the child placed in an out-of-state facility or program it shall set forth in the order directing the placement the reasons why the child was not placed in an in-state facility or program.

(c) Any member of the multidisciplinary treatment team who disagrees with recommendations of the team may inform the court of his or her own recommendations and objections to the team's recommendations. The recommendations and objections of the dissenting team member may be made in a hearing on the record, made in writing and served upon each team member and filed with the court and indicated in the case plan, or both made in writing and indicated in the case plan. Upon receiving objections, the court will conduct a hearing pursuant to paragraph (a) of this section.

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§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions.

(a) Within 30 days of the initiation of a judicial proceeding pursuant to part six of this article, the department shall convene a multidisciplinary treatment team to assess, plan, and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of that plan.

(b) In a case initiated pursuant to part six of this article, the treatment team consists of:

(1) The child or family's case manager in the department;

(2) The adult respondent or respondents;

(3) The child's parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents;

(4) Any attorney representing an adult respondent or other member of the treatment team;

(5) The child's counsel or the guardian ad litem;

(6) The prosecuting attorney or his or her designee;

(7) A member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate;

(8) Any court-appointed special advocate assigned to a case;

(9) Any other person entitled to notice and the right to be heard;

(10) An appropriate school official;

(11) A parent resource navigator;

(12) The managed care case coordinator; and

(13) Any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers.

The child may participate in multidisciplinary treatment team meetings if the child's participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney may not be given notice of a multidisciplinary treatment team meeting and

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do not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities, or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court and shall meet as often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or copetitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements may not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.

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§49-4-406. Multidisciplinary treatment process for status offenders or delinquents; requirements; custody; procedure; reports; cooperation; inadmissibility of certain statements.

(a) When a juvenile is adjudicated as a status offender pursuant to §49-4-711 of this code, the department shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile.

(b) When a juvenile is adjudicated as a delinquent or has been granted a pre-adjudicatory community supervision period pursuant to §49-4-708 of this code, the court, either upon its own motion or motion of a party, may require the department to convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan, which shall be provided in writing to the court and team members. A referral to the department to convene a multidisciplinary treatment team and to conduct such an assessment shall be made when the court is considering placing the juvenile in the department's custody or placing the juvenile out-of-home at the department's expense pursuant to §49-4-714 of this code. In any delinquency proceeding in which the court requires the department to convene a multidisciplinary treatment team, the probation officer shall notify the department at least 15 working days before the court proceeding in order to allow the department sufficient time to convene and develop an individualized service plan for the juvenile.

(c) When a juvenile has been adjudicated and committed to the custody of the Director of the Division of Corrections and Rehabilitation, including those cases in which the juvenile has been committed for examination and diagnosis, or the court considers commitment for examination and diagnosis, the Division of Corrections and Rehabilitation shall promptly convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, including a needs assessment, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs and recommended service plan. Upon completion of the assessment, the treatment team shall prepare and implement a comprehensive, individualized service plan for the juvenile, which shall be provided in writing to the court and team members. In cases where the juvenile is committed as a post-sentence disposition to the custody of the Division of Corrections and Rehabilitation, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the Division of Corrections and Rehabilitation without an active service plan for more than 60 days, the director of the facility may call a

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multidisciplinary team meeting to review the case and discuss the status of the service plan.

(d)(1) The rules of juvenile procedure shall govern the procedure for obtaining any assessment of a juvenile, preparing an individualized service plan and submitting the plan and any assessment to the court.

(2) In juvenile proceedings conducted pursuant to §49-4-701 et seq. of this code, the following representatives shall serve as members and attend each meeting of the multidisciplinary treatment team, so long as they receive notice at least seven days prior to the meeting:

(A) The juvenile;

(B) The juvenile's case manager in the department or the Division of Corrections and Rehabilitation;

(C) The juvenile's parent, guardian or custodian;

(D) The juvenile's attorney;

(E) Any attorney representing a member of the multidisciplinary treatment team;

(F) The prosecuting attorney or his or her designee;

(G) The county school superintendent or the superintendent's designee;

(H) A treatment or service provider with training and clinical experience coordinating behavioral or mental health treatment;

(I) The managed care case coordinator; and

(J) Any other person or agency representative who may assist in providing recommendations for the particular needs of the juvenile and family, including domestic violence service providers. In delinquency proceedings, the probation officer shall be a member of a multidisciplinary treatment team. When appropriate, the juvenile case manager in the department and the Division of Corrections and Rehabilitation shall cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.

(3) Prior to disposition, in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement at facilities or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child. The

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multidisciplinary treatment team shall also determine and advise the court as to the individual treatment and rehabilitation plan recommended for the child for either out-of-home placement or community supervision. The plan may focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for his or her actions, completion of evidence-based services or programs or any other relevant goal for the child. The plan may also include opportunities to incorporate the family, custodian or guardian into the treatment and rehabilitation process.

(4) The multidisciplinary treatment team shall submit written reports to the court as required by applicable law or by the court, shall meet with the court at least every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court. The multidisciplinary treatment team shall monitor progress of the plan identified in subdivision (3) of this subsection and review progress of the plan at the regular meetings held at least every three months pursuant to this section, or at shorter intervals, as ordered by the court, and shall report to the court on the progress of the plan or if additional modification is necessary.

(5) In any case in which a juvenile has been placed out of his or her home except for a temporary placement in a shelter or detention center, the multidisciplinary treatment team shall cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan. The rules of juvenile procedure and §49-4-409 of this code govern the development of an after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-care plan.

(6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant to §49-4-701 through §49-4-725 of this code, in the multidisciplinary treatment planning process, his or her statements may not be used in any juvenile or criminal proceedings against the juvenile, except for perjury or false swearing.

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§49-4-407. Team directors; records; case logs.

All persons directing any team created pursuant to this article shall maintain records of each meeting indicating the name and position of persons attending each meeting and the number of cases discussed at the meeting, including a designation of whether or not that case was previously discussed by any multidisciplinary team. Further, all investigative teams shall maintain a log of all cases to indicate the number of referrals to that team, whether or not a police report was filed with the prosecuting attorney's office, whether or not a petition was sought pursuant to part six of this article or whether or not a criminal complaint was issued and a case was criminally prosecuted. All treatment teams shall maintain a log of all cases to indicate the basis for failure to review a case for a period in excess of six months.

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§49-4-408. Unified child and family case plans; treatment teams; programs; agency requirements.

(a) The Department of Human Services shall develop a unified child and family case plan for every family wherein a person has been referred to the department after being allowed an improvement period or where the child is placed in foster care. The case plan must be filed within sixty days of the child coming into foster care or within thirty days of the inception of the improvement period, whichever occurs first. The department may also prepare a case plan for any person who voluntarily seeks child abuse and neglect services from the department, or who is referred to the department by another public agency or private organization. The case plan provisions shall comply with federal law and the rules of procedure for child abuse and neglect proceedings.

(b) The department shall convene a multidisciplinary treatment team, which shall develop the case plan. Parents, guardians or custodians shall participate fully in the development of the case plan, and the child shall also fully participate if sufficiently mature and the child's participation is otherwise appropriate. The case plan may be modified from time to time to allow for flexibility in goal development, and in each case the modifications shall be submitted to the court in writing. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time as reasonable efforts are being made to prevent removal or to make it possible for a child to return safely home. The court shall examine the proposed case plan or any modification thereof, and upon a finding by the court that the plan or modified plan can be easily communicated, explained and discussed so as to make the participants accountable and able to understand the reasons for any success or failure under the plan, the court shall inform the participants of the probable action of the court if goals are met or not met.

(c) In furtherance of the provisions of this article, the department shall, within the limits of available funds, establish programs and services for the following purposes:

(1) For the development and establishment of training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification and treatment of child abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;

(2) For the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams and community teams of personnel trained in the prevention, identification and treatment of child abuse and neglect cases, to provide a broad range of services related to child abuse and neglect, including direct support as well as providing advice and consultation to individuals, agencies and organizations which request the services;

(3) For furnishing services of multidisciplinary teams and community teams, trained in the

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prevention, identification and treatment of child abuse and neglect cases, on a consulting basis to small communities where the services are not available;

(4) For other innovative programs and projects that show promise of successfully identifying, preventing or remedying the causes of child abuse and neglect, including, but not limited to, programs and services designed to improve and maintain parenting skills, programs and projects for parent self help, and for prevention and treatment of drug-related child abuse and neglect; and

(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the federal Secretary of the Department of Health and Human Services for demonstration programs and projects designed to identify, prevent and treat child abuse and neglect.

(d) Agencies, organizations and programs funded to carry out the purposes of this section shall be structured so as to comply with any applicable federal law, any regulation of the federal Department of Health and Human Services or its secretary, and any final comprehensive plan of the federal advisory board on child abuse and neglect. In funding organizations, the department shall, to the extent feasible, ensure that parental organizations combating child abuse and neglect receive preferential treatment.

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§49-4-409. After-care plans; contents; written comments; contacts; objections; courts.

(a) Prior to the discharge of a child from any out-of-home placement to which the juvenile was committed pursuant to this chapter, the department or the Division of Juvenile Services shall convene a meeting of the multidisciplinary treatment team to which the child has been referred or, if no referral has been made, convene a multidisciplinary treatment team for any child for which a multidisciplinary treatment plan is required by this article and forward a copy of the juvenile's proposed after-care plan to the court which committed the juvenile. A copy of the plan shall also be sent to: (1) The child's parent, guardian or custodian; (2) the child's lawyer; (3) the child's probation officer or community mental health center professional; (4) the prosecuting attorney of the county in which the original commitment proceedings were held; and (5) the principal of the school which the child will attend. The plan shall have a list of the names and addresses of these persons attached to it.

(b) The after-care plan shall contain a detailed description of the education, counseling and treatment which the child received at the out-of-home placement and it shall also propose a plan for education, counseling and treatment for the child upon the child's discharge. The plan shall also contain a description of any problems the child has, including the source of those problems, and it shall propose a manner for addressing those problems upon discharge.

(c) Within twenty-one days of receiving the plan, the child's probation officer or community mental health center professional shall submit written comments upon the plan to the court which committed the child. Any other person who received a copy of the plan pursuant to subsection (a) of this section may submit written comments upon the plan to the court which committed the child. Any person who submits comments upon the plan shall send a copy of those comments to every other person who received a copy of the plan.

(d) Within twenty-one days of receiving the plan, the child's probation officer or community mental health center professional shall contact all persons, organizations and agencies which are to be involved in executing the plan to determine whether they are capable of executing their responsibilities under the plan and to further determine whether they are willing to execute their responsibilities under the plan.

(e) If adverse comments or objections regarding the plan are submitted to the circuit court, it shall, within forty-five days of receiving the plan, hold a hearing to consider the plan and the adverse comments or objections. Any person, organization or agency which has responsibilities in executing the plan, or their representatives, may be required to appear at the hearing unless they are excused by the circuit court. Within five days of the hearing, the circuit court shall issue an order which adopts the plan as submitted or as modified in response to any comments or objections.

(f) If no adverse comments or objections are submitted, a hearing need not be held. In that case, the circuit court shall consider the plan as submitted and shall, within forty-five days of

receiving the plan, issue an order which adopts the plan as submitted.

(g) Notwithstanding the provisions of subsections (e) and (f) of this section, the plan which is adopted by the circuit court shall be in the best interests of the child and shall also be in conformity with West Virginia's interest in youths as embodied in this chapter.

(h) The court which committed the child shall appoint the child's probation officer or community mental health center professional to act as supervisor of the plan. The supervisor shall report the child's progress under the plan to the court every sixty days or until the court determines that no report or no further care is necessary.

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§49-4-410. Other agencies of government required to cooperate.

State, county and local agencies shall provide the multidisciplinary teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing the agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with this article remain confidential. For purposes of this section, the term "confidential" shall be construed in accordance with article five of this chapter.

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§49-4-411. Law enforcement; prosecution; interference with performance of duties.

No multidisciplinary team may take any action which, in the determination of the prosecuting attorney or his or her assistant, impairs the ability of the prosecuting attorney, his or her assistant, or any law-enforcement officer to perform his or her statutory duties.

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§49-4-412. Exemption from multidisciplinary team review before emergency out-of-home placements.

Notwithstanding any provision of this article to the contrary, a multidisciplinary team meeting may not be required before temporary out-of-home placement of a child in an emergency circumstance or for purposes of assessment as provided by this article. As soon a practicable after the emergency circumstance, the mutidiscplinary treatment team shall convene to explore placement options.

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§49-4-413. Individualized case planning.

(a) For any juvenile ordered to probation supervision pursuant to §49-4-714 of this code, the probation officer assigned to the juvenile shall develop and implement an individualized case plan in consultation with the juvenile's parents, guardian or custodian, and other appropriate parties, and based upon the results of a needs assessment conducted within 90 days prior to the disposition to probation. The probation officer shall work with the juvenile and his or her family, guardian or custodian to implement the case plan following disposition. At a minimum, the case plan shall:

(1) Identify the actions to be taken by the juvenile and, if appropriate, the juvenile's parents, guardian or custodian to ensure future lawful conduct and compliance with the court's disposition order; and

(2) Identify the services to be offered and provided to the juvenile and, if appropriate, the juvenile's parents, guardian or custodian and may include services to address: Mental health and substance abuse issues; education; individual, group and family counseling services; community restoration; or other relevant concerns identified by the probation officer.

(b) For any juvenile disposed to an out-of-home placement with the department, the department shall ensure that the residential service provider develops and implements an individualized case plan based upon the recommendations of the multidisciplinary team pursuant to §49-4-406 of this code and the results of a needs assessment. At a minimum, the case plan shall include:

(1) Specific treatment goals and the actions to be taken by the juvenile in order to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the residential service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

(c) For any juvenile committed to the Division of Corrections and Rehabilitation, the Division of Corrections and Rehabilitation shall develop and implement an individualized case plan based upon the recommendations made to the court by the multidisciplinary team pursuant to §49-4-406(c) of this code and the results of a risk and needs assessment. At a minimum, the case plan shall include:

(1) Specific correctional goals and the actions to be taken by the juvenile to demonstrate satisfactory attainment of each goal;

(2) The services to be offered and provided by the Division of Corrections and Rehabilitation

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and any contracted service providers; and

(3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her family, guardian, school and community following the satisfactory completion of the case plan treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians prior to the release of the juvenile.

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§49-4-501. Prosecuting attorney representation of the Department of Human Services; conflict resolution.

(a) The prosecuting attorney shall render to the Department of Human Services, without additional compensation, the legal services as the department may require. This section shall not be construed to prohibit the department from developing plans for cooperation with courts, prosecuting attorneys, and other law-enforcement officials in a manner as to permit the state and its citizens to obtain maximum fiscal benefits under federal laws, rules and regulations.

(b) Nothing in this code may be construed to limit the authority of a prosecuting attorney to file an abuse or neglect petition, including the duties and responsibilities owed to its client the Department of Human Services, in his or her fulfillment of the provisions of this article.

(c) Whenever, pursuant to this chapter, a prosecuting attorney acts as counsel for the Department of Human Services, and a dispute arises between the prosecuting attorney and the department's representative because an action proposed by the other is believed to place the child at imminent risk of abuse or serious neglect, either the prosecuting attorney or the department's representative may contact the secretary of the department and the executive director of the West Virginia Prosecuting Attorneys Institute for prompt mediation and resolution. The secretary may designate either his or her general counsel or the director of social services to act as his or her designee and the executive director may designate an objective prosecuting attorney as his or her designee.

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§49-4-502. Prosecuting attorney to cooperate with persons other than the department in child abuse and neglect matters; duties.

It is the duty of every prosecuting attorney to cooperate fully and promptly with persons seeking to apply for relief, including copetitioners with the department, under this article in all cases of suspected child abuse and neglect; to promptly prepare applications and petitions for relief requested by those persons, to investigate reported cases of suspected child abuse and neglect for possible criminal activity; and to report at least annually to the grand jury regarding the discharge of his or her duties with respect thereto.

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§49-4-503. Prosecuting attorney to represent petitioner in juvenile cases.

The prosecuting attorney shall represent the petitioner in all proceedings under this article before the court judge or magistrate having juvenile jurisdiction.

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§49-4-504. Prosecuting attorney duty to establish multidisciplinary investigative teams.

The prosecuting attorney of each county shall establish a multidisciplinary investigative team in that county, pursuant to section four hundred two of this article, and section five, article four of chapter seven.

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§49-4-601. Petition to court when child believed neglected or abused; venue; notice; right to counsel; continuing legal education; findings; proceedings; procedure.

(a) Petitioner and venue. — If the department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or if the petition is being brought by the department, in the county in which the custodial respondent or other named party abuser resides, or in which the abuse or neglect occurred, or to the judge of the court in vacation. Under no circumstance may a party file a petition in more than one county based on the same set of facts.

(b) Contents of Petition. — The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how the conduct comes within the statutory definition of neglect or abuse with references thereto, any supportive services provided by the department to remedy the alleged circumstances and the relief sought.

(c) Court action upon filing of petition. — Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to this article, the preliminary hearing shall be held within ten days of the order continuing or transferring custody, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(d) Department action upon filing of the petition. — At the time of the institution of any proceeding under this article, the department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

(e) Notice of hearing. —

(1) The petition and notice of the hearing shall be served upon both parents and any other custodian, giving to the parents or custodian at least five days' actual notice of a preliminary hearing and at least ten days' notice of any other hearing.

(2) Notice shall be given to the department, any foster or preadoptive parent, and any relative providing care for the child.

(3) In cases where personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to the person by certified mail, addressee only, return receipt requested, to the last known address of the person. If the person signs the certificate, service shall be complete and the certificate shall be filed as proof of the service with the clerk of the circuit court.

(4) If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with article three, chapter fifty-

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nine of this code.

(5) A notice of hearing shall specify the time and place of the hearing, the right to counsel of the child and parents or other custodians at every stage of the proceedings and the fact that the proceedings can result in the permanent termination of the parental rights.

(6) Failure to object to defects in the petition and notice may not be construed as a waiver.

(f) Right to counsel. —

(1) In any proceeding under this article, the child, his or her parents and his or her legally established custodian or other persons standing in loco parentis to him or her has the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed.

(2) Counsel shall be appointed in the initial order. For parents, legal guardians, and other persons standing in loco parentis, the representation may only continue after the first appearance if the parent or other persons standing in loco parentis cannot pay for the services of counsel.

(3) Counsel for other parties shall only be appointed upon request for appointment of counsel. If the requesting parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to represent the other party or parties and so inform the parties.

(4) Under no circumstances may the same attorney represent both the child and the other party or parties, nor may the same attorney represent both parents or custodians. However, one attorney may represent both parents or custodians where both parents or guardians consent to this representation after the attorney fully discloses to the client the possible conflict and where the attorney assures the court that she or he is able to represent each client without impairing her or his professional judgment; however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children.

(5) A parent who is a copetitioner is entitled to his or her own attorney. The court may allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases.

(g) Continuing education for counsel. — Any attorney representing a party under this article shall receive a minimum of eight hours of continuing legal education training per reporting period on child abuse and neglect procedure and practice. In addition to this requirement, any attorney appointed to represent a child must first complete training on representation of children that is approved by the administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures for approval and certification of training required under this section. Where no attorney has completed the training required by this

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subsection, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the parent or child. Any attorney appointed pursuant to this section shall perform all duties required of an attorney licensed to practice law in the State of West Virginia.

(h) Right to be heard. — In any proceeding pursuant to this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. Foster parents, preadoptive parents, and relative caregivers shall also have a meaningful opportunity to be heard.

(i) Findings of the court. — Where relevant, the court shall consider the efforts of the department to remedy the alleged circumstances. At the conclusion of the adjudicatory hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether the child is abused or neglected and whether the respondent is abusing, neglecting, or, if applicable, a battered parent, all of which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing evidence.

(j) Priority of proceedings. — Any petition filed and any proceeding held under this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under section three hundred nine, article twenty-seven, chapter forty-eight of this code and actions in which trial is in progress. Any petition filed under this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under this article shall be held as nearly as practicable on successive days and, with respect to the hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of the improvement period and shall be held within thirty days of the termination of the improvement period.

(k) Procedural safeguards. — The petition may not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response may not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay therefor.

(l) CASA. — The department, guardian ad litem, or any parent as defined in §49-1-204 of this code who is a party to a proceeding instituted pursuant to the provisions of this section, may, in accordance with the Rules of Procedure for Child Abuse and Neglect Proceedings, request the appointment of a court appointed special advocate, which the circuit court may appoint

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if a court appointed special advocate provides services to the circuit court with jurisdiction over the proceedings instituted pursuant to this section.

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§49-4-601a. Preference of child placement.

When a child is removed from his or her home, placement preference is to be given to relatives or fictive kin of the child. If a child requires out-of-home care, placement of a child with a relative is the least restrictive alternative living arrangement. The department must diligently search for relatives of the child and fictive kin within the first days of a child's removal and must identify and provide notice of the child's need for a placement to relatives and fictive kin who are willing to act as a foster or kinship parent.

(1) After a petition alleging abuse and neglect of a child is filed, the department shall commence a search for every relative and fictive kin of the child.

(2) No later than seven calendar days after the petition for removal has been filed, the department shall file, with the court, a list of all of the relatives and fictive kin of the child known to the department at the time of the filing, whether or not those persons have expressed a willingness to take custody of the child.

(3) Within seven days after the department files the list described in subdivision (2) of this subsection, any party to the case may file, with the court, his or her own list containing names and addresses of relatives and fictive kin of the child.

(4) The department shall investigate and determine whether any of the persons identified in the lists filed pursuant to this section are willing and able to act as foster or kinship parents to the child. The department shall file its determinations with the court within 45 days from the filing of the petition alleging abuse or neglect of a child.

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§49-4-601b. Substantiation by the department of abuse and neglect; file purging; expungement; exceptions.

(a) Notwithstanding any provision of this code to the contrary, when the department substantiates an allegation of abuse and/or neglect against a person, but there is no judicial finding of abuse and/or neglect as a result of the allegation, the department shall provide written notice of the substantiation to the person by certified mail, return receipt requested.

(b) The person against whom an abuse and/or neglect allegation has been substantiated, as described in subsection (a) of this section, has the right to contest the substantiation by filing a grievance with the board of review of the department and has the right to appeal the decision of the board of review to the court, in accordance with the provisions of §29A-5-1 *et seq*. of this code regarding administrative appeals.

(c) The secretary of the department shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code, within the applicable time limit to be considered by the Legislature during its regular session in the year 2021, which rules shall include, at a minimum:

(1) Provisions for ensuring that an individual against whom the department has substantiated an allegation of abuse and/or neglect, but against whom there is no judicial finding of abuse and/or neglect, receives written notice of the substantiation in a timely manner. The written notice shall at a minimum, state the following:

(A) The name of the child the person is alleged to have abused and/or neglected, the place or places where the abuse and/or neglect allegedly occurred, and the date or dates on which the abuse and/or neglect is alleged to have occurred;

(B) That the person has a right to file a grievance protesting the substantiation of abuse and/or neglect with the board of review of the department and clear instructions regarding how to file a grievance with the board of review, including a description of any applicable time limits;

(C) That the person has a right to appeal an adverse decision of the board of review of the department to the courts and notice of any applicable time limits; and

(D) A description of any public or nonpublic registry on which the person's name will be included as a result of a substantiated allegation of abuse and/or neglect and a statement that the inclusion of the person's name on the registry may prevent the person from holding jobs from which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

(2) Provisions for ensuring that a person against whom an allegation of abuse and/or neglect has been substantiated, but against whom there is no judicial finding of abuse and/or neglect, may file a grievance with the department and provisions guaranteeing that he or

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she will have a full and fair opportunity to be heard; and

(3) Provisions requiring the department to remove a person's name from an abuse and/or neglect registry maintained by the department if a substantiated allegation is successfully challenged in the board of review or in a court.

(d) Notwithstanding any provision of this code to the contrary:

(1) Where any allegation of abuse and/or neglect is substantiated and a petition for abuse and/or neglect could be filed and the department does not file a petition, all department records related to the allegation shall be sealed one year after the substantiation determination, unless during the one-year period another allegation of child abuse and/or neglect against the person is substantiated: *Provided*, That the provisions of this subdivision do not apply to a person against whom an allegation is substantiated but the circumstances do not allow for the filing of a petition for abuse and/or neglect;

(2) Where an allegation of child abuse and/or neglect is substantiated and a petition is filed with the circuit court which does not end in an adjudication that abuse and/or neglect occurred, the allegation shall be considered to have been unsubstantiated.

(3)(A) Where an allegation of child abuse and/or neglect is substantiated and a judicial determination of child abuse and/or neglect is found, a person may petition the circuit court which found the person to be an abusing parent to have his or her department record sealed after no less than five years have elapsed since the finding of abuse and/or neglect is rendered: *Provided*, That a petition may not be filed if the person had been the subject of a substantiated allegation of abuse and/or neglect during the period of time after the finding and prior to the filing of the petition; and

(B) In its consideration of a petition filed under this subdivision, the court, in its discretion, may look at all relevant factors related to the petition, including, but not limited to, efforts at rehabilitation and family reunification.

(e) The sealing of a record pursuant to subsection (d) of this section means that any inquiry of the department about a person having a record of child abuse and/or neglect for purposes of possible employment shall be answered in the negative.

(f) The secretary is directed to propose legislative rules pursuant to §29A-1-1 *et seq*. of this code to effectuate the amendments to this section enacted during the regular session of the Legislature, 2023.

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§49-4-602. Petition to court when child believed neglected or abused; temporary care, custody, and control of child at different stages of proceeding; temporary care; orders; emergency removal; when reasonable efforts to preserve family are unnecessary.

(a)(1) Temporary care, custody, and control upon filing of the petition. -- Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the care, custody, and control of the department or a responsible person who is not the custodial parent or guardian of the child, if it finds that:

(A) There exists imminent danger to the physical well-being of the child; and

(B) There are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody.

(2) Where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in the home unless the alleged abusing person is or has been precluded from visiting or residing in the home by judicial order.

(3) In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state. Notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of those children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of the child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal.

(4) The initial order directing custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of care, custody, and control of the child or children to the department or a responsible relative, which may include any parent, guardian, or other custodian. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why; and

(B) Whether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made those efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Temporary care, custody and control at preliminary hearing. -- Whether or not the court

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orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary care, custody, and control of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days. The court order shall state:

(1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor;

(2) Whether or not the department made reasonable efforts to preserve the family and to prevent the child's removal from his or her home;

(3) Whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made those efforts unreasonable or impossible;

(4) Whether or not the department made reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services; and

(5) What efforts should be made by the department, if any, to facilitate the child's return home. If the court grants an improvement period as provided in section six hundred ten of this article, the sixty-day limit upon temporary custody is waived.

(c) Emergency removal by department during pendency of case. -- Regardless of whether the court has previously granted the department care and custody of a child, if the department takes physical custody of a child during the pendency of a child abuse and neglect case (also known as removing the child) due to a change in circumstances and without a court order issued at the time of the removal, the department must immediately notify the court and a hearing shall take place within ten days to determine if there is imminent danger to the physical well-being of the child, and there is no reasonably available alternative to removal of the child. The court findings and order shall be consistent with subsections (a) and (b) of this section.

(d) Situations when reasonable efforts to preserve the family are not required. -- For purposes of the court's consideration of temporary custody pursuant to subsection (a), (b), or (c) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:

(1) The parent has subjected the child, another child of the parent or any other child residing

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in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime;

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(E) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(F) Has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family; or

(3) The parental rights of the parent to another child have been terminated involuntarily.

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§49-4-603. Medical and mental examinations; limitation of evidence; probable cause; testimony; judge or referee.

(a)(1) At any time during proceedings under this article the court may, upon its own motion or upon motion of the child or other parties, order the child or other parties to be examined by a physician, psychologist or psychiatrist, and may require testimony from the expert, subject to cross-examination and the rules of evidence.

(2) The court may not terminate parental or custodial rights of a party solely because the party refuses to submit to the examination, nor may the court hold a party in contempt for refusing to submit to an examination.

(3) The physician, psychologist or psychiatrist shall be allowed to testify as to the conclusions reached from hospital, medical, psychological or laboratory records provided the same are produced at the hearing.

(4) If the child, parent or custodian is indigent, the witnesses shall be compensated out of the Treasury of the State, upon certificate of the court wherein the case is pending.

(5) No evidence acquired as a result of an examination of the parent or any other person having custody of the child may be used against the person in any subsequent criminal proceedings against the person.

(b) (1) If a person with authority to file a petition under this article shall have probable cause to believe that evidence exists that a child has been abused or neglected and that the evidence may be found by a medical examination, the person may apply to a judge or juvenile referee for an order to take the child into custody for delivery to a physician or hospital for examination.

(2) The application may be on forms prescribed by the Supreme Court of Appeals or prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that probable cause exists for the belief.

(3) Upon sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order any law-enforcement officer to take the child into custody and deliver the child to a physician or hospital for examination.

(4) If a referee issues an order the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall, on the next judicial day, enter an order of confirmation.

(5) Any child protection worker and the child's parents, guardians or custodians may accompany the officer for examination.

(6) After the examination the officer may return the child to the custody of his or her parent, guardian or custodian, retain custody of the child or deliver custody to the state department

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until the end of the next judicial day, at which time the child shall be returned to the custody of his or her parent, guardian or custodian unless a petition has been filed and custody of the child has been transferred to the department under section six hundred two of this article.

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§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

(a) *Child and family case plans*. — Following a determination pursuant to §49-4-602 of this code wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term "case plan" means a written document that includes, where applicable, the requirements of the family case plan as provided in §49-4-408 of this code and that also includes, at a minimum, the following:

(1) A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child, and foster or kinship parents in order to improve the conditions that made the child unsafe in the care of his or her parent(s), including any reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. §12101 *et seq.,* to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(2) A plan to facilitate the return of the child to his or her own home or the concurrent permanent placement of the child; and address the needs of the child while in kinship or foster care, including a discussion of the appropriateness of the services that have been provided to the child.

The term "permanency plan" refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it possible for a child to return to the care of his or her parent(s) safely. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative, concurrent permanent placement plans for the child to include approximate time lines for when the placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard.

(b) *Requirements for a Guardian ad litem*. —

A guardian ad litem appointed pursuant to §49-4-601(f)(1) of this code, shall, in the performance of his or her duties, adhere to the requirements of the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct and such other rules as the West Virginia Supreme Court of Appeals may promulgate, and any appendices

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thereto, and must meet all educational requirements for the guardian ad litem. A guardian ad litem may not be paid for his or her services without meeting the certification and educational requirements of the court. The West Virginia Supreme Court of Appeals is requested to provide guidance to the judges of the circuit courts regarding supervision of said guardians ad litem. The West Virginia Supreme Court of Appeals is requested to review the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct specific to guardians ad litem.

(c) *Disposition decisions*. — The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the care, custody, and control of the department, a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why;

(B) Whether or not the department has made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home;

(C) Whether the department has made reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(D) What efforts were made or that the emergency situation made those efforts unreasonable or impossible; and

(E) The specific circumstances of the situation which made those efforts unreasonable if services were not offered by the department. The court order shall also determine under

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what circumstances the child's commitment to the department are to continue. Considerations pertinent to the determination include whether the child should:

(i) Be considered for legal guardianship;

(ii) Be considered for permanent placement with a fit and willing relative; or

(iii) Be placed in another planned permanent living arrangement, but only in cases where the child has attained 16 years of age and the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 of this code;

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child's need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child 14 years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child's home

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and to make it possible for the child to safely return home, or that the emergency situation made those efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse, and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit murder or voluntary manslaughter, or been an accessory before or after the fact to either crime;

(iv) Committed a malicious assault that results in serious bodily injury to the child, the child's other parent, guardian, or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(v) Attempted or conspired to commit malicious assault, as outlined in subparagraph (iv), or been an accessory before or after the fact to the same;

(vi) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(vii) Attempted or conspired to commit sexual assault or sexual abuse, as outlined in subparagraph (vi), or been an accessory before or after the fact to the same.

(C) The parental rights of the parent to another child have been terminated involuntarily;

(D) A parent has been required by state or federal law to register with a sex offender

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registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family.

(d) As used in this section, "No reasonable likelihood that conditions of neglect or abuse can be substantially corrected" means that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Those conditions exist in the following circumstances, which are not exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and the person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling their responsibilities to the child; and

(6) The battered parent's parenting skills have been seriously impaired and the person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan, or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(e) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately

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improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

(f) The court may not terminate the parental rights of a parent on the sole basis that the parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 *et seq.,* for substance use disorder, as long as the parent is successfully fulfilling his or her treatment obligations in the medication-assisted treatment program.

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§49-4-605. When department efforts to terminate parental rights are required.

(a) Except as provided in §49-4-605(b) of this code, the department shall file or join in a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

(1) If a child has been in foster care for 15 of the most recent 22 months as determined by the earlier of the 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 is removed from the home;

(2) If a court has determined the child is abandoned, tortured, sexually abused, or chronically abused;

(3) If a court has determined the parent has committed murder or voluntary manslaughter of another of his or her children, another child in the household, or the other parent of his or her children; has attempted or conspired to commit murder or voluntary manslaughter or has been an accessory before or after the fact of either crime; has committed unlawful or malicious wounding resulting in serious bodily injury to the child or to another of his or her children, another child in the household or to the other parent of his or her children; has committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or the parental rights of the parent to another child have been terminated involuntarily; or

(4) If a parent whose child has been removed from the parent's care, custody, and control by an order of removal voluntarily fails to have contact or attempt to have contact with the child for a period of 18 consecutive months: Provided, That failure to have, or attempt to have, contact due to being incarcerated, being in a medical or drug treatment or recovery facility, or being on active military duty shall not be considered voluntary behavior.

(b) The department may determine not to file a petition to terminate parental rights when:

(1) At the option of the department, the child has been placed permanently with a relative by court order;

(2) The department has documented in the case plan made available for court review a compelling reason, including, but not limited to, the child's age and preference regarding termination or the child's placement in custody of the department based on any proceedings initiated under part seven of this article, that filing the petition would not be in the best interests of the child; or

(3) The department has not provided, when reasonable efforts to return a child to the family are required, the services to the child's family as the department deems necessary for the safe return of the child to the home.

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§49-4-606. Modification of dispositional orders; hearings; treatment team; unadopted children.

(a) Upon motion of a child, a child's parent or custodian or the department alleging a change of circumstances requiring a different disposition, the court shall conduct a hearing pursuant to section six hundred four of this article and may modify a dispositional order if the court finds by clear and convincing evidence a material change of circumstances and that the modification is in the child's best interests. A dispositional order may not be modified after the child has been adopted, except as provided in subsections (b) and (c) of this section. Adequate and timely notice of any motion for modification shall be given to the child's counsel, counsel for the child's parent or custodian, the department and any person entitled to notice and the right to be heard. The circuit court of origin has exclusive jurisdiction over placement of the child, and the placement may not be disrupted or delayed by any administrative process of the department.

(b) If the child is removed or relinquished from an adoptive home or other permanent placement after the case has been dismissed, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the department and the child's counsel, and the court shall schedule a permanency hearing within sixty days of the report to the circuit court, with notice given to any appropriate parties and persons entitled to notice and the right to be heard. The department shall convene a multidisciplinary treatment team meeting within thirty days of the receipt of notice of permanent placement disruption.

(c) If a child has not been adopted, the child or department may move the court to place the child with a parent or custodian whose rights have been terminated and/or restore the parent's or guardian's rights. Under these circumstances, the court may order the placement and/or restoration of a parent's or guardian's rights if it finds by clear and convincing evidence a material change of circumstances and that the placement and/or restoration is in the child's best interests.

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§49-4-607. Consensual termination of parental rights.

An agreement of a natural parent in termination of parental rights is valid if made by a duly acknowledged writing, and entered into under circumstances free from duress and fraud. Where during the pendency of an abuse and neglect proceeding, a parent offers voluntarily to relinquish of his or her parental rights, and the relinquishment is accepted by the circuit court, the relinquishment may, without further evidence, be used as the basis of an order of adjudication of abuse and neglect by that parent of his or her children.

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§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placement; findings; notice; permanent placement review.

(a) Permanency hearing when reasonable efforts are not required. — If the court finds pursuant to this article that the department is not required to make reasonable efforts to preserve the family, then notwithstanding any other provision a permanency hearing must be held within 30 days following the entry of the court order so finding, and a permanent placement review hearing must be conducted at least once every 90 days thereafter until a permanent placement is achieved.

(b) Permanency hearing every 12 months until permanency is achieved. — If 12 months after receipt by the department or its authorized agent of physical care, custody, and control of a child either by a court-ordered placement or by a voluntary agreement the department has not placed a child in an adoptive home, placed the child with a natural parent, placed the child in legal guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a permanency hearing. The department shall file a progress report with the court detailing the efforts that have been made to place the child in a permanent home and copies of the child's case plan, which shall include the permanency plan as defined in §49-1-201 and §49-4-604 of this code. Copies of the report shall be sent to the parties and all persons entitled to notice and the right to be heard. The court shall schedule a hearing giving notice and the right to be present to the child's attorney; the child; the child's parents; the child's guardians; the child's foster parents; any preadoptive parent, or any relative providing care for the child; any person entitled to notice and the right to be heard; and other persons as the court may, in its discretion, direct. The child's presence may be waived by the child's attorney at the request of the child or if the child is younger than 12 years-of-age and would suffer emotional harm. The purpose of the hearing is to review the child's case, to determine whether and under what conditions the child's commitment to the department shall continue, to determine what efforts are necessary to provide the child with a permanent home, and to determine if the department has made reasonable efforts to finalize the permanency plan. The court shall conduct another permanency hearing within 12 months thereafter for each child who remains in the care, custody, and control of the department until the child is placed in an adoptive home, returned to his or her parents, placed in legal guardianship, or permanently placed with a fit and willing relative.

(c) Transitional planning for older children. — In the case of a child who has attained 16 years of age, the court shall determine the services needed to assist the child to make the transition from foster care to independent living. The child's case plan should specify services aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged 17 comes into a case, the department must immediately provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child. The plan must include specific options on housing, health insurance, education, local opportunities for mentors, continuing support services, work force support, and employment services, and the plan should be as detailed as the child may elect. In addition to these requirements, when a child with special needs turns 17, or as soon as a child aged

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17 with special needs comes into a case, he or she is entitled to the appointment of a department adult services worker to the multidisciplinary treatment team, and coordination between the multidisciplinary treatment team and other transition planning teams, such as special education individualized education planning (IEP) teams.

(d) Out-of-state placements. — A court may not order a child to be placed in an out-of-state facility unless the child is diagnosed with a health issue that no in-state facility or program serves unless a placement out of state is in closer proximity to the child's family for the necessary care or the services are able to be provided more timely. If the child is to be placed with a relative or other responsible person out of state, the court shall use judicial leadership to help expedite the process under the Interstate Compact for the Placement of Children provided in §49-7-101 and §49-7-102 of this code and the Uniform Child Custody Jurisdiction and Enforcement Act provided in §48-20-101 *et seq*. of this code.

(e) Findings in order. — At the conclusion of the hearing the court shall, in accordance with the best interests of the child, enter an order containing all the appropriate findings. The court order shall state:

(1) Whether or not the department made reasonable efforts to preserve the family and to prevent out-of-home placement or that the specific situation made the effort unreasonable;

(2) Whether or not the department made reasonable efforts to finalize the permanency plan and concurrent plan for the child;

(3) The appropriateness of the child's current placement, including its distance from the child's home and whether or not it is the least restrictive one (or most family-like one) available;

(4) The appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;

(5) Services required to meet the child's needs and achieve permanency; and

(6) In addition, in the case of any child for whom another planned permanent living arrangement is the permanency plan the court shall: (A) Inquire of the child about the desired permanency outcome for the child; (B) make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child; and (C) provide in the court order compelling reasons why it continues to not be in the best interest of the child to: (i) return home, (ii) be placed for adoption, (iii) be placed with a legal guardian, or (iv) be placed with a fit and willing relative.

(f) The department shall annually report to the court the current status of the placements of children in the care, custody, and control of the state department who have not been adopted.

(g) The department shall file a report with the court in any case where any child in the

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custody of the state receives more than three placements in one year no later than 30 days after the third placement. This report shall be provided to all parties and persons entitled to notice and the right to be heard. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a permanent home. No report may be provided to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(h) The department shall give actual notice, in writing, to the court, the child, the child's attorney, the parents, and the parents' attorney at least 48 hours prior to the move if this is a planned move, or within 48 hours of the next business day after the move if the child is in imminent danger in the child's current placement, except where the notification would endanger the child or the foster family. A multidisciplinary treatment team shall convene as soon as practicable after notice to explore placement options. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice may be provided pursuant to this provision to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(i) Nothing in this article precludes any party from petitioning the court for review of the child's case at any time. The court shall grant the petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

(j) Any foster parent, preadoptive parent or relative providing care for the child shall be given notice of and the right to be heard at the permanency hearing provided in this section.

(k) Once an adoption case is assigned to a child placing agency, all related court hearing notices shall be sent to the child placing agency as an interested party.

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§49-4-609. Conviction for offenses against children.

In any case where a person is convicted of an offense against a child described in section twelve, article eight, chapter sixty-one of this code or articles eight-b or eight-d of that chapter and the person has custodial, visitation or other parental rights to the child who is the victim of the offense or to 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 this chapter 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 the court shall take further steps as are required by this article.

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§49-4-610. Improvement periods in cases of child neglect or abuse; findings; orders; extensions; hearings; time limits.

In any proceeding brought pursuant to this article, the court may grant any respondent an improvement period in accord with this article. During the period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children or the state department or other agency during the improvement period. An order granting an improvement period shall require the department to prepare and submit to the court a family case plan in accordance with section four hundred eight, of this article. The types of improvement periods are as follows:

(1) Preadjudicatory improvement period. -- A court may grant a respondent an improvement period of a period not to exceed three months prior to making a finding that a child is abused or neglected pursuant to section six hundred one of this article only when:

(A) The respondent files a written motion requesting the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(C) In the order granting the improvement period, the court:

(i) Orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondents progress in the improvement period within sixty days of the order granting the improvement period; and

(D) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with section four hundred eight of this article;

(2) Post-adjudicatory improvement period. -- After finding that a child is an abused or neglected child pursuant to section six hundred one of this article, a court may grant a respondent an improvement period of a period not to exceed six months when:

(A) The respondent files a written motion requesting the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

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(C) In the order granting the improvement period, the court:

(i) orders that a hearing be held to review the matter within thirty days of the granting of the improvement period; or

(ii) orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within sixty days of the order granting the improvement period;

(D) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances the respondent is likely to fully participate in a further improvement period; and

(E) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with section four hundred eight of this article.

(3) Post-dispositional improvement period. – The court may grant an improvement period not to exceed six months as a disposition pursuant to section six hundred four of this article when:

(A) The respondent moves in writing for the improvement period;

(B) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(C) In the order granting the improvement period, the court:

(i) Orders that a hearing be held to review the matter within sixty days of the granting of the improvement period; or

(ii) Orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within sixty days of the order granting the improvement period;

(D) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances, the respondent is likely to fully participate in the improvement period; and

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(E) The order granting the improvement period shall require the department to prepare and submit to the court an individualized family case plan in accordance with section four hundred eight of this article.

(4) Responsibilities of the respondent receiving improvement period. --

(A) When any improvement period is granted to a respondent pursuant to this section, the respondent shall be responsible for the initiation and completion of all terms of the improvement period. The court may order the state department to pay expenses associated with the services provided during the improvement period when the respondent has demonstrated that he or she is unable to bear the expenses.

(B) When any improvement period is granted to a respondent pursuant to this section, the respondent shall execute a release of all medical information regarding that respondent, including, but not limited to, information provided by mental health and substance abuse professionals and facilities. The release shall be accepted by a professional or facility regardless of whether the release conforms to any standard required by that facility.

(5) Responsibilities of the department during improvement period. -- When any respondent is granted an improvement period pursuant to this article, the department shall monitor the progress of the person in the improvement period. This section may not be construed to prohibit a court from ordering a respondent to participate in services designed to reunify a family or to relieve the department of any duty to make reasonable efforts to reunify a family required by state or federal law.

(6) Extension of improvement period. -- A court may extend any improvement period granted pursuant to subdivision (2) or (3) of this section for a period not to exceed three months when the court finds that the respondent has substantially complied with the terms of the improvement period; that the continuation of the improvement period will not substantially impair the ability of the department to permanently place the child; and that the extension is otherwise consistent with the best interest of the child.

(7) Termination of improvement period. -- Upon the motion by any party, the court shall terminate any improvement period granted pursuant to this section when the court finds that respondent has failed to fully participate in the terms of the improvement period or has satisfied the terms of the improvement period to correct any behavior alleged in the petition or amended petition to make his or her child unsafe.

(8) Hearings on improvement period. --

(A) Any hearing scheduled pursuant to this section may be continued only for good cause upon a written motion properly served on all parties. When a court grants a continuance, the court shall enter an order granting the continuance specifying a future date when the hearing will be held.

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(B) Any hearing to be held at the end of an improvement period shall be held as nearly as practicable on successive days and shall be held as close in time as possible after the end of the improvement period and shall be held no later than thirty days of the termination of the improvement period.

(9) Time limit for improvement periods. -- Notwithstanding any other provision of this section, no combination of any improvement periods or extensions thereto may cause a child to be in foster care more than fifteen months of the most recent twenty-two months, unless the court finds compelling circumstances by clear and convincing evidence that it is in the child's best interests to extend the time limits contained in this paragraph.

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Part VII. Juvenile Proceedings

§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; Constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts.

(a) The circuit court has original jurisdiction of proceedings brought under this article. A person under the age of eighteen years who appears before the circuit court in proceedings under this article is a ward of the court and protected accordingly.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any violation of chapter twenty of this code. Juveniles are liable for punishment for violations of these laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(d) Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or a juvenile delinquent; or

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia.

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(f)(1) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the same power over that person that it had before he or she became an adult, and has the power to sentence that person to a term of incarceration: Provided, That any term of incarceration may not exceed six months. This authority does not preclude the court from exercising criminal jurisdiction over that person if he or she violates the law after becoming an adult or if the proceedings have been transferred to the court's criminal jurisdiction pursuant to section seven hundred four of this article.

(2) If a juvenile is adjudicated as a status offender because he or she is habitually absent from school without good cause, the jurisdiction of the court which adjudged the juvenile a status offender continues until either the juvenile becomes twenty-one years of age, completes high school, completes a high school equivalent or other education plan approved by the court, or the court otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the court is extended pursuant to this subdivision, the court has the same power over that person that it had before he or she became an adult. No person so adjudicated who has attained the age of nineteen may be ordered to attend school in a regular, nonalternative setting.

(g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an adult and be afforded the protection guaranteed by Article III of the West Virginia Constitution.

(h) A juvenile has the right to be effectively represented by counsel at all stages of proceedings under this article, including participation in multidisciplinary team meetings, until the child is no longer under the jurisdiction of the court. If the juvenile or the juvenile's parent or custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall appoint an attorney, who shall be paid in accordance with article twenty-one, chapter twenty-nine of this code.

(i)(1) In all proceedings under this article, the juvenile will be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend.

(2) In cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer.

(3) In any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to

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adults in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases apply, including the rule against written reports based upon hearsay.

(l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained fourteen years of age to law-enforcement officials or while in custody are not admissible unless those statements were made in the presence of the juvenile's counsel. Except for res gestae, extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen years of age to law-enforcement officers or while in custody, are not admissible unless made in the presence of the juvenile's counsel or made in the presence of, and with the consent of, the juvenile's parent or custodian, and the parent or custodian has been fully informed regarding the juvenile's right to a prompt detention hearing, the juvenile's right to counsel, including appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege against self-incrimination.

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall make findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor the juvenile's parents or custodian have the ability to pay for the transcript.

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§49-4-702. Prepetition diversion to informal resolution; mandatory prepetition diversion program for status offenses and misdemeanor offenses; prepetition review team.

(a) Before a juvenile petition is formally filed with the court, the court may refer the matter to a case worker, probation officer or truancy diversion specialist for preliminary inquiry to determine whether the matter can be resolved informally without the formal filing of a petition with the court.

(b)(1) If the matter is for a truancy offense, the prosecutor may refer the matter to a state department worker, probation officer, or truancy diversion specialist who shall develop a diversion program pursuant to subsection (d) of this section. If the prosecutor does not refer the matter to a state department worker, probation officer, or truancy diversion specialist pursuant to this subdivision, he or she may proceed to file a petition with the court.

(2) If the matter is for a status offense other than truancy, the prosecutor shall refer the juvenile to a case worker or probation officer who shall develop a diversion program pursuant to subsection (d) of this section.

(3) The prosecutor is not required to refer the juvenile for development of a diversion program pursuant to subdivision (2) of this subsection and may proceed to file a petition with the court if he or she determines:

(A) The juvenile has a prior adjudication for a status or delinquency offense; or

(B) There exists a significant and likely risk of harm to the juvenile, a family member, or the public.

(c) If the matter is for a nonviolent misdemeanor offense, the prosecutor shall determine whether the case can be resolved informally through a diversion program without the filing of a petition. If the prosecutor determines that a diversion program is appropriate, he or she shall refer the matter to a case worker or probation officer who shall develop a diversion program pursuant to subsection (d) of this section.

(d)(1) When developing a diversion program, the case worker, probation officer, or truancy diversion specialist shall:

(A) Conduct an assessment of the juvenile to develop a diversion agreement;

(B) Create a diversion agreement;

(C) Obtain consent from the juvenile and his or her parent, guardian, or custodian to the terms of the diversion agreement;

(D) Refer the juvenile and, if necessary, his or her parent, guardian, or custodian to services in the community pursuant to the diversion agreement.

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(2) A diversion agreement may include:

(A) Referral to community services as defined in §49-1-206 of this code for the juvenile to address the assessed need;

(B) Referral to services for the parent, guardian, or custodian of the juvenile;

(C) Referral to one or more community work service programs for the juvenile;

(D) A requirement that the juvenile regularly attend school;

(E) Community-based sanctions to address noncompliance; or

(F) Any other efforts which may reasonably benefit the community, the juvenile, and his or her parent, guardian, or custodian.

(3) When a referral to a service provider occurs, the service provider shall make reasonable efforts to contact the juvenile and his or her parent, custodian, or guardian within 72 hours of the referral.

(4) Upon request by the case worker, probation officer, or truancy diversion specialist, the court may enter reasonable and relevant orders to the parent, custodian, or guardian of the juvenile who have consented to the diversion agreement as is necessary and proper to carry out the agreement.

(5) If the juvenile and his or her parent, custodian, or guardian do not consent to the terms of the diversion agreement created by the case worker, probation officer, or truancy diversion specialist, the petition may be filed with the court.

(6) Referral to a prepetition diversion program shall toll the statute of limitations for status and delinquency offenses.

(7) Probation officers may be authorized by the court to participate in a diversion program.

(e) The case worker, probation officer, or truancy diversion specialist shall monitor the juvenile's compliance with any diversion agreement.

(1) If the juvenile successfully completes the terms of the diversion agreement, a petition shall not be filed with the court and no further action shall be taken.

(2) If the juvenile is unsuccessful in or noncompliant with the diversion agreement, the diversion agreement shall be referred to a prepetition review team convened by the case worker, probation officer or the truancy diversion specialist: *Provided*, That if a new delinquency offense occurs, a petition may be filed with the court.

(f)(1) The prepetition review team may be a subset of a multidisciplinary team established

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pursuant to §49-4-406 of this code.

(2) The prepetition review team may consist of:

(A) A case worker knowledgeable about community services available and authorized to facilitate access to services;

(B) A service provider;

(C) A school superintendent or his or her designee; or

(D) Any other person, agency representative, member of the juvenile's family, or a custodian or guardian who may assist in providing recommendations on community services for the particular needs of the juvenile and his or her family.

(3) The prepetition review team shall review the diversion agreement and the service referrals completed and determine whether other appropriate services are available to address the needs of the juvenile and his or her family.

(4) The prepetition review shall occur within 14 days of referral from the state department worker, probation officer, or truancy diversion specialist.

(5) After the prepetition review, the prepetition review team may:

(A) Refer a modified diversion agreement back to the case worker, probation officer or truancy diversion specialist;

(B) Advise the case worker, probation officer or truancy diversion specialist to file a petition with the court; or

(C) Advise the case worker to open an investigation for child abuse or neglect.

(g) The requirements of this section are not mandatory until July 1, 2024: *Provided*, That nothing in this section prohibits a judicial circuit from continuing to operate a truancy or other juvenile treatment program that existed as of January 1, 2023: *Provided, however*, That any judicial circuit desiring to create a diversion program after the effective date of this section, may only do so pursuant to this section.

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§49-4-702a. Noncustodial counseling or community services provided to a juvenile; prepetition counsel and advice.

(a) The court at any time, or the department or other official upon a request from a parent, guardian or custodian, may, before a petition is filed under this article, refer a juvenile alleged to be a delinquent or a status offender to a counselor at the department or a community mental health center, other professional counselor in the community or to a truancy diversion specialist. In the event the juvenile refuses to respond to this referral, the department may serve a notice by first class mail or personal service of process upon the juvenile, setting forth the facts and stating that a noncustodial order will be sought from the court directing the juvenile to submit to counseling or community services. The notice shall set forth the time and place for the hearing on the matter. The court or referee after a hearing may direct the juvenile to participate in a noncustodial period of counseling or community services that may not exceed six months. Upon recommendation of the department or request by the juvenile's parent, custodian or guardian, the court or referee may allow or require the parent, custodian or guardian to participate in this noncustodial counseling or community services. No information obtained as the result of counseling or community services is admissible in a subsequent proceeding under this article.

(b) Before a petition is formally filed with the court, the probation officer or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties with a view to an informal adjustment period if it appears:

(1) The admitted facts bring the case within the jurisdiction of the court;

(2) Counsel and advice without an adjudication would be in the best interest of the public and the juvenile; and

(3) The juvenile and his or her parents, guardian or other custodian consent thereto with knowledge that consent is not obligatory.

(c) The giving of counsel and advice pursuant to this section may not continue longer than six months from the day it is commenced unless extended by the court for an additional period not to exceed six months.

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§49-4-703. Juvenile drug courts; hearing officers.

Juvenile drug courts shall be designed and operated consistent with the developmental and rehabilitative needs of juveniles as defined in this article. The Supreme Court shall provide uniform referral, procedure and order forms that shall be used in juvenile drug courts. The Supreme Court is further authorized to appoint appropriate hearing officers in those jurisdictions which choose to operate a juvenile drug court. Hearing officers for juvenile drug courts shall be limited to current or senior status circuit court judges or family court judges.

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§49-4-704. Institution of proceedings by petition; notice to juvenile and parents; preliminary hearings; subpoena.

(a)(1) A petition alleging that a juvenile is a status offender or a juvenile delinquent may be filed by a person who has knowledge of or information concerning the facts alleged. The petition shall be verified by the petitioner, shall set forth the name and address of the juvenile's parents, guardians or custodians, if known to the petitioner, and shall be filed in the circuit court in the county where the alleged status offense or act of delinquency occurred. However, a proceeding under this chapter may be removed, for good cause shown, in accordance with section one, article nine, chapter fifty-six of this code. The petition shall contain specific allegations of the conduct and facts upon which the petition is based, including the approximate time and place of the alleged conduct; a statement of the right to have counsel appointed and consult with counsel at every stage of the proceedings; and the relief sought.

(2) Upon the filing of the petition, the court shall set a time and place for a preliminary hearing and may appoint counsel. A copy of the petition and summons may be served upon the respondent juvenile by first class mail or personal service of process. If a juvenile does not appear in response to a summons served by mail, no further proceeding may be held until the juvenile is served a copy of the petition and summons by personal service of process. If a juvenile fails to appear in response to a summons served in person upon him or her, an order of arrest may be issued by the court for that reason alone.

(b) The parents, guardians or custodians shall be named in the petition as respondents and shall be served with notice of the proceedings in the same manner as provided in subsection (a) of this section for service upon the juvenile and required to appear with the juvenile at the time and place set for the proceedings unless the respondent cannot be found after diligent search. If a respondent cannot be found after diligent search, the court may proceed without further requirement of notice. However, the court may order service by first class mail to the last known address of the respondent. The respondent shall be afforded fifteen days after the date of mailing to appear or answer.

(c) The court or referee may order the issuance of a subpoena against the person having custody and control of the juvenile ordering him or her to bring the juvenile before the court.

(d) When any case of a juvenile charged with the commission of a crime is certified or transferred to the circuit court, the court shall forthwith cause the juvenile and his or her parents, guardians or custodians to be served with a petition as provided in subsections (a) and (b) of this section. In the event the juvenile is in custody, the petition shall be served upon the juvenile within ninety-six hours of the time custody began and if the petition is not served within that time, the juvenile shall be released forthwith.

(e) The clerk of the court shall notify, within two judicial days, the local office of the Department of Human Services of all proceedings under this article, which is responsible for convening and directing the multidisciplinary treatment planning process in accordance with

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section four hundred six of this article. In status offense or delinquency cases where a case manager has not been assigned, the juvenile probation officer is responsible for notifying the local office of the Department of Human Services which will assign a case manager who will initiate assessment and be responsible for convening and directing the multidisciplinary treatment planning process.

(f) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to §48-27-403 of this code 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 and that results in the issuance of an emergency protective order naming a juvenile as the respondent, shall be treated as a petition authorized by this section, alleging the juvenile is a juvenile delinquent. However, the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within twenty-four hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with subsection (a) of this section within two judicial days.

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§49-4-705. Taking a juvenile into custody; requirements; existing conditions; detention centers; medical aid.

(a) In proceedings formally instituted by the filing of a juvenile petition, the circuit court or a magistrate may issue an order directing that a juvenile be taken into custody before adjudication only upon a showing of probable cause to believe that one of the following conditions exists: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health, safety and welfare of the juvenile demand custody; (3) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; or (4) the juvenile is alleged to be a juvenile delinquent with a record of willful failure to appear at juvenile proceedings and custody is necessary to assure his or her presence before the court. A detention hearing pursuant to section seven hundred six of this article shall be held by the judge or magistrate authorized to conduct the hearings without unnecessary delay and in no event may any delay exceed the next day.

(b) Absent a court order, a juvenile may be taken into custody by a law-enforcement official only if one of the following conditions exists:

(1) Grounds exist for the arrest of an adult in identical circumstances;

(2) Emergency conditions exist which, in the judgment of the officer, pose imminent danger to the health, safety and welfare of the juvenile;

(3) The official has reasonable grounds to believe that the juvenile has left the care of his or her parents, guardian or custodian without the consent of the person and the health, safety and welfare of the juvenile is endangered;

(4) The juvenile is a fugitive from a lawful custody or commitment order of a juvenile court;

(5) The official has reasonable grounds to believe the juvenile to have been driving a motor vehicle with any amount of alcohol in his or her blood; or

(6) The juvenile is the named respondent in an emergency domestic violence protective order issued pursuant to section four hundred three, article twenty-seven, chapter forty-eight of this code and the individual filing the petition for the emergency protective order is the juvenile's parent, guardian or custodian or other person with whom the juvenile resides.

(c) Upon taking a juvenile into custody, with or without a court order, the official shall:

(1) Immediately notify the juvenile's parent, guardian, custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

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(B) No responsible adult can be found into whose custody the juvenile can be delivered. Each day the juvenile is detained, a written record must be made of all attempts to locate a responsible adult; or

(C) The juvenile has been taken into custody for an alleged act of delinquency for which secure detention is permissible.

(3) If the juvenile is an alleged status offender or has been taken into custody pursuant to subdivision (6), subsection (b) of this section, immediately notify the Department of Human Services and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the official may detain the juvenile, but only in a nonsecure or staff-secure facility;

(4) Take the juvenile without unnecessary delay before a judge of the circuit court for a detention hearing pursuant to section seven hundred six of this article. If a circuit court judge is not available in the county, the official shall take the juvenile without unnecessary delay before any magistrate available in the county for the sole purpose of conducting the detention hearing. In no event may any delay in presenting the juvenile for a detention hearing exceed the next day after he or she is taken into custody.

(d) In the event that a juvenile is delivered into the custody of a sheriff or director of a detention facility, the sheriff or director shall immediately notify the sheriff or director shall immediately provide to every juvenile who is delivered into his or her custody a written statement explaining the juvenile's right to a prompt detention hearing, his or her right to counsel, including appointed counsel if he or she cannot afford counsel, and his or her privilege against self-incrimination. In all cases when a juvenile is delivered into a sheriff's or detention center director's custody, that official shall release the juvenile to his or her parent, guardian or custodian by the end of the next day unless the juvenile has been placed in detention after a hearing conducted pursuant to section seven hundred six of this article.

(e) The law-enforcement agency that takes a juvenile into custody or places a juvenile under arrest is responsible for the juvenile's initial transportation to a juvenile detention center or other Division of Juvenile Services' residential facility.

(f) Notwithstanding any other provision of this code, a juvenile detention center, or other Division of Juvenile Services' residential facility, is not required to accept a juvenile if the juvenile appears to be in need of medical attention of a degree necessitating treatment by a physician. If a juvenile is refused pursuant to this subsection, the juvenile detention center, or other Division of Juvenile Services' residential facility, may not subsequently accept the juvenile for detention until the arresting or transporting officer provides the juvenile detention center, or other Division of Juvenile Services' residential facility, with a written clearance from a licensed physician reflecting that the juvenile has been examined and, if necessary, treated and which states that in the physician's medical opinion the juvenile can be safely confined in the juvenile detention center or other Division of Juvenile Services' residential facility.

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§49-4-706. Detention hearing; rights of juvenile; notification; counsel; hearings.

(a) The circuit court judge or magistrate shall inform the juvenile of his or her right to remain silent, that any statement may be used against him or her and of his or her right to counsel, and no interrogation may be made without the presence of a parent or counsel. If the juvenile or his or her parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as practicable. The circuit court judge or magistrate shall hear testimony concerning the circumstances for taking the juvenile into custody and the possible need for detention. The sole mandatory issue at the detention hearing is whether the juvenile should be detained pending further court proceedings. The court shall, if the health, safety and welfare of the juvenile will not be endangered thereby, release the juvenile on recognizance to his or her parents, custodians or an appropriate agency; however, if warranted, the court may require bail, except that bail may be denied in any case where bail could be denied if the accused were an adult. The court shall:

(1) Immediately notify the juvenile's parent, guardian or custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

(A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

(B) No responsible adult can be found into whose custody the juvenile can be delivered. However, each day the juvenile is detained, a written record must be made of all attempts to locate a responsible adult; or

(C) The juvenile is charged with an act of delinquency for which secure detention is permissible; and

(3) If the juvenile is an alleged status offender, immediately notify the Department of Human Services, and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the court may order the juvenile detained, but only in a nonsecure or staff-secure facility. Any juvenile detained pursuant to this subdivision shall be placed in the legal custody of the Department of Human Services pending further proceedings by the court.

(b) The circuit court judge or magistrate may, in conjunction with the detention hearing, conduct a preliminary hearing pursuant to section seven hundred and four of this article if all the parties are prepared to proceed and the juvenile has counsel during the hearing.

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§49-4-707. Review of order following detention hearing.

Upon the application of any person in interest or on his or her own motion, a circuit court judge may modify or vacate any order entered in his or her court after a detention hearing and enter the order as to detention, or release from detention, as he or she deems just and proper.

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§49-4-708. Preliminary hearing; counsel; custody; court requirements; preadjudicatory community supervision period.

(a) Following the filing of a juvenile petition, unless a preliminary hearing has previously been held in conjunction with a detention hearing with respect to the same charge contained in the petition, the circuit court judge or magistrate shall hold a preliminary hearing. In the event that the juvenile is being detained, the hearing shall be held within ten days of the time the juvenile is placed in detention unless good cause is shown for a continuance. If no preliminary hearing is held within ten days of the time the juvenile is placed in detention, the juvenile shall be released on recognizance unless the hearing has been continued for good cause. If the judge is in another county in the circuit, the hearing may be conducted in that other county or by video conferencing. Written notice shall be provided to all parties of the availability to participate by videoconferencing. The preliminary hearing may be waived by the juvenile, upon advice of counsel. At the hearing, the circuit court judge or magistrate shall:

(1) If the juvenile is not represented by counsel, inform the juvenile and his or her parents, guardian or custodian or any other person standing in loco parentis to him or her of the juvenile's right to be represented at all stages of proceedings under this article and the right to have counsel appointed;

(2) Appoint counsel by order entered of record, if counsel has not already been retained, or appointed. Counsel must represent the child until he or she is no longer under the jurisdiction of the court;

(3) Determine after hearing if there is probable cause to believe that the juvenile is a status offender or a juvenile delinquent. If probable cause is not found, the juvenile, if in detention, shall be released and the proceedings dismissed. If probable cause is found, the case shall proceed to adjudication. At this hearing or as soon thereafter as is practicable, the date for the adjudicatory hearing shall be set to give the juvenile and the juvenile's parents and attorney at least ten days' notice unless notice is waived by all parties;

(4) In lieu of placing the juvenile in a detention facility, the court may place the juvenile in the temporary legal and/or physical custody of the department. If the juvenile is detained, the detention may not continue longer than thirty days without commencement of the adjudicatory hearing unless good cause for a continuance is shown by either party or, if a jury trial is demanded, no longer than the next regular term of the court. A juvenile who is alleged to be a status offender may not be placed in a secure detention facility; and

(5) Inform the juvenile of the right to demand a jury trial.

(b) The juvenile may move to be allowed a preadjudicatory community supervision period not to exceed one year. If the court is satisfied that the best interest of the juvenile is likely to be served by a preadjudicatory community supervision period, the court may delay the adjudicatory hearing and allow a preadjudicatory community supervision period upon terms

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calculated to serve the rehabilitative needs of the juvenile. At the conclusion of the preadjudicatory community supervision period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise, the court shall proceed to the adjudicatory stage. A motion for a pre-adjudicatory community supervision period, may not be construed as an admission or be used as evidence. Preadjudicatory community supervision periods authorized by this subsection may be, in the court's discretion, either custodial or noncustodial.

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§49-4-709. Right to jury trial for juveniles; inapplicability.

(a) In a proceeding under this article, the juvenile, the juvenile's counsel or the juvenile's parent or guardian may demand, or the judge on his or her own motion may order a jury trial on any question of fact, in which the juvenile is accused of any act or acts of delinquency which, if committed by an adult would expose the adult to incarceration.

(b) A juvenile who is charged with a status offense or other offense where incarceration is not a possibility due either to the statutory penalty or where the court rules pretrial that a sentence of incarceration will not be imposed upon adjudication is not entitled to a trial by jury.

(c) This section is inapplicable to proceedings held pursuant to section seven hundred sixteen of this article.

(d) Juries consist of twelve members.

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§49-4-710. Waiver and transfer of jurisdiction.

(a) Upon written motion of the prosecuting attorney filed at least eight days prior to the adjudicatory hearing and with reasonable notice to the juvenile, his or her counsel, and his or her parents, guardians or custodians, the court shall conduct a hearing to determine if juvenile jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of the court. Any motion filed in accordance with this section is to state, with particularity, the grounds for the requested transfer, including the grounds relied upon as set forth in subsection (d), (e), (f) or (g) of this section, and the burden is upon the state to establish the grounds by clear and convincing evidence. Any hearing held under this section is to be held within seven days of the filing of the motion for transfer unless it is continued for good cause.

(b) No inquiry relative to admission or denial of the allegations of the charge or the demand for jury trial may be made by or before the court until the court has determined whether the proceeding is to be transferred to criminal jurisdiction.

(c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a juvenile who has attained the age of fourteen years makes a demand on the record to be transferred to the criminal jurisdiction of the court. The case may then be referred to magistrate or circuit court for further proceedings, subject to the court's jurisdiction.

(d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The juvenile is at least fourteen years of age and has committed the crime of treason under section one, article one, chapter sixty-one of this code; the crime of murder under sections one, two and three, article two of that chapter; the crime of robbery involving the use or presenting of firearms or other deadly weapons under section twelve, article two of that chapter; the crime of kidnapping under section fourteen-a of article two of that chapter; the crime of first degree arson under section one, article three of that chapter; or the crime of sexual assault in the first degree under section three, article eight-b of that chapter;

(2) The juvenile is at least fourteen years of age and has committed an offense of violence to the person which would be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged delinquent for the commission of an offense of violence to the person which would be a felony if the juvenile was an adult; or

(3) The juvenile is at least fourteen years of age and has committed an offense which would be a felony if the juvenile was an adult. However, the juvenile has been twice previously adjudged delinquent for the commission of an offense which would be a felony if the juvenile was an adult.

(e) The court may transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (1),

subsection (d) of this section, but who is younger than fourteen years of age.

(f) The court may, upon consideration of the juvenile's mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (2) or (3), subsection (d) of this section, but who is younger than fourteen years of age.

(g) The court may, upon consideration of the juvenile's mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The juvenile, who is at least fourteen years of age, has committed an offense of violence to a person which would be a felony if the juvenile was an adult;

(2) The juvenile, who is at least fourteen years of age, has committed an offense which would be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged delinquent for the commission of a crime which would be a felony if the juvenile was an adult;

(3) The juvenile, who is at least fourteen years of age, used or presented a firearm or other deadly weapon during the commission of a felony; or

(4) The juvenile has committed a violation of section four hundred one, article four, chapter sixty-a of this code which would be a felony if the juvenile was an adult involving the manufacture, delivery or possession with the intent to deliver a narcotic drug. For purposes of this subdivision, the term narcotic drug has the same definition as that set forth in section one hundred one, article one of that chapter;

(5) The juvenile has committed the crime of second degree arson as defined in section two, article three, chapter sixty-one of this code involving setting fire to or burning a public building or church. For purposes of this subdivision, the term public building means a building or structure of any nature owned, leased or occupied by this state, a political subdivision of this state or a county board of education and used at the time of the alleged offense for public purposes. For purposes of this subdivision, the term church means a building or structure of any nature owned, leased or occupied by a church, religious sect, society or denomination and used at the time of the alleged offense for religious worship or other religious or benevolent purpose, or as a residence of a minister or other member of clergy.

(h) For purposes of this section, the term offense of violence means an offense which involves the use or threatened use of physical force against a person.

(i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal

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jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its decision is based or shall incorporate findings of fact and conclusions of law in its order directing transfer.

(j) A juvenile who has been transferred to criminal jurisdiction pursuant to subsection (e), (f) or (g) of this section, by an order of transfer, has the right to either directly appeal an order of transfer to the supreme court of appeals or to appeal the order of transfer following a conviction of the offense of transfer. If the juvenile exercises the right to a direct appeal from an order of transfer, the notice of intent to appeal and a request for transcript is to be filed within ten days from the date of the entry of any order of transfer, and the petition for appeal is to be presented to the Supreme Court of Appeals within forty-five days from the entry of the order of transfer. Article five, chapter fifty-eight of this code pertaining to the appeals of judgments in civil actions applies to appeals under this chapter except as modified in this section. The court may, within forty-five days of the entry of the order of transfer, by appropriate order, extend and reextend the period in which to file the petition for appeal for additional time, not to exceed a total extension of sixty days, as in the court's opinion may be necessary for preparation of the transcript. However, the request for a transcript was made by the party seeking appeal within ten days of entry of the order of transfer. In the event any notice of intent to appeal and request for transcript be timely filed, proceedings in criminal court are to be stayed upon motion of the defendant pending final action of the Supreme Court of Appeals.

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§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand silent, in which event the court shall enter a general denial of all allegations in the petition.

(1) If the respondent juvenile admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds: (A) The respondent fully understands all of his or her rights under this article; (B) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication; and (C) the respondent in his or her admission has not set forth facts which constitute a defense to the allegations.

(2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

(3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition pursuant to §49-4-704 of this code. The court shall receive and consider the results of the needs assessment, as defined in §49-1-206 of this code, prior to or at the disposition.

(4) If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing evidence, the court shall consider the results of the needs assessment, as defined in §49-1-206 of this code, prior to or at the disposition and refer the juvenile to the Department of Human Services for services, pursuant to §49-4-712 of this code, and order the department to report back to the court with regard to the juvenile's progress at least every 90 days or until the court, upon motion or sua sponte, orders further disposition under §49-4-712 of this code or dismisses the case from its docket: *Provided*, That in a judicial circuit operating a truancy program, a circuit judge may, in lieu of referring truant juveniles to the department, order that the juveniles be supervised by his or her probation office: *Provided, however*, That a circuit judge may also refer a truant juvenile to a truancy diversion specialist.

(5) If the allegations in a petition are not sustained by evidence as provided in §49-4-711(c) and §49-4-711(d) of this code, the petition shall be dismissed and the juvenile shall be discharged if he or she is in custody.

(6) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court. The record shall include the treatment and rehabilitation plan the court has adopted after recommendation by the multidisciplinary team as provided for in §49-4-406 of this code.

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§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders or juvenile found incompetent to stand trial; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders or a juvenile found incompetent to stand trial in a Bureau of Juvenile Services facility.

(a) Services provided by the department to juveniles adjudicated as status offenders shall be consistent with §49-2-1001 *et seq*. of this code. Services provided by the department for juveniles adjudicated as status offenders pursuant to §49-4-711 of this code and juveniles found to be incompetent to proceed and in need of services pursuant to §49-4-734(b)(2) of this code shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians, or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the juvenile and his or her family.

(b) If the juvenile, or his or her parent, guardian, or custodian, fails to comply with the services provided in subsection (a) of this section, the department may petition the circuit court:

(1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

(2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile adjudicated as a status offender may not be placed in an out-of-home placement, excluding placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or probation for the current matter: *Provided*, *however*, That if the court finds by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member, or the public and continued placement in the home is contrary to the best interests of the juvenile, the juvenile may be ordered to an out-of-home placement: *Provided further*, That the court finds the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that such reasonable efforts are not required due to an emergent situation.

(c) In ordering any further disposition under this section, the court is not limited to the relief sought in the department's petition and shall make reasonable efforts to prevent removal of the juvenile from his or her home or, as an alternative, to place the juvenile in a community-based facility which is the least restrictive alternative appropriate to the needs of the juvenile and the community. The disposition may include reasonable and relevant orders to the parents, guardians, or custodians of the juvenile that are necessary and proper to effectuate the disposition.

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(d) (1) If the court finds that placement in a residential facility is necessary to provide the services under subsection (a) of this section, except as prohibited by subdivision (2), subsection (b) of this section, the court shall make findings of fact as to the necessity of this placement, stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

(2) The findings of fact shall include the factors that indicate:

(A) The likely effectiveness of placement in a residential facility for the juvenile; and

(B) The community services which were previously attempted.

(e) The disposition of the juvenile may not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than mandatory referral to the department for services is subject to appeal to the Supreme Court of Appeals.

(f) Following any further disposition by the court, the court shall inquire of the juvenile whether or not appeal is desired and the response shall be transcribed; a negative response may not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel if it is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(g) A juvenile adjudicated solely as a status offender or a juvenile found to be incompetent to proceed may not be placed in a Bureau of Juvenile Services facility.

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§49-4-713. Graduated penalties for juvenile alcohol consumption; fines; community service; revocation of driver's license.

(a) Notwithstanding any provision of this article to the contrary, in addition to any other penalty available to the court, any child who is adjudicated to have consumed alcoholic liquor or nonintoxicating beer as defined in section five, article one, chapter sixty of this code, shall:

(1) Upon a first adjudication, he or she shall be ordered to perform community service for not more than eight hours or fined not more than $25, or both performing community service and fined.

(2) Upon a second adjudication, he or she shall be ordered to perform community service for not more than sixteen hours or fined not more than $50, or both performing community service and fined.

(3) Upon a third or subsequent adjudication, he or she shall be ordered to perform not more than twenty-four hours of community service or fined not more than $100, or both performing community service and fined.

(b) In addition to the penalties set forth in subsection (a) of this section and notwithstanding the provisions of subdivision (4), subsection (a), section seven hundred fifteen of this article, any child adjudicated a second time for consumption of alcoholic liquor or nonintoxicating beer shall have his or her license to operate a motor vehicle suspended for a definite term of not less than five nor more than ninety days. Any child adjudicated a third or subsequent time for consumption of an alcoholic liquor or nonintoxicating beer shall have his or her license to operate a motor vehicle suspended until he or she attains the age of eighteen years.

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§49-4-714. Disposition of juvenile delinquents; appeal.

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the juvenile shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order the use of a standardized screener, as defined in §49-1-206 of this code or, if additional information is necessary, a psychological examination of the juvenile. The report of an examination and other investigative and social reports shall not be relied upon the court in making a determination of adjudication. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than 72 hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall receive and consider the results of a needs assessment, as defined in §49-1-206 of this code, and shall conduct the disposition, giving all parties an opportunity to be heard. The disposition may include reasonable and relevant orders to the parents, custodians or guardians of the juvenile as is necessary and proper to effectuate the disposition. At disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the juvenile and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established pursuant to §22-15A-3 of this code or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 et

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seq. of this code and guidelines promulgated by the Supreme Court of Appeals;

(5) (A) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency, the court may commit the juvenile to the custody of the Director of the Division of Corrections and Rehabilitation for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider alternative sentencing arrangements.

(B) Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile's best interests or required by the public welfare to place the juvenile in the custody of the Division of Corrections and Rehabilitation, the court shall provide the Division of Corrections and Rehabilitation with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations, needs assessment results, medical reports and evaluations or any other such records as may be in the court's possession as would enable the Division of Corrections and Rehabilitation to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender.

(C) Commitments may not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable term of confinement to be served in a juvenile correctional facility shall take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in §27-5-4(c) and §27-5-4(d) of this code, commit the juvenile to a mental health facility in accordance with the juvenile's treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible.

The court shall make all reasonable efforts to place the juvenile in the least restrictive alternative appropriate to the needs of the juvenile and the community: Provided, That a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-home placement within the Division of Corrections and Rehabilitation or the department if that juvenile has no prior adjudications as either a status offender or as a delinquent, or no prior dispositions to a pre-adjudicatory improvement period or probation for the current matter, excluding placements made for abuse or neglect: Provided, however, That if the court finds by clear and convincing evidence that there is a significant and likely risk of harm, as determined by a needs assessment, to the juvenile, a family member or the

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public and that continued placement in the home is contrary to the best interest of the juvenile, such juvenile may be ordered to an out-of-home placement: Provided further, That the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

(d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any disposition is subject to appeal to the Supreme Court of Appeals.

(e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(f) Following a disposition under §49-4-714(b)(4), §49-4-714(b)(5), or §49-4-714(b)(6) of this code, the court shall include in the findings of fact the treatment and rehabilitation plan the court has adopted upon recommendation of the multidisciplinary team under §49-4-406 of this code.

(g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing the person as an adult.

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§49-4-715. Authority of the courts to impose additional penalties; public service projects; ineligible to operate a motor vehicle; restitution.

(a) In addition to the methods of disposition provided in section seven hundred fourteen of this article, the court may enter an order imposing one or more of the following penalties, conditions and limitations:

(1) Impose a fine not to exceed $100 upon the child;

(2) Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent, or if the child does not make full restitution, require the custodial parent or parents, as defined in section two, article seven-a, chapter fifty-five, of the child to make partial or full restitution to the victim to the extent the child fails to make full restitution;

(3) Require the child to participate in a public service project under the conditions as the court prescribes, including participation in the litter control program established pursuant to the authority of section three, article fifteen-a, chapter twenty-two of this code; and

(4) When the child is fifteen years of age or younger and has been adjudged delinquent, the court may order that the child is not eligible to be issued a junior probationary operator's license or when the child is between the ages of sixteen and eighteen years and has been adjudged delinquent, the court may order that the child is not eligible to operate a motor vehicle in this state, and any junior or probationary operator's license shall be surrendered to the court. The child's driving privileges shall be suspended for a period not to exceed two years, and the clerk of the court shall notify the Commissioner of the Division of Motor Vehicles of the order.

(b) Nothing may limit the discretion of the court in disposing of a juvenile case. The juvenile may not be denied probation or any other disposition pursuant to this article because the juvenile is financially unable to pay a fine or make restitution or reparation. All penalties, conditions and limitations imposed under this section shall be based upon a consideration by the court of the seriousness of the offense, the child's ability to pay and a program of rehabilitation consistent with the best interests of the child.

(c) Notwithstanding any other provisions of this code to the contrary, in the event a child charged with delinquency under this chapter is transferred to adult jurisdiction and there convicted, the court may nevertheless, in lieu of sentencing the person as an adult, make its disposition in accordance with this section.

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§49-4-716. Teen court program; alternative; suitability; unsuccessful cooperation; requirements; fees.

(a) Notwithstanding any provision of this article to the contrary, any county or municipality may choose to institute a teen court program in accordance with this section.

(b) A juvenile may be given the option of proceeding in a teen court program as an alternative to the filing of a formal proceeding pursuant to section seven hundred four or section seven hundred fourteen of this article if:

(1) The juvenile is alleged to have committed a status offense or an act of delinquency that would be a misdemeanor if committed by an adult;

(2) The juvenile is alleged to have violated a municipal ordinance over which municipal court and state court have concurrent jurisdiction; or

(3) The juvenile is otherwise subject to the provisions of this article.

(c) If the circuit court or municipal court finds that the offender is a suitable candidate for the teen court program, it may extend the option to enter the program as an alternative procedure. A juvenile may not enter the teen court program unless he or she and his or her parent or guardian consent to participating in the program.

(d) Any juvenile who does not successfully cooperate in, and complete, the teen court program and any disposition imposed during the juvenile's participation shall be returned to the circuit court for further disposition as provided by section seven hundred twelve or seven hundred fourteen of this article, as the case may be, or returned to the municipal court for further disposition for cases originating in municipal court consistent with any applicable ordinance.

(e) The following provisions apply to all teen court programs:

(1) The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia State Bar, who serves on a voluntary basis.

(2) Any juvenile who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.

(3) Volunteer students from grades seven through twelve of the schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform sixteen to forty hours of community service, the duration and type of which shall be determined by the teen court jury from a standard list of available community service programs provided by the county juvenile probation system and a standard list of alternative

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consequences that are consistent with the purposes of this article. The performance of the juvenile shall be monitored by the county juvenile probation system for cases originating in the circuit court's jurisdiction, or municipal teen court coordinator or other designee for cases originating in the municipal court's jurisdiction. The juvenile shall also perform at least two sessions of teen court jury service and, if considered appropriate by the circuit court judge or teen court judge, participate in an education program. Nothing in this section may be construed so as to deny availability of the services provided under section seven hundred twelve of this article to juveniles who are otherwise eligible for the service.

(f) The rules for administration, procedure and admission of evidence shall be determined by the chief circuit judge or teen court judge, but in no case may the court require a juvenile to admit the allegation against him or her as a prerequisite to participation in the teen court program. A copy of these rules shall be provided to every teen court participant.

(g) Each county or municipality that operates, or wishes to operate, a teen court program as provided in this section is hereby authorized to adopt a mandatory fee of up to $5 to be assessed as provided in this subsection. Municipal courts may assess a fee pursuant to this section upon authorization by the city council of the municipality. The clerk of the court of conviction shall collect the fees established in this subsection. Assessments collected by the clerk of the court pursuant to this subsection shall be deposited into an account specifically for the operation and administration of the municipal teen court program. Assessments collected by the clerk of the circuit court or magistrate court pursuant to this subsection shall be remitted monthly to the sheriff for deposit into an account specifically for the operation and administration of the county teen court program.

(h) Any mandatory fee established by a county commission or city council in accordance with this subsection shall be paid by the defendant on a judgment of guilty or a plea of nolo contendere for each violation committed in the county or municipality of any felony, misdemeanor or any local ordinance, including traffic violations and moving violations but excluding municipal parking ordinances. Municipalities operating teen courts are authorized to use fees assessed in municipal court pursuant to this subsection for operation of a teen court in their municipality.

WV Legislature

§49-4-717. Sexting educational diversion program; requirements.

(a) Before a juvenile petition is filed for activity proscribed by article eight-a or eight-c, chapter sixty-one of this code, or after probable cause has been found to believe a juvenile has committee a violation thereof, but before an adjudicatory hearing on the petition, the court or a prosecuting attorney may direct or allow a minor who engaged in the activity to participate in an educational diversion program which meets the requirements of subsection (b) of this section. The prosecutor or court may refer the minor to the educational diversion program, as part of a prepetition intervention pursuant to section seven hundred two of this article.

(b) The West Virginia Supreme Court of Appeals may develop an educational diversion program for minors who are accused of activity proscribed by article eight-a or eight-c, chapter sixty-one of this code. As a part of any specialized educational diversion program so developed, the following issues and topics should be included:

(1) The legal consequences of and penalties for sharing sexually suggestive or explicit materials, including applicable federal and state statutes;

(2) The nonlegal consequences of sharing sexually suggestive or explicit materials including, but not limited to, the effect on relationships, loss of educational and employment opportunities, and being barred or removed from school programs and extracurricular activities;

(3) How the unique characteristics of cyberspace and the Internet, including searchability, replicability and an infinite audience, can produce long-term and unforeseen consequences for sharing sexually suggestive or explicit materials; and

(4) The connection between bullying and cyber-bullying and minors sharing sexually suggestive or explicit materials.

(c) Once a specialized educational diversion program is established by the West Virginia Supreme Court of Appeals consistent with this section, the minor's successful completion of the educational diversion program shall be duly considered by the prosecutor or the court in their respective decisions to either abstain from filing the juvenile petition or to dismiss the juvenile petition, as follows:

(1) If the minor has not previously been judicially determined to be delinquent, and the minor's activities represent a first offense for a violation of section three-b, article eight-c, chapter sixty-one of this code, the minor is not subject to the requirements of that section, as long as he or she successfully completes the educational diversion program; and

(2) If the minor commits a second or subsequent violation of article eight-a or eight-c, chapter sixty-one of this code, the minor's successful completion of the educational diversion program may be considered as a factor to be considered by the prosecutor and court in

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deciding to not file a petition or to dismiss a petition, upon successful completion of an improvement plan established by the court.

WV Legislature

§49-4-718. Modification of dispositional orders; motions; hearings.

(a) A dispositional order of the court may be modified:

(1) Upon the motion of the probation officer, a department official, the director of the Division of Juvenile Services or prosecuting attorney; or

(2) Upon the request of the juvenile or a juvenile's parent, guardian or custodian who alleges a change of circumstances relating to disposition of the juvenile.

(b) Upon such a motion or request, the court shall conduct a review hearing, except that if the last dispositional order was within the previous six months, the court may deny a request for review. Notice in writing of a review hearing shall be given to the juvenile, the juvenile's parent, guardian or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the juvenile, the juvenile's parent or custodian, the juvenile's case worker and other persons providing assistance to the juvenile or juvenile's family. If the motion or request for review of disposition is based upon an alleged violation of a court order, the court may modify the disposition order and impose a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the absence of such evidence, the court may decline to modify the dispositional order or may modify the order and impose one of the less restrictive alternatives set forth in section seven hundred twelve of this article. A juvenile may not be required to seek a modification order as provided in this section in order to exercise his or her right to seek relief by habeas corpus.

(c) In a hearing for modification of a dispositional order, or in any other dispositional hearing, the court shall consider the best interests of the child and the welfare of the public.

(d)(1) For dispositional orders that include probation, the juvenile's probation officer shall submit an overview to the court of the juvenile's compliance with the conditions of probation and goals of his or her case plan every ninety days.

(2) If the juvenile is compliant and no longer in need of probation supervision, the probation officer shall submit a recommendation for discharge from probation supervision. If the court determines that early termination of the probation term is warranted, it may issue an order discharging the juvenile from probation without conducting a review hearing.

(3) If the juvenile is not compliant with the conditions or has not met his or her goals, the probation officer shall include an accompanying recommendation to the court with additional or changed conditions or goals necessary to achieve compliance. If the court determines that changes to the conditions of probation are warranted, the court shall conduct a review hearing in accordance with subsection (b) of this section.

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§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties; powers.

(a)(1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may not be related by blood or marriage to the appointing judge.

(2) The salary for juvenile probation officers and clerical assistants shall be determined and fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules. The county commission of each county shall provide adequate office facilities for juvenile probation officers and their staff. All equipment and supplies required by juvenile probation officers and their staff shall be provided by the Supreme Court of Appeals.

(b) In recognition of the duties of their employment supervising confinement and supervised release, and the inherent arrest powers for violation of the same which constitute law enforcement, state juvenile probation officers are determined to be qualified law-enforcement officers as that term is used in 18 U.S.C. § 926B.

(c) Any state juvenile probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. § 926B if the following criteria are met:

(1) The Supreme Court of Appeals has a written policy authorizing a state juvenile probation officer to carry a concealed firearm for self-defense purposes;

(2) There shall be in place in the Supreme Court of Appeals a requirement that state juvenile probation officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff’s deputies by the Law-Enforcement Professional Standards Program; and

(3) The Supreme Court of Appeals issues a photographic identification and certification card which identify the state juvenile probation officers as law-enforcement employees as that term is contemplated by 18 U.S.C. § 926B.

(d) Any policy instituted pursuant to this subsection includes provisions which:

(1) Preclude or remove a person from participation in the concealed firearm program;

(2) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;

(3) Prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

WV Legislature

(e) Any state juvenile probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(f) It is the intent of the Legislature in enacting the amendments to this section during the 2022, regular session of the Legislature to authorize state juvenile probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. § 926B.

(g) The privileges authorized by the amendments to this section enacted during the 2022, regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

(h)The clerk of a court shall notify, if practicable, the chief probation officer of the county, or his or her designee, when a juvenile is brought before the court or judge for proceedings under this article. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or she or one of his or her assistants shall:

(1) Make investigation of the case; and

(2) Furnish information and assistance that the court or judge may require.

(i) (1) The Supreme Court of Appeals may develop a system of community-based juvenile probation sanctions and incentives to be used by probation officers in response to violations of terms and conditions of probation and to award incentives for positive behavior.

(2) The community-based juvenile probation sanctions and incentives may consist of a continuum of responses from the least restrictive to the most restrictive, designed to respond swiftly, proportionally, and consistently to violations of the terms and conditions of probation and to reward compliance therewith.

(3) The purpose of community-based juvenile probation sanctions and incentives is to reduce the amount of resources and time spent by the court addressing probation violations, to reduce the likelihood of a new status or delinquent act, and to encourage and reward positive behavior by the juvenile on probation prior to any attempt to place a juvenile in an out-of-home placement.

WV Legislature

§49-4-720. Prohibition on committing juveniles to adult facilities.

(a) A juvenile, including one who has been transferred to criminal jurisdiction of the court, may not be detained or confined in any institution in which he or she has contact with or comes within sight or sound of any adult persons incarcerated because he or she has have been convicted of a crime or are awaiting trial on criminal charges or with the security staff (including management) or direct-care staff of a jail or locked facility for adults.

(b) A child who has been convicted or is awaiting trial of an offense under the adult jurisdiction of the circuit court may not be held in custody in an adult correctional facility of this state while under the age of 18 years. The Division of Juvenile Services shall notify the sentencing court and copy the county prosecuting attorney of the sentencing court within 180 days, or as soon as practicable, that the child will be turning 18 years of age. The court shall, upon receipt of the notice, set the matter for a hearing. Before the child reaches 18 years of age, the court shall hold a hearing and enter an order transferring the offender to an adult correctional facility, a facility for youthful offenders, if applicable: or any other disposition the court considers appropriate, which does not violate the provisions of subsection (a) of this section: Provided, however, That the court may not remand a person who reached the age of 18 years to a juvenile facility or place the person with other juveniles.

(c) The provisions of §61-11A-1 et seq. of this code, are applicable to proceedings under this section.

WV Legislature

§49-4-721. Rules governing juvenile facilities; rights of juveniles.

(a) The Director of the Division of Juvenile Services within the Department of Military Affairs and Public Safety shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, outlining policies and procedures governing the operation of those correctional, detention, predispositional detention centers and other facilities wherein juveniles may be housed. These policies and procedures shall include, but are not limited to, standards of cleanliness, temperature and lighting; availability of medical and dental care; provision of food, furnishings, clothing and toilet articles; supervision; procedures for enforcing rules of conduct consistent with due process of law; and visitation privileges. A juvenile in custody or detention has, at a minimum, the following rights, and the policies prescribed ensuring that:

(1) A juvenile may not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or imposition of solitary confinement;

(2) A juvenile shall be afforded an opportunity to participate in physical exercise each day;

(3) Except for sleeping hours, a juvenile in a state facility may not be locked alone in a room unless that juvenile is not amenable to reasonable direction and control;

(4) A juvenile shall be provided with his or her own clothing or individualized clothing which is clean and supplied by the facility, and shall also be afforded daily access to showers;

(5) A juvenile shall be afforded constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the juvenile's presence, without being read, to inspect for contraband;

(6) A juvenile may make and receive regular local phone calls without charge and long distance calls to his or her family without charge at least once a week, and receive visitors daily and on a regular basis;

(7) A juvenile shall be afforded immediate access to medical care as needed;

(8) A juvenile in a juvenile detention facility or juvenile corrections facility shall be provided access to education, including teaching, educational materials and books;

(9) A juvenile shall be afforded reasonable access to an attorney upon request; and

(10) A juvenile shall be afforded a grievance procedure, including an appeal mechanism.

(b) Upon admission to a detention facility or juvenile corrections facility, a juvenile shall be furnished with a copy of the rights provided him or her by virtue of this section and as further prescribed by rules proposed and promulgated pursuant to this section.

WV Legislature

§49-4-722. Conviction for offense while in custody.

(a) Notwithstanding any other provision of law to the contrary, any person who is 18 years of age or older who is convicted as an adult of an offense that he or she committed while in the custody of the Bureau of Juvenile Services and who is sentenced for the conviction to a regional jail or state correctional facility for the offense may not be returned to the custody of the Bureau upon the completion of his or her adult sentence.

(b) Whenever a person of 18 years of age or older is charged with an offense while in the custody of the Bureau of Juvenile Services, the Bureau shall provide notice of the person's custodial status to the court in which the charge is pending and provide notice of the pending charge to the circuit court having juvenile jurisdiction over the person.

(c) At least 10 days prior to the sentencing on a criminal charge referred to in subsection (b) of this section, the sentencing court shall provide written notice of the sentencing hearing to the Commissioner of the Division of Corrections and Rehabilitation and to the circuit court having juvenile jurisdiction over the person. The person may not be released from custody until the sentencing court has received notice from the circuit court having juvenile jurisdiction over the person that it has held the hearing required by subsection (d) of this section.

(d) Prior to completion of the adult sentence referenced in subsection (c) of this section, the circuit court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine whether the person who has turned 18 years of age shall remain in the regional jail during pendency of the underlying juvenile matter or if another disposition or pretrial placement is appropriate and available: Provided, That the court may not remand a child who reached the age of 18 years to a juvenile facility or placement during the pendency of the underlying juvenile matter.

(e) Notwithstanding the provisions of §15A-3-12(i) of this code, the Commissioner of the Division of Corrections and Rehabilitation is authorized to designate a unit in one or more institutions, either juvenile facilities, jails, or prisons, under his or her management to house adults remaining under the juvenile jurisdiction of the circuit court to ensure that such persons are not within sight or sound of adult inmates.

WV Legislature

§49-4-723. Discrimination prohibited; penalties; damages.

(a) No individual, firm, corporation or other entity may discriminate against any person in any manner due to that person's prior involvement in a proceeding under this article if that person's records have been expunged pursuant to this article. This includes, but is not limited to, discrimination relating to employment, housing, education, obtaining credit, and contractual rights.

(b) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail for not more than six months, or both fined and confined. Additionally, a person who violates this section is liable to the person who has been discriminated against for damages in the amount of $300 or the actual amount of damages, whichever is greater.

WV Legislature

§49-4-724. Standardized assessments.

(a) The Supreme Court of Appeals is requested to adopt a risk and needs assessment to be used for adjudicated delinquents, detained and delivered to, or committed to the custody of the Commissioner of Corrections and Rehabilitation. A validation study of the risk and needs assessment may be conducted at least every three years to ensure that the risk and needs assessment is predictive of the risk of reoffending.

(b) Each juvenile adjudicated for a delinquency offense and committed or detained with the Division of Corrections and Rehabilitation in accordance with §49-4-714(b)(5)(A) of this code shall undergo a risk and needs assessment prior to disposition to identify specific factors that predict a juvenile's likelihood of reoffending and, when appropriately addressed, may reduce the likelihood of reoffending. The risk and needs assessment may be conducted by a division worker trained to conduct the risk and needs assessment.

(c) Each multidisciplinary team convened pursuant to §49-4-406(c) of this code shall receive and consider the results of the risk and needs assessment of the juvenile.

(d) The results of the risk and needs assessment shall be provided to the court prior to disposition or at the time of the dispositional hearing.

WV Legislature

§49-4-725. Restorative justice programs.

(a) The court or prosecuting attorney may offer a juvenile, against whom a petition has been filed alleging that the juvenile has committed any of the offenses set forth in subsection (b) of this section, the opportunity to participate in a voluntary restorative justice program, where available, at any time prior to disposition of the case.

(b) A juvenile is eligible to participate in a restorative justice program if the offense that the juvenile is alleged to have committed is:

(1) A status offense;

(2) An offense that would constitute a nonviolent offense if committed by an adult;

(3) An offense that would constitute misdemeanor assault pursuant to §61-2-9(b) of this code if committed by an adult; or

(4) An offense that would constitute misdemeanor battery pursuant to §61-2-9(c) of this code if committed by an adult.

(c) The juvenile or the victim or both may decline and shall not be required to participate in a restorative justice program: *Provided*, That any declination by the juvenile or the victim or both shall not preclude future participation in a restorative justice program during the current proceeding or any subsequent proceeding under this article.

(d) A restorative justice program shall implement measures agreed to by the victim and the juvenile which are designed to provide redress to the victim and community, including, but not limited to, restitution to the victim, restitution to the community, services for the victim, services for the community, or any other reasonable measure intended to provide restitution or services to the victim or the community.

(e) If a juvenile is referred to, and successfully completes, a restorative justice program, including all agreed-to measures pursuant to subsection (d) of this section, the petition against the juvenile shall be dismissed.

(f) No self-incriminating information obtained from the juvenile as the result of a restorative justice program is admissible as evidence against him or her in a subsequent proceeding under this article.

WV Legislature

§49-4-726. Study of juvenile competency issues; requiring and requesting report and proposed legislation; submission to Legislature.

(a) The Secretary of the Department of Human Services and the Secretary of the Department of Military Affairs and Public Safety are directed, and the Juvenile Justice Commission of the Supreme Court of Appeals is requested to undertake a collaborative investigation and evaluation of issues regarding juvenile competency. They shall:

(1) Develop appropriate procedures for determining what actions should be taken when a juvenile is determined to lack substantial capacity to understand the proceedings against him or her brought under §49-4-704 of this code;

(2) Recommend appropriate processes for juveniles to receive restorative services when found to be incompetent; and

(3) Recommend appropriate disposition alternatives for juveniles found to be incompetent and not restorable, including a recommendation as to the location and operation of an appropriate facility to house juveniles determined to be incompetent, nonrestorable, and in need of out-of-home placement.

(b) The secretaries shall issue a joint report of their findings and recommendations, together with draft legislation necessary to effectuate the recommendations, on or before July 31, 2020, to the President of the Senate and the Speaker of the House of Delegates.

(c) The report shall:

(1) Include models from other states considered to be best practices;

(2) Include an estimate of the number of juveniles that may be affected by this procedure and data of trends by other states;

(3) Include an estimate of the cost of providing restorative services and a recommendation of which agency should pay for the services; and

(4) Ensure that any recommended legislation provides that all services be provided in the least restrictive placement for the juvenile and recommend a facility for the housing and treatment of juveniles determined to be incompetent, nonrestorable, and in need of out-of-home placement which can appropriately provide the juvenile with necessary services.

(d) It is the intent of the Legislature in enacting this section to acknowledge the importance of ensuring the constitutionality of juvenile proceedings under §49-4-704 of this code.

WV Legislature

§49-4-727. Juvenile competency proceedings.

(a) Subject to the provisions of subsection (c) of this section, a juvenile's attorney, the prosecuting attorney, or the court may raise the issue of his or her competency to participate in the proceeding any time during proceedings under this article.

(b) In any delinquency proceeding pursuant to this article, a juvenile 13 years of age or older is presumed to be competent. If a juvenile's attorney, the prosecuting attorney, or the court raise the issue of competency, all adjudication or disposition proceedings shall be stayed until the issue of competency is resolved: *Provided*, That the juvenile's attorney, guardian ad litem, or prosecuting attorney may seek, or the court may order, any pre-adjudicatory procedures or case specific alternatives permitted by the Rules of Juvenile Procedure while the issue of competency is pending. A juvenile has the burden of proof to rebut this presumption by showing incompetency by a preponderance of the evidence.

(c) In any delinquency proceeding pursuant to this article, if the juvenile is under 13 years of age, there exists a rebuttable presumption that he or she is incompetent to be adjudicated, unless judicially determined to be competent pursuant to the procedures set forth in §49-4-728 through §49-4-734 of this code: *Provided*, That the juvenile's attorney, guardian ad litem, or prosecuting attorney may seek, or the court may order, any pre-adjudicatory procedures or case specific alternatives permitted by the Rules of Juvenile Procedure or any disposition alternatives set forth in §49-4-734 of this code for a juvenile presumed incompetent. The state has the burden of proof to rebut this presumption by showing competency by a preponderance of the evidence.

(d) Regardless of the age of the juvenile, the court may dismiss the petition without ordering a competency evaluation or competency hearing if the prosecuting attorney, the juvenile's attorney, and the guardian ad litem, if previously appointed, agree that there is compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided*, That a court may not order services authorized by §49-4-733 of this code without a competency evaluation.

(e) If and when the issue of a juvenile's competency is raised under subsection (b) of this section or, a rebuttable presumption of incompetency exists under subsection (c) of this section, the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is requested to establish a training program for persons acting as guardians ad litem in juvenile competency matters.

WV Legislature

§49-4-728. Definitions for juvenile competency proceedings.

As used in §49-4-727 through §49-4-734 of this code:

“Competent” and “competency” refer to whether or not a juvenile has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him or her. A juvenile is incompetent if, due to developmental disability, intellectual disability, or mental illness, the juvenile is presently incapable of understanding the nature and objective of proceedings against him or her or of assisting in his or her defense.

“Competency attainment services” means services provided to a juvenile to assist the juvenile in attaining competency.

“Department” means the Department of Health and Human Resources.

“Developmental disability” means a severe and chronic disability that is attributable to a mental or physical impairment, including, but not limited to, neurological conditions that lead to impairment of general intellectual functioning or adaptive behavior.

“Developmental immaturity” means a condition based on a juvenile’s chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or intellectual disability.

“Intellectual disability” means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical domains.

“Mental illness” means a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion, and physical well-being.

“Proceeding” means any delinquency proceeding under this article.

“Qualified forensic evaluator” means a licensed psychologist or psychiatrist with the necessary education, training, and experience to perform juvenile competency evaluations, and who has been approved to render opinions for the court pursuant to the requirements of §49-4-729 of this code.

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§49-4-729. Motion for determination of competency, time frames, order for evaluation.

(a) When the prosecuting attorney, the juvenile's attorney, or the guardian ad litem has reasonable basis to believe that:

(1) A juvenile age 13 or older is incompetent to proceed in the delinquency action, that party shall file a motion for a determination of competency. The motion shall state any known facts to the movant of in support thereof. If the court raises the issue sua sponte, it shall, by written order, set forth the basis for ordering a competency evaluation.

(2) A juvenile under the age of 13 is competent to proceed in the delinquency action, the prosecuting attorney shall file a motion for determination of competency. The motion shall state the basis to believe the juvenile is competent to proceed despite the presumption of incompetency due to age and shall state any known facts to the prosecuting attorney in support of the motion. If the court raises the issue sua sponte, the court by written order shall set forth the factual basis supporting the finding that the juvenile is competent to proceed.

(b) Within 10 judicial days after a motion is made, the court shall make one of the following determinations regardless of which presumption applies:

(1) Find that there is compelling evidence that the juvenile is not competent to participate in the proceedings and dismiss the case pursuant to §49-4-727(d) of this code;

(2) Without conducting a hearing, find that there exists a reasonable basis to conduct a competency evaluation; or

(3) Schedule a hearing to determine whether there exists a reasonable basis to conduct a competency evaluation. The hearing shall be held within 30 judicial days. The court's determination shall be announced no later than three judicial days after the conclusion of the hearing.

(c) If the court determines there is a reasonable basis to order a competency evaluation pursuant to §49-4-731 of this code, or if the prosecutor and the juvenile's attorney agree to the evaluation, the court shall order a competency evaluation. If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least restrictive environment, taking into account the public safety and the best interests of the juvenile.

(1) Notwithstanding any other provisions of this code, the court shall provide in its order that the qualified forensic evaluator shall have access to all relevant confidential and public records related to the juvenile, including competency evaluations and reports conducted in prior delinquent proceedings. The court shall provide to the qualified forensic evaluator a copy of the petition and the names and contact information for the judge, prosecutor,

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juvenile's attorney, and parents or legal guardians.

(2) Within five judicial days after the court orders an evaluation, the prosecutor shall deliver to the evaluator copies of relevant police reports and other background information relevant to the juvenile that are in the prosecutor's possession.

(3) Within five judicial days after the court orders an evaluation, the juvenile's attorney shall deliver to the qualified forensic evaluator copies of police reports and other records including, but not limited to, educational, medical, psychological, and neurological records that are relevant to the evaluation and that are in the attorney's possession. Upon good cause shown, the court may extend the time frame to deliver these documents noting that time is of the essence.

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§49-4-730. Juvenile competency qualified forensic evaluator; qualifications.

An evaluation ordered by the court shall be conducted by a qualified forensic evaluator.

(1) A qualified forensic evaluator shall have education and training in the following areas:

(A) Forensic evaluation procedures for juveniles, including accepted criteria used in evaluating competency;

(B) Evaluation, diagnosis, and treatment of children and adolescents with developmental disability, developmental immaturity, intellectual disability, or mental illness;

(C) Clinical understanding of child and adolescent development; and

(D) Familiarity with competency standards in this state.

(2) The department shall establish procedures for ensuring the training and qualifications of qualified forensic evaluators. Annually, the department shall provide a list of qualified forensic evaluators to the Administrative Office of the Supreme Court of Appeals of West Virginia.

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§49-4-731. Juvenile competency evaluation.

(a) The qualified forensic evaluator shall file with the court a written competency evaluation report within 30 days after the date of entry of the order requiring the juvenile to be evaluated and appointing the qualified forensic evaluator. For good cause shown, the court may extend the time for filing for a period not to exceed an additional 30 days. The report shall include the evaluator's opinion as to whether or not a juvenile, due to developmental disability, intellectual disability, or mental illness, has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and whether the juvenile has a rational as well as factual understanding of the proceedings against him or her. The report shall not include the evaluator's opinion as to whether the juvenile committed the alleged offense or recite or reference any self-incriminating or inculpatory statements as reported by the juvenile. A self-incrimination or inculpatory statement made by a juvenile during an evaluation or hearing conducted pursuant to this article shall not be admissible on the issue of responsibility or guilt in subsequent court proceedings, including adjudication and disposition or transfer hearings.

(b) A competency evaluation report shall include:

(1) A statement of the procedures used, including psychometric tests administered, records reviewed, and the identity of persons interviewed;

(2) Pertinent background information, including a history of educational performance, psychiatric or psychological history, developmental and family history;

(3) Results of the mental status examination;

(4) A diagnosis, if one has been made, which shall address any psychological or psychiatric conditions or cognitive deficiencies determined to exist; and

(5) An opinion as to the juvenile's developmental maturity or developmental immaturity as it would affect his or her ability to proceed.

(c) If the qualified forensic evaluator determines that the juvenile is not competent to participate in the proceedings, the competency evaluation report shall address the following questions:

(1) Whether the juvenile has a developmental disability, intellectual disability, or mental illness;

(2) Whether the juvenile has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding;

(3) Whether a juvenile has a rational as well as factual understanding of the proceedings against him or her; and

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(4) Whether the juvenile can attain competency in the foreseeable future if provided with a course of treatment, therapy, or training.

(d) If the qualified forensic evaluator determines that the juvenile is incompetent, but that there is a reasonable probability that he or she can attain competency within the periods set forth in §49-4-733(c)(3) of this code, the report shall include the following recommendations:

(1) A recommendation as to the treatment or therapy; and

(2) The least restrictive setting for juvenile competency attainment services consistent with the juvenile's ability to attain competency and the safety of both the juvenile and the public.

(e) The court shall provide a copy of each competency evaluation report it receives to the prosecutor, the juvenile's attorney, and guardian ad litem and may provide a copy upon request to the juvenile's parents or legal guardian.

(f) The department shall pay qualified forensic evaluators for all matters related to conducting a court-ordered competency evaluation. The department shall develop and implement a process for prompt payment of qualified forensic evaluators including a rate schedule. The amount of payment for court-ordered evaluations shall reasonably compensate qualified forensic evaluators for the work performed in a particular case.

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§49-4-732. Hearing to determine juvenile's competency to participate in the proceedings.

(a) Not more than 15 judicial days after receiving the evaluator's report, the court shall conduct a hearing to determine the juvenile's competency to participate in the proceedings. The court may continue the hearing for good cause shown.

(b) The competency evaluation report is admissible as evidence in the competency proceedings. The qualified forensic evaluator may be called as a witness and is subject to cross examination by all parties. If authorized by the court, hearings held pursuant to this section may be conducted by or participated in using teleconference or video conference technology. If the court contacts the qualified forensic evaluator to obtain clarification of the report contents, the court shall promptly inform all parties and allow each party to participate in each contact.

(c) In determining the competency of the juvenile to participate in the proceedings, the court shall consider the content of all competency evaluation reports admitted as evidence. The court may consider additional evidence introduced at the hearing by the prosecuting attorney, the juvenile's attorney, or guardian ad litem.

(d) (1) Except as otherwise provided, the court shall make a written determination as to the juvenile's competency based on a preponderance of the evidence within 10 judicial days after completion of the hearing. The applicable burden of proof shall be as set forth in §49-4-727 of this code.

(2) The court shall not find a juvenile competent to proceed solely because the juvenile is receiving or has received in-patient treatment or is receiving or has received psychotropic or other medication, even if the juvenile might become incompetent to proceed without that medication.

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§49-4-733. Procedure after determination of juvenile's competency to participate in the proceedings.

(a) After a hearing pursuant to §49-4-732 of this code, if the court determines by a preponderance of the evidence that the juvenile is competent to proceed despite any presumption that may have applied, the delinquency proceedings shall resume as provided by law.

(b) If the court determines by a preponderance of the evidence that a juvenile is incompetent to proceed, but is likely to attain competency within a reasonable time with services, the court shall stay the proceedings and order the juvenile to receive services designated to assist the juvenile in attaining competency, based upon the recommendations in the competency evaluation report, unless the court makes specific findings that the recommended services are not justified. The court shall order the juvenile's parent or legal guardian to contact a court-designated provider by a specified date to arrange for services.

(1) The competency attainment services provided to a juvenile shall be based on the recommendations contained in the qualified forensic evaluator's report described in §49-4-731(d) of this code, and are subject to the conditions and time periods required pursuant to this section measured from the date the court approves the plan.

(2) The court shall order that the competency attainment services ordered are provided in the least restrictive environment, taking into account the public safety and the best interests of the juvenile. If the juvenile has been released on temporary orders and refuses or fails to cooperate with the service provider, the court may modify the orders to require a more appropriate setting for further services. A juvenile may not be placed in a Bureau of Juvenile Services facility to receive competency attainment services. Additionally, a juvenile presumed incompetent under §49-4-727(c) of this code shall not be placed in a Bureau of Juvenile Services facility, except in compliance with §49-4-705 and §49-4-706 of this code, and corresponding Rules of Juvenile Procedure as adopted by the Supreme Court of Appeals of West Virginia.

(3) A juvenile shall not be required to participate in competency attainment services for longer than is necessary to attain competency or after the court determines that there is no reasonable likelihood that competency can be attained. The following maximum time limits apply to the participation of a juvenile:

(A) A juvenile charged with an act which would constitute a misdemeanor or nonviolent felony if committed by an adult shall not be required to participate in competency attainment services beyond his or her 19th birthday and there shall be a rebuttable presumption that competency is not attainable if the juvenile has not attained competency after 90 days of services.

(B) A juvenile charged with an act which would constitute a felony crime of violence if committed by an adult shall not be required to participate in competency attainment

services beyond his or her 21st birthday and there shall be a rebuttable presumption that competency is not attainable if the juvenile has not attained competency after 180 days of services.

(4) Not later than 10 judicial days after the court orders competency attainment services, the department shall identify the appropriate entity and location to provide those services.

(5) Within 10 judicial days after the department identifies the appropriate entity and location, the provider responsible for the juvenile's competency attainment services shall commence. The court shall deliver to that provider:

(A) The name and address of the juvenile's counsel;

(B) A copy of the juvenile's petition;

(C) A copy of the competency evaluation report;

(D) The name, address, and phone number of the juvenile's parents or legal guardian;

(E) The name of the department's caseworker, if any; and

(F) Any other relevant documents or reports concerning the juvenile's health that have come to the attention of the court.

(c) The court shall order and conduct review hearings no less often than every 90 days as determined appropriate by the court. The multidisciplinary team shall meet prior to any review hearing and provide a written status report to the court prior to the hearing. Unless sooner ordered by the court, the qualified forensic evaluator shall submit a report to the court prior to any review hearing, and upon completion or termination of services, and shall include the following:

(1) The services provided to the juvenile, including medication, education, and counseling;

(2) The likelihood that the competency of the juvenile to proceed will be restored within the applicable period of time set forth in subdivision (3), subsection (b) of this section; and

(3) The progress made toward the goals and objectives for the restoration of competency identified in the recommendations from the competency evaluation adopted by the court.

(d) The provider responsible for the juvenile's competency attainment services shall report to the court within three judicial days if he or she determines that:

(1) The juvenile is failing to cooperate, and the lack of cooperation is significantly impeding or precluding the attainment of competency; or

(2) The current setting is no longer the least restrictive setting that is consistent with the

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juvenile's ability to attain competency taking into account public safety and the best interests of the juvenile. The provider shall include in the report an assessment of the danger the juvenile poses to himself, herself or others and an assessment of the appropriateness of the placement.

(e) The provider responsible for the juvenile's competency attainment services shall request a subsequent evaluation when the provider has reason to believe:

(1) The juvenile has achieved the goals of the plan and would be able to understand the nature and objectives of the proceedings against him or her, to assist in his or her defense, and to understand and appreciate the consequences that may be imposed or result from the proceedings with or without reasonable accommodations; and

(2) The juvenile will not achieve the goals of the plan within the applicable period of time pursuant to subdivision (3), subsection (b) of this section.

(f) The evaluator shall assess the observation of the provider and provide a written report to the court within 10 days of receiving a report from the provider pursuant to subsection (e) of this section.

(g) The court shall provide copies of any report made by the provider to the prosecuting attorney, the juvenile's attorney, the juvenile's case worker, and the juvenile's guardian ad litem, if any. The court shall provide copies of any reports made by the provider to the juvenile's parents or legal guardians, unless the court finds that doing so is not in the best interest of the juvenile.

(h) Within 15 judicial days after receiving an evaluator's report, the court may hold a hearing to determine if new, additional, or further orders are necessary.

(i) If the court determines that the juvenile is not making progress toward competency or is so uncooperative that attainment services cannot be effective, the court may order a change in setting or services that would help the juvenile attain competency within the relevant period of time as set forth in subdivision (3), subsection (b) of this section.

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§49-4-734. Disposition alternatives for incompetent juveniles.

(a) If the court determines that the juvenile has attained competency, the court shall proceed with the delinquent juvenile's proceeding in accordance with this article.

(b) After a hearing pursuant to §49-4-732 of this code, if the court determines by the preponderance of the evidence that the juvenile is incompetent to proceed and cannot attain competency within the period of time set forth in §49-4-733(b)(3) of this code, the court may dismiss the petition without prejudice, or may take the following actions or any combination thereof the court determines to be in the juvenile's best interest and the interest of protecting the public:

(1) Refer the matter to the department and request a determination on whether a child abuse or neglect petition, pursuant to §49-4-601 *et seq*. of this code, should be filed;

(2) Refer the juvenile to the department for services pursuant to §49-4-712 of this code. Services may include, but are not limited to, referral of the juvenile and his or her parents, guardians, or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, education, or other social services, as appropriate to the needs of the juvenile and his or her family;

(3) Place the juvenile in the custody of his or her parents or other suitable person or private or public institution or agency under terms and conditions as determined to be in the best interests of the juvenile and the public, which conditions may include the provision of out-patient services by any suitable public or private agency; or

(4) Upon motion by the prosecuting attorney, stay the proceeding for no more than 20 days to allow the prosecuting attorney to initiate proceedings for civil commitment pursuant to §27-5-1 *et seq*. of this code if the juvenile has attained majority.

(c) A circuit court may, sua sponte or upon a motion by any party direct that a dangerous assessment be performed prior to directing the resolutions set forth in subsection (b) of this section.

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§49-4-735. Stay of transfer to criminal jurisdiction.

If a juvenile is presumed incompetent under §49-4-727(c) of this code, or if the issue of the juvenile's competency to participate in the proceedings is raised at any time during the proceedings for a juvenile presumed competent under §49-4-727(b) of this code, the procedures outlined in §49-4-727 through §49-4-734 of this code shall be used to determine the juvenile's competency and if appropriate, restore the juvenile's competency regardless of whether the case is to proceed under the court's juvenile jurisdiction or transfer to adult criminal jurisdiction pursuant to §49-4-710 of this code and corresponding Rules of Juvenile Procedure adopted by the Supreme Court of Appeals of West Virginia.

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§49-4-801. Support of a child removed from home pursuant to this chapter; order requirements.

(a) It is the intent of the Legislature that to the extent practicable, this article should encourage and require a child's parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.

(b) This article shall be construed to be consistent with articles one, eleven, twelve, thirteen, fourteen, fifteen, sixteen, eighteen, nineteen and twenty four of chapter forty-eight of this code, and those articles apply to actions pursuant to this chapter unless expressly stated otherwise.

(c) When a child is removed from his or her home pursuant to this chapter, the court shall issue a support order payable by the child's mother. If the child's legal father has been determined, the court shall issue a child support order payable by the legal father. If no legal father has been determined, the court shall issue an order establishing paternity prior to or simultaneously with establishing a support order payable by the child's legal father. Copies of the orders shall be provided to the Bureau of Child Support Enforcement.

(d) The order establishing a child support obligation must use the Guidelines for Child Support Awards that are set forth in article thirteen, chapter forty-eight of this code.

(e) In addition to the reasons for deviation listed in section seven hundred two, article thirteen, chapter forty-eight of this code, deviation from the child support guidelines is appropriate when the court finds that:

(1) It may assist the parent in successful completion of an improvement period;

(2) It may be in the best interest of the minor child to issue a zero child support order; and/or

(3) The parent temporarily or permanently has no gross income as defined §48-1-228 of this code.

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§49-4-802. General provisions for support orders; contempt.

(a) Any pre-existing support order from any other court or administrative agency with authority to issue a support order shall remain in full force and effect until a superseding order is issued.

(b) If a child is returned to the physical custody of a parent, that parent is not responsible for paying child support for the duration of time that parent has physical custody of the child without the necessity of entry of another court order terminating that parent's child support obligation.

(c) If the action is dismissed for failure to prove the allegations of abuse or neglect, any support provision issued pursuant to this chapter are void ab initio. Any adjudication of paternity shall remain in full force and effect.

(d) The support obligation shall automatically continue beyond the termination of the payor's parental rights, unless the support obligation is explicitly ended in an order.

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§49-4-803. Enforcement of support orders.

(a) Support orders may be enforced through any manner provided in chapters thirty-eight and forty-eight of this code.

(b) An action for contempt for nonpayment of support may be brought by the Bureau for Children and Families or Bureau for Child Support Enforcement; the child's physical custodian; the child's guardian ad litem; or the prosecuting attorney.

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§49-4-901

Repealed.

Acts, 2016 Reg. Sess., Ch. 32

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§49-4-902

Repealed.

Acts, 2016 Reg. Sess., Ch. 32

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§49-4-903. Interference with disposition of child punishable as contempt of court.

A person who interferes with the direction of disposition of a child in accordance with an order of the court or judge made in pursuance of this chapter, or with the department, or a probation or other officer of the court in carrying out the directions of the court or judge under an order, is subject to punishment as for contempt of court.

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§49-4-904. Enticing child from custody; penalties.

A person who personally or by agent entices or forcibly removes a child from a custody in which the child was placed under this chapter is guilty of a misdemeanor and, upon conviction shall be fined not more than $100, or confined in jail not more than six months, or fined and confined.

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§49-5-101. Confidentiality of records; non-release of records; exceptions; penalties.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile which are maintained by the Division of Corrections and Rehabilitation, the Department of Human Services, a child agency or facility, or court or law-enforcement agency, are confidential and may not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated;

(C) The attorney of the child or parent; and

(D) The Juvenile Justice Commission and its' designees acting in the course of their official duties;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; and

(4) Pursuant to an order of a court of record: *Provided*, That the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available upon request to:

(1) Federal, state, or local government entities, or any agent of those entities, including law-enforcement agencies and prosecuting attorneys, having a need for that information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

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(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court, or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court, or family court; and

(6) The West Virginia Crime Victims Compensation Fund and its designees acting in the course of their official duties.

(d) Information related to proceedings involving child abuse or neglect, or both, shall be made available, upon request, to the Foster Care Ombudsman, or his or her designee, with the exception of information related to the identity of the person making a referral or suspected abuse or neglect. Only in cases involving near fatalities or fatalities of a child in the foster care system, shall the information related to the identity of the person who reported the suspected abuse or neglect be made available to the Foster Care Ombudsman: *Provided*, That such request is made in the course of their official duties pursuant to §16B-16-1 *et seq*. of this code.

(e) If there is a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Human Services and provided to the entities described in subsection (c) of this section and to the Critical Incident Review Team as established in §61-12B-1 *et seq*. of this code: *Provided*, That information released by the Department of Human Services pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect except when such information and records are released to the Foster Care Ombudsman or his or her designee acting in the course of their official duties related to a near fatality or fatality of a child with in the foster care system. Only in those circumstances shall the Department of Human Services include the identity of a person reporting or making a complaint of child abuse or neglect may be included: *Provided, however*, That the Foster Care Ombudsman or his or her designee is acting in the course of their official duties pursuant to §16B-16-1 *et seq*. of this code. For purposes of this subsection, "near fatality" means any medical condition of the child which is certified by the attending physician to be life-threatening.

(f) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to §49-5-103 of this code.

(g) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in jail for not more than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of $300, or actual damages, whichever is greater.

(h) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(i)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Corrections and Rehabilitation may provide access to, and the confidential use of, a treatment plan, court records, or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Corrections and Rehabilitation in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody, and treatment of the juvenile;

(3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement this subsection; and

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

(j) The records subject to disclosure pursuant to subsection (b) of this section may not include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of which is exclusively subject to §62-6B-6 of this code.

(k) Notwithstanding the provisions of subsection (a) of this section, records in the possession of the Division of Corrections and Rehabilitation declared to be confidential by the provisions of subsection (a) of this section may be published and disclosed for use in an employee grievance if the disclosure is done in compliance with subsections (l), (m), and (n) of this section.

(l) Records or information declared confidential by the provisions of this section may not be released for use in a grievance proceeding except:

(1) Upon written motion of a party; and

(2) Upon an order of the Public Employee's Grievance Board entered after an in-camera hearing as to the relevance of the record or information.

(m) If production of confidential records or information is disclosed to a grievant, his or her

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counsel or representative, pursuant to subsection (l) of this section:

(1) The division shall ensure that written records or information is redacted of all identifying information of any juvenile which is not relevant to the resolution of the grievance;

(2) Relevant video and audio records may be disclosed without redaction; and

(3) Records or other information released to a grievant or his or her counsel or representative pursuant to subsection (l) of this section may only be used for purposes of his or her grievance proceeding and may not be disclosed, published, copied, or distributed for any other purpose, and upon the conclusion of the grievance procedure, returned to the Division of Corrections and Rehabilitation.

(n) If a grievant or the Division of Corrections and Rehabilitation seek judicial review of a decision of the Public Employee's Grievance Board, the relevant confidential records disclosed and used in the grievance proceeding may be used in the appeal proceeding upon entry of an order by the circuit court, and the order shall contain a provision limiting disclosure or publication of the records or information to purposes necessary to the proceeding and prohibiting unauthorized use and reproduction.

(o) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et seq*. of this code.

(p) When requested, a child-placing agency or a residential childcare and treatment facility shall disclose otherwise confidential information to other child-placing agencies or residential childcare and treatment facilities when making referrals or providing services on behalf of the child. This information shall be maintained in the same manner as provided in this code.

(q) The department shall provide electronic access to information required to perform an adoption to child-placing agencies as necessary to complete the adoption.

(r) A child-placing agency completing adoption as a contractor on behalf of the department shall have access to secure records from vital statistics and other pertinent record holders.

(s) The Bureau for Social Services shall provide to the managed care organization, the child-placing agency, and the person having temporary custody of the child, the medical records of the child that are necessary for the care of treatment of the child.

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§49-5-102. Preservation of records.

The proceedings, records, reports, case histories, and all other papers or documents of or received by the state department in the administration of this chapter shall be filed of record and preserved.

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§49-5-103. Confidentiality of juvenile records; permissible disclosures; penalties; damages.

(a) Any findings or orders of the court in a juvenile proceeding shall be known as the juvenile record and shall be maintained by the clerk of the court.

(b) Records of a juvenile proceeding conducted under this chapter are not public records and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

(c) Notwithstanding the provisions of subsection (b) of this section, a copy of a juvenile's records shall automatically be disclosed to certain school officials, subject to the following terms and conditions:

(1) Only the records of certain juveniles shall be disclosed. These include, and are limited to, cases in which:

(A) The juvenile has been charged with an offense which:

(i) Involves violence against another person;

(ii) Involves possession of a dangerous or deadly weapon; or

(iii) Involves possession or delivery of a controlled substance as that term is defined in section one hundred one, article one, chapter sixty-a of this code; and

(B) The juvenile's case has proceeded to a point where one or more of the following has occurred:

(i) A circuit court judge or magistrate has determined that there is probable cause to believe that the juvenile committed the offense as charged;

(ii) A circuit court judge or magistrate has placed the juvenile on probation for the offense;

(iii) A circuit court judge or magistrate has placed the juvenile into a preadjudicatory community supervision period in accordance with section seven hundred eight, article four of this chapter; or

(iv) Some other type of disposition has been made of the case other than dismissal.

(2) The circuit court for each judicial circuit in West Virginia shall designate one person to supervise the disclosure of juvenile records to certain school officials.

(3) If the juvenile attends a West Virginia public school, the person designated by the circuit court shall automatically disclose all records of the juvenile's case to the county superintendent of schools in the county in which the juvenile attends school and to the

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principal of the school which the juvenile attends, subject to the following:

(A) At a minimum, the records shall disclose the following information:

(i) Copies of the arrest report;

(ii) Copies of all investigations;

(iii) Copies of any psychological test results and any mental health records;

(iv) Copies of any evaluation reports for probation or facility placement; and

(v) Any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others;

(B) The disclosure of the juvenile's psychological test results and any mental health records shall only be made in accordance with subdivision (14) of this subsection;

(C) If the disclosure of any record to be automatically disclosed under this section is restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996, PL 104-191, and any amendments and regulations under the act, the person designated by the circuit court shall provide the superintendent and principal any notice of the existence of the record that is permissible under the act and, if applicable, any action that is required to obtain the record; and

(D) When multiple disclosures are required by this subsection, the person designated by the circuit court is required to disclose only material in the juvenile record that had not previously been disclosed to the county superintendent and the principal of the school which the juvenile attends.

(4) If the juvenile attends a private school in West Virginia, the person designated by the circuit court shall determine the identity of the highest ranking person at that school and shall automatically disclose all records of a juvenile's case to that person.

(5) If the juvenile does not attend school at the time the juvenile's case is pending, the person designated by the circuit court may not transmit the juvenile's records to any school. However, the person designated by the circuit court shall transmit the juvenile's records to any school in West Virginia which the juvenile subsequently attends.

(6) The person designated by the circuit court may not automatically transmit juvenile records to a school which is not located in West Virginia. Instead, the person designated by the circuit court shall contact the out-of-state school, inform it that juvenile records exist and make an inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person designated by the circuit court shall consult with the circuit judge who presided over the case to determine whether the juvenile records should be disclosed to the out-of-state school. The circuit judge has discretion in determining whether to disclose

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the juvenile records and shall consider whether the other state's law regarding disclosure provides for sufficient confidentiality of juvenile records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be disclosed in accordance with subdivision (7) of this subsection.

(7) The person designated by the circuit court shall transmit the juvenile's records to the appropriate school official under cover of a letter emphasizing the confidentiality of those records and directing the official to consult this section of the code. A copy of this section of the code shall be transmitted with the juvenile's records and cover letter.

(8) Juvenile records are absolutely confidential by the school official to whom they are transmitted and nothing contained within the juvenile's records may be noted on the juvenile's permanent educational record. The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances. However, the principal of a school to whom the records are transmitted shall have the duty to disclose the contents of those records to any teacher who teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in which the subject juvenile is regularly transported to or from school, except that the disclosure of the juvenile's psychological test results and any mental health records may only be made in accordance with subdivision (14) of this subsection. Furthermore, any school official to whom the juvenile's records are transmitted may disclose the contents of those records to any adult within the school system who, in the discretion of the school official, has the need to be aware of the contents of those records.

(9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's records, the appropriate official at that school shall seal the records and return them to the circuit court which sent them to that school. If the juvenile has changed schools for any reason, the former school shall inform the circuit court of the name and location of the new school which the juvenile attends or will be attending. If the new school is located within West Virginia, the person designated by the circuit court shall forward the juvenile's records to the juvenile's new school in the same manner as provided in subdivision (7) of this subsection. If the new school is not located within West Virginia, the person designated by the circuit court shall handle the juvenile records in accordance with subdivision (6) of this subsection.

If the juvenile has been found not guilty of an offense for which records were previously forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit court may not forward those records to the juvenile's new school. However, this does not affect records related to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be attending another school, the circuit court shall retain the juvenile's records and handle them as otherwise provided in this article.

(10) Under no circumstances may one school transmit a juvenile's records to another school.

(11) Under no circumstances may juvenile records be automatically transmitted to a college,

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university or other post-secondary school.

(12) No one may suffer any penalty, civil or criminal, for accidentally or negligently attributing certain juvenile records to the wrong person. However, that person has the affirmative duty to promptly correct any mistake that he or she has made in disclosing juvenile records when the mistake is brought to his or her attention. A person who intentionally attributes false information to a certain person shall be subjected to both criminal and civil penalties in accordance with subsection (e) of this section.

(13) If a circuit judge or magistrate has determined that there is probable cause to believe that a juvenile has committed an offense but there has been no final adjudication of the charge, the records which are transmitted by the circuit court shall be accompanied by a notice which clearly states in bold print that there has been no determination of delinquency and that our legal system requires a presumption of innocence.

(14) The county superintendent shall designate the school psychologist or psychologists to receive the juvenile's psychological test results and any mental health records. The psychologist designated shall review the juvenile's psychological test results and any mental health records and, in the psychologist's professional judgment, may disclose to the principal of the school that the juvenile attends and other school employees who would have a need to know the psychological test results, mental health records and any behavior that may trigger violence or other disruptive behavior by the juvenile. Other school employees include, but are not limited to, any teacher who teaches a class in which the subject juvenile is enrolled and the regular driver of a school bus in which the subject juvenile is regularly transported to or from school.

(d) Notwithstanding the provisions of subsection (b) of this section, juvenile records may be disclosed, subject to the following terms and conditions:

(1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to the provisions of subsection (c) or (d), section seven hundred ten, article four of this chapter, the juvenile records are open to public inspection.

(2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to the provisions of subsection (e), (f) or (g), section seven hundred ten, article four of this chapter, the juvenile records are open to public inspection only if the juvenile fails to file a timely appeal of the transfer order, or the Supreme Court of Appeals refuses to hear or denies an appeal which has been timely filed.

(3) If a juvenile is fourteen years of age or older and a court has determined there is a probable cause to believe the juvenile committed an offense set forth in subsection (g), section seven hundred ten, article four of this chapter, but the case is not transferred to criminal jurisdiction, the juvenile records are open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

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(4) If a juvenile is younger than fourteen years of age and a court has determined there is probable cause to believe that the juvenile committed the crime of murder under section one, two or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree under section three, article eight-b of chapter sixty-one, but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(5) Upon a written petition and pursuant to a written order, the circuit court may permit disclosure of juvenile records to:

(A) A court, in this state or another state, which has juvenile jurisdiction and has the juvenile before it in a juvenile proceeding;

(B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile which requests records for the purpose of a presentence report or disposition proceeding;

(C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

(D) The officials of a public institution to which the juvenile is committed if they require those records for transfer, parole or discharge; or

(E) A person who is conducting research. However, juvenile records may be disclosed for research purposes only upon the condition that information which would identify the subject juvenile or the juvenile's family may not be disclosed.

(6) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to a probation officer upon his or her request. Any probation officer may access relevant juvenile case information contained in any electronic database maintained by or for the Supreme Court of Appeals and share it with any other probation officer.

(7) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, in response to any lawfully issued subpoena from a federal court or federal agency.

(8) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to the department or the Division of Juvenile Services for purposes of case planning for the juvenile and his or her parents, custodians or guardians.

(e) Any records open to public inspection pursuant to this section are subject to the same requirements governing the disclosure of adult criminal records.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail for not more than six months, or both fined and confined. A person who violates this section is also liable for

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damages in the amount of $300 or actual damages, whichever is greater.

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§49-5-104. Confidentiality of juvenile records for children who become of age while a ward of the state or who have been transferred to adult criminal jurisdiction; separate and secure location; penalties; damages; accessibility of records for child victims of sex trafficking.

(a) One year after the juvenile's 18th birthday, or one year after personal or juvenile jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including, but not limited to, law-enforcement files and records, may be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court.

(b) The records of a juvenile proceeding in which a juvenile was transferred to criminal jurisdiction pursuant to §49-4-710 of this code shall be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense upon which the waiver or order of transfer was based, or if the offense upon which the waiver or order of transfer was based is subsequently dismissed.

(c) To keep the confidentiality of juvenile records, they shall be returned to the circuit court in which the case was pending and be kept in a separate confidential file. The records shall be physically marked to show that they are to remain confidential and shall be securely kept and filed in a manner so that no one can have access to determine the identity of the juvenile, except upon order of the circuit court.

(d) Marking the juvenile records to show they are to remain confidential has the legal effect of extinguishing the offense as if it never occurred.

(e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court pursuant to §49-4-710(d)(1) of this code may not be marked and kept as confidential.

(f) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail for not more than six months, or both so fined and confined, and is liable for damages in the amount of $300 or actual damages, whichever is greater.

(g) Notwithstanding any other provision of this code, the records of a juvenile victim of sex trafficking within the meaning of §61-14-1 *et seq*. of this code, may be immediately accessible to the juvenile victim upon written request to the circuit court in which a juvenile delinquency case was pending.

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§49-5-105. Juvenile justice database; individual records confidential.

The West Virginia Supreme Court of Appeals is responsible for collecting, compiling and disseminating information in the juvenile justice database. Notwithstanding any other provision of this code to the contrary, the court shall grant the Division of Justice and Community Services access to confidential juvenile records for the limited purpose of the collection and analysis of statistical data. However, the division shall keep the records confidential and not publish any information that would identify any individual juvenile.

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§49-5-106. Data collection.

(a) The Division of Juvenile Services, the department and the Supreme Court of Appeals shall establish procedures to jointly collect and compile data necessary to calculate juvenile recidivism and the outcome of programs.

(b) For each juvenile who enters into a diversion agreement, is placed on an improvement period, is placed on probation or is placed in an out-of-home placement as defined by section two hundred six, article one of this chapter, the data and procedures developed in subsection (a) shall include:

(1) New offense referrals to juvenile court or criminal court within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody;

(2) Adjudications for a delinquent or status offense by a juvenile or a conviction by a criminal court within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody;

(3) Commitments to the Division of Juvenile Services, the department, excluding out-of-home placements made for child welfare or abuse and neglect purposes, or incarceration with the Division of Corrections within three years of completion of the diversion agreement, release from court jurisdiction or release from agency custody; and

(4) The number of out-of-home placements ordered where the judge found by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member or the public.

(c) For youth placed in programs operated or funded by the Division of Juvenile Services, the department or the Supreme Court of Appeals, including youth reporting centers, juvenile drug courts, restorative justice programs and teen courts, the division, department and Supreme Court shall develop procedures using, at a minimum, the measures in subsection (b) of this section to track and record outcomes of each program, and to demonstrate that the program reduces the likelihood of reoffending for the youth referred to the program.

(d) For youth referred to truancy diversion specialists or other truancy diversion programs operated or funded by the Supreme Court of Appeals, the Division of Juvenile Services, the Department of Human Services, the Department of Education or other political subdivisions, that branch of government or agency shall develop procedures to track and record outcomes of each program, and to evaluate the effectiveness in reducing unexcused absences for the youth referred to the program. At a minimum, this outcome data shall include:

(1) The number of youth successfully completing the truancy diversion program;

(2) The number of youth who are referred to the court system after failing to complete a truancy diversion program; and

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(3) The number of youth who, after successfully completing a truancy diversion program, accumulate five or more unexcused absences in the current or subsequent school year.

(e) The Supreme Court of Appeals, the Division of Juvenile Services, the Department of Human Services and the Department of Education shall also establish procedures to jointly collect and compile data relating to disproportionate minority contact, which is defined as the proportion of minority youth who come into contact with the juvenile justice system in relation to the proportion of minority youth in the general population, and the compilation shall include data indicating the prevalence of such disproportionality in each county. Data shall include, at a minimum, the race and gender of youth arrested or referred to court, entered into a diversion program, adjudicated and disposed.

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§49-6-101. Clearinghouse function; State Police requirements; rule-making.

(a) The Missing Children Information Clearinghouse is established under the West Virginia State Police. The State Police:

(1) Shall provide for the administration of the clearinghouse; and

(2) May promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

(b) The clearinghouse is a central repository of information on missing children and shall be used by all law-enforcement agencies in this state.

(c) The clearinghouse shall:

(1) Establish a system of intrastate communication of information relating to missing children;

(2) Provide a centralized file for the exchange of information on missing children and unidentified bodies of children within the state;

(3) Communicate with the National Crime Information Center for the exchange of information on missing children suspected of interstate travel;

(4) Collect, process, maintain and disseminate accurate and complete information on missing children;

(5) Provide a statewide toll-free telephone line for the reporting of missing children and for receiving information on missing children;

(6) Disseminate to custodians, law-enforcement agencies, the state Department of Education, the Bureau for Children and Families and the general public information that explains how to prevent child abduction and what to do if a child becomes missing;

(7) Compile statistics relating to the incidence of missing children within the state;

(8) Provide training materials and technical assistance to law-enforcement agencies and social services agencies pertaining to missing children; and

(9) Establish a media protocol for disseminating information pertaining to missing children.

(d) The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of missing children.

(e) The State Police may accept public or private grants, gifts and donations to assist in carrying out the provisions of this article.

WV Legislature

§49-6-102. State Department of Education; missing children program; rule-making.

(a) The State Department of Education shall develop and administer a program for the location of missing children who may be enrolled in the West Virginia school system, including private schools, and for the reporting of children who may be missing or who may be unlawfully removed from schools.

(b) The program shall include the use of information received from the clearinghouse and shall be coordinated with the operations of the clearinghouse.

(c) The State Board of Education may promulgate rules in accordance with article three, chapter twenty-nine-a of this code for the operation of the program and shall require the participation of all school districts and state-accredited private schools in this state.

WV Legislature

§49-6-103. Information to clearinghouse; definitions.

(a) The Department of Human Services and every law-enforcement agency in West Virginia shall provide to the clearinghouse or another investigating law-enforcement agency any information that would assist in locating or identifying a missing child.

(b) For purposes of this article:

(1) "Missing and endangered child" means any missing child for which there are substantial indications the child is at high risk of harm or in immediate danger, and rapid action is required, including, but not limited to:

(A) Physically or mentally disabled and dependent upon an agency or another individual for care;

(B) Under the age of 13;

(C) Missing under circumstances which indicate the child's safety may be in danger; or

(D) A foster child and has been determined a missing and endangered child by the Department of Human Services.

(2) "Missing child" means any child under the age of 18 whose whereabouts are unknown to the child's legal custodian.

WV Legislature

§49-6-104. Custodian request for information.

(a) Upon written request made to a law-enforcement agency by the custodian of a missing child, the law-enforcement agency shall request from the clearinghouse information concerning the child that may aid the custodian in locating or identifying the child.

(b) A law-enforcement agency to which a request has been made pursuant to subsection (a) of this section shall report to the custodian on the results of its inquiry within fourteen calendar days after the day the written request is received by the law-enforcement agency.

WV Legislature

§49-6-105. Missing child report forms; where filed.

(a) The clearinghouse shall distribute missing child and missing and endangered child report forms to law-enforcement agencies in the state and to the Department of Human Services.

(b) A missing child or missing and endangered child report may be made to a law-enforcement agency in person or by telephone, or other indirect method of communication, and the person taking the report may enter the information on the form for the reporter. A missing child or missing and endangered child report form may be completed by the reporter and delivered to a law-enforcement office.

(c) A copy of the report form shall be maintained by the clearinghouse.

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§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.

(a) A law-enforcement agency, upon receiving a missing child or missing and endangered child report, shall:

(1) Start an investigation to determine the present location of the child if it determines that the child is in danger; and

(2) Enter the name of the missing child or missing and endangered child into the clearinghouse and the National Crime Information Center missing person file if the child meets the center's criteria, with all available identifying features, including dental records, fingerprints, other physical characteristics, and a description of the clothing worn when the missing child or missing and endangered child was last seen.

(b) Information not immediately available shall be obtained as soon as possible by the law-enforcement agency and entered into the clearinghouse and the National Crime Information Center file as a supplement to the original entry.

(c) All West Virginia law-enforcement agencies shall enter information about all unidentified bodies of children found in their jurisdiction into the clearinghouse and the National Crime Information Center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the National Crime Information Center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(d) A law-enforcement agency, upon receiving a missing and endangered child report, shall immediately:

(1) Start an investigation to determine the present location of the child if it determines that the child is missing and endangered; and

(2) Issue a Missing and Endangered Child Advisory pursuant to §15-3D-9 of this code.

WV Legislature

§49-6-107. Release of dental records; cause shown; immunity.

(a) At the time a missing child report is made, the law-enforcement agency to which the missing child report is given may, when feasible and appropriate, provide a dental record release form to the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the missing child. The law-enforcement agency shall endorse the dental record release form with a notation that a missing child report has been made in compliance with this article. When the dental record release form is properly completed by the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the missing child and contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release dental records relating to the missing child to the law-enforcement agency.

(b) A circuit court judge may for good cause shown authorize the release of dental records of a missing child to a law-enforcement agency.

(c) A law-enforcement agency which receives dental records under subsection (a) or (b) of this section shall send the dental records to the clearinghouse.

(d) A dentist or physician who releases dental records to a person presenting a proper release executed or ordered pursuant to this section is immune from civil liability or criminal prosecution for the release of the dental records.

WV Legislature

§49-6-108. Cross-checking and matching.

(a) The clearinghouse shall, in accordance with national crime information center policies and procedures, cross-check and attempt to match unidentified bodies with descriptions of missing children. When the clearinghouse discovers a possible match between an unidentified body and a missing child description, the clearinghouse shall notify the appropriate law-enforcement agencies.

(b) A law-enforcement agency that receives notice of a possible match shall make arrangements for positive identification. If a positive identification is made, the law-enforcement agency shall complete and close the investigation with notification to the clearinghouse.

WV Legislature

§49-6-109. Interagency cooperation.

(a) State agencies and public and private schools shall cooperate with a law-enforcement agency that is investigating any missing child or missing and endangered child report and shall furnish any information, including confidential information, that will assist the law-enforcement agency in completing the investigation.

(b) Information provided by a state agency or a public or private school may not be released to any person outside the law-enforcement agency or the clearinghouse, except as provided by rules of the West Virginia State Police.

WV Legislature

§49-6-110. Confidentiality of records; rulemaking; requirements.

(a) The State Police shall promulgate rules according §29A-3-1 *et seq*. of this code to provide for the classification of information and records as confidential that:

(1) Are otherwise confidential under state or federal law or rules promulgated pursuant to state or federal law;

(2) Are related to the investigation by a law-enforcement agency of a missing child, a missing and endangered child, or an unidentified body, if the State Police, in consultation with the law-enforcement agency, determines that release of the information would be deleterious to the investigation;

(3) Are records or notations that the clearinghouse maintains for internal use in matters relating to missing children or missing and endangered children and unidentified bodies and the State Police determines that release of the internal documents might interfere with an investigation by a law-enforcement agency in West Virginia or any other jurisdiction; or

(4) Are records or information that the State Police determines might interfere with an investigation or otherwise harm a child or custodian.

(b) The rules may provide for the sharing of confidential information with the custodian of the missing child or missing and endangered child: *Provided*, That confidential information, which is not believed to jeopardize an investigation, must be shared with the custodian when the legal custodian is the Department of Human Services.

(c) Notwithstanding any other provision of this code to the contrary, the Department of Human Services may share confidential information with any law-enforcement agency and the National Center for Missing and Exploited Children in the case of a child who runs away from home or is determined missing.

WV Legislature

§49-6-111. Attorney general to require compliance.

The Attorney General shall require each law-enforcement agency to comply with the provisions of the Missing Children Information Act and may seek writs of mandamus or other appropriate remedies to enforce this article.

WV Legislature

§49-6-112. Agencies to receive report; law-enforcement agency requirements.

(a) Upon completion of the missing child or missing and endangered child report the law-enforcement agency shall immediately forward the contents of the report to the missing children information clearinghouse and the National Crime Information Center's missing person file. However, if an information entry into the National Crime Information Center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(b) Within 15 days of completion of the report, if the child is less than 13 years of age the law-enforcement agency may, when appropriate, forward the contents of the report to the last:

(1) Child care center or child care home in which the child was enrolled; or

(2) School the child attended in West Virginia, if any.

(c) A law-enforcement agency involved in the investigation of a missing child or missing and endangered child shall:

(1) Update the initial report filed by the agency that received notification of the missing child or missing and endangered child upon the discovery of new information concerning the investigation;

(2) Forward the updated report to the appropriate agencies and organizations;

(3) Search the National Crime Information Center's wanted person file for reports of arrest warrants issued for persons who allegedly abducted or unlawfully retained children and compare these reports to the missing child's National Crime Information Center's missing person file; and

(4) Notify all law-enforcement agencies involved in the investigation, the missing children information clearinghouse, and the National Crime Information Center when the missing child is located.

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§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

(a) The Clearinghouse Advisory Council is continued as a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of 11 members who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Six members to be appointed by the Governor, with the advice and consent of the Senate, with not more than four belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with preventing the abduction, runaway, or exploitation of children or locating missing or missing and endangered children;

(2) The Secretary of the Department of Human Services or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;

(4) The State Superintendent of Schools or his or her designee;

(5) The Director of the Division of Administrative Services or his or her designee; and

(6) The Commissioner of the Bureau for Children and Families or his or her designee.

(b) The Governor shall appoint the six council members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy may serve only for the unexpired term. A member is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the same manner as the original appointment was made.

(c) Members of the council are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) A majority of serving members constitutes a quorum for the purpose of conducting business. The chair of the council shall be designated by the Governor from among the appointed council members who represent nonprofit organizations involved with preventing the abduction, runaway, or exploitation of children or locating missing children or missing and endangered children. The term of the chair shall run concurrently with his or her term of office as a member of the council. The council shall meet semiannually at the call of the chair. The council shall conduct all meetings in accordance with the open governmental meetings law pursuant to §6-9A-1 *et seq*. of this code.

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(e) The employee of the West Virginia State Police who is primarily responsible for the clearinghouse established by §49-6-101 of this code, shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(f) The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support.

(g) The executive director of the council shall be available to the Governor and to the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.

(h) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the Governor and the Legislature on or before December 15 of each year.

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§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan required to be provided to the Legislature.

The council shall prepare a comprehensive strategic plan and recommendation of programs in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation, or any thereof, of children to locate missing children, advise the West Virginia State Police regarding operation of the clearinghouse and its other responsibilities under this article, and cooperate with and coordinate the efforts of state agencies and private organizations involved with issues relating to missing or exploited children. The council may seek public and private grants, contracts, matching funds, and procurement arrangements from the state and federal government, private industry, and other agencies in furtherance of its mission and programs. An initial comprehensive strategic plan that will support and foster efforts to prevent the abduction, runaway, and exploitation of children, and to locate missing children, shall be developed and provided to the Governor, the Speaker of the House of Delegates, and the President of the Senate no later than July 1, 2020, and shall include, but not be limited to, the following:

(1) Findings and determinations regarding the extent of the problem in this state related to: (A) Abducted children; (B) missing children; (C) exploited children; and (D) missing and endangered children.

(2) Findings and determinations identifying the systems, both public and private, existing in the state to prevent the abduction, runaway, or exploitation of children, and to locate missing children, and assessing the strengths and weaknesses of those systems and the clearinghouse;

(3) The inclusion of exploited children within the functions of the clearinghouse. For purposes of this article, an exploited child is a person under the age of 18 years who has been: (A) Used in the production of pornography; (B) subjected to sexual exploitation or sexual offenses under §61-8B-1 *et seq.* of this code; or (C) employed or exhibited in any injurious, immoral, or dangerous business or occupation in violation of §§61-8-5 through 61-8-8 of this code;

(4) Recommendations of legislative changes required to improve the effectiveness of the clearinghouse and other efforts to prevent abduction, runaway, or exploitation of children, and to locate missing children. Those recommendations shall consider the following:

(A) Interaction of the clearinghouse with child custody proceedings;

(B) Involvement of hospitals, child care centers, and other private agencies in efforts to prevent child abduction, runaway, or exploitation, and to locate missing children;

(C) Publication of a directory of and periodic reports regarding missing children;

(D) Required reporting by public and private agencies and penalties for failure to report and

false reporting;

(E) Removal of names from the list of missing children;

(F) Creating of an advocate for missing and exploited children;

(G) State funding for the clearinghouse and efforts to prevent the abduction, runaway, and exploitation of children, and to locate missing children;

(H) Mandated involvement of state agencies, such as publication of information regarding missing children in existing state publications and coordination with the state registrar of vital statistics under §§16-5-12 of this code; and

(I) Expanded requirement for boards of education to notify the clearinghouse in addition to local law-enforcement agencies under §18-2-5c of this code or if a birth certificate or school record received appears to be inaccurate or fraudulent and to receive clearinghouse approval before releasing records;

(5) Methods that will coordinate and engender collaborative efforts among organizations throughout the state, whether public or private, involved with missing or exploited children;

(6) Plans for the use of technology in the clearinghouse and other efforts related to missing or exploited children;

(7) Compliance of the clearinghouse, state law, and all rules promulgated pursuant thereto with applicable federal law so as to enhance opportunities for receiving federal grants;

(8) Consultation with the state board of education and other agencies responsible for promulgating rules under this article;

(9) Possible methods for identifying missing children prior to enrollment in a public or nonpublic school;

(10) The feasibility and effectiveness of utilizing the federal parent locator service in locating missing children; and

(11) Programs for voluntary fingerprinting.

WV Legislature

§49-6-115. Public-private partnerships; funding.

(a) In furtherance of its mission, the clearinghouse council is authorized to enter into contracts or joint venture agreements with federal and state agencies; with nonprofit corporations organized pursuant to the corporate laws of this state or other jurisdictions that are qualified under Section 501(c)(3) of the Internal Revenue Code; and with other organizations that conduct research, make grants, improve educational programs and work for the prevention of missing or exploited children and to locate missing children. All contracts and joint venture agreements must be approved by a majority vote of the council. The council may also enter into contractual agreements for consideration or recompense to it even though the entities are funded from sources other than the state. Members of the council are not prohibited from sitting on the boards of directors of any contracting private nonprofit corporation, foundation or firm. However, members of the council are not exempt from chapter six-b of this code.

(b) The council shall solicit and is authorized to receive and accept gifts or grants from private foundations, corporations, individuals, devises and bequests or from other lawful sources. The funds shall be paid into a special account in the State Treasury for the use and benefit of the council.

WV Legislature

§49-6-116. Establish a missing foster child locator unit program.

(a) The Secretary of the West Virginia Department of Human Services shall establish a Missing Foster Child Locator Unit within the department with a minimum staffing of a northern-based caseworker, a southern-based caseworker, and an identified worker located in the Centralized Intake Unit.

(b) The duties of the Missing Foster Child Locator Unit shall include, but are not limited to, the following:

(1) Receiving reports of missing foster children;

(2) Assisting law enforcement in locating missing foster children who have been reported missing; and

(3) Interviewing missing foster children and completing trafficking screening once the child is located.

(c) For this section, "missing foster child" means missing child or missing and endangered child, as defined in §49-6-103 of this code, who is a foster child at the time he or she was reported missing.

(d) Beginning in July 1, 2021, and each year thereafter, the Secretary of the Department of Human Services shall provide a status report to the Legislative Oversight Committee on Health and Human Resources Accountability.

(e) The secretary shall implement and administer this program at least until December 31, 2022. The secretary may administer this program after such date.

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PART I. INTERSTATE COMPACT

ON THE PLACEMENT OF CHILDREN.

§49-7-101. Adoption of compact.

The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I.

PURPOSE AND POLICY.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II.

DEFINITIONS.

As used in this compact:

(a) “Child” means a person who, by reason of minority is legally subject to parental, guardianship or similar control.

(b) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

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(c) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) “Placement” means the arrangement for the care of a child in a family free home or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III.

CONDITIONS FOR REPLACEMENT.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for the proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, the supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

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ARTICLE IV.

PENALTY FOR ILLEGAL PLACEMENT.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. A violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any punishment or penalty, a violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V.

RETENTION OF JURISDICTION.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. The jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of the case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI.

INSTITUTIONAL CARE OF DELINQUENT CHILDREN.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his or her

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being sent to the other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII.

COMPACT ADMINISTRATOR.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII.

LIMITATIONS.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his or her parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his or her guardian and leaving the child with a relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between the states which has the force of law.

ARTICLE IX.

ENACTMENT AND WITHDRAWAL.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to those jurisdictions when that other jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of the statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement

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made prior to the effective date of withdrawal.

ARTICLE X.

CONSTRUCTION.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

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§49-7-102. Definitions; implementation.

(a) Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, section one hundred one, article two of this chapter may be invoked.

(b) The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the Department of Human Services and the agency shall receive and act with reference to notices required by Article III.

(c) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the Department of Human Services.

(d) The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. An agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof is not binding unless it has the approval in writing of the Auditor in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

(e) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections one hundred eight and one hundred eleven, article two of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

(f) Section one hundred nine, article two of this chapter does not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

(g) Any court having jurisdiction to place delinquent children may place a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

(h) As used in Article VII of the interstate compact on the placement of children, the term "executive head" means the Governor. The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of that Article VII.

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§49-7-201. Interstate adoption assistance compact; findings and purpose.

(a) The Legislature finds that:

(1) Finding adoptive families for children, for whom state assistance is desirable pursuant to section one hundred twelve, article four, of this chapter and assuring the protection of the interests of the children affected during the entire assistance period, require special measures when the adoptive parents move to other states or are residents of another state; and

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states.

(b) The purposes of sections two hundred one through two hundred four of this article are to:

(1) Authorize the Department of Human Services to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the Department of Human Services; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments.

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§49-7-202. Interstate adoption assistance compacts authorized; definitions.

(a) The Department of Human Services is authorized to develop, participate in the development of, negotiate and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in sections two hundred one through two hundred four of this article. When so entered into, and for so long as it shall remain in force, the compact shall have the force and effect of law.

(b) For the purposes of sections two hundred one through two hundred four of this article, the term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a Territory or Possession of or administered by the United States.

(c) For the purposes of sections two hundred one through two hundred four of this article, the term "adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(d) For the purposes of sections two hundred one through two hundred four of this article, the term "residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

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§49-7-203. Interstate adoption assistance compact; contents of compact.

A compact entered into pursuant to the authority conferred by sections two hundred one through two hundred four of this article shall have the following content:

(1) A provision making it available to joinder by all states.

(2) A provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal.

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode.

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state department which undertakes to provide the adoption assistance, and further, that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents, and the state agency providing the adoption assistance.

(5) Other provisions as may be appropriate to implement the proper administration of the compact.

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§49-7-204. Medical assistance for children with special needs; rule-making; penalties.

(a) A child with special needs resident in this state who is the subject of an adoption assistance agreement with another state shall be entitled to receive a medical assistance identification from this state upon the filing in the Department of Human Services of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the Department of Human Services the adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(b) The Department of Human Services shall consider the holder of a medical assistance identification pursuant to this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims on account of the holder in the same manner and pursuant to the same conditions and procedures as for other recipients of medical assistance.

(c) The Department of Human Services shall provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the Department of Human Services for the coverage or benefits, if any, not provided by the residence state. To this end, the adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and shall be reimbursed therefor. However, there may be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The Department of Human Services shall propose rules in accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate the requirements and purposes of this section. The additional coverages and benefit amounts provided pursuant to this section shall be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. Among other things, the regulations shall include procedures to be followed in obtaining prior approvals for services in those instances where required for the assistance.

(d) Any person who submits a claim for payment or reimbursement for services or benefits pursuant to this section or the making of any statement in connection therewith, which claim of statement the maker knows or should know to be false, misleading or fraudulent is guilty of a felony and, upon conviction, shall be fined not more than $10,000, or incarcerated in a correctional facility not more than two years, or both fined and incarcerated.

(e) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance pursuant to adoption assistance agreements entered into by this state shall be eligible to receive it in accordance with the laws and procedures applicable thereto.

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PART III. INTERSTATE COMPACT FOR JUVENILES.

§49-7-301. Execution of interstate compact for juveniles.

The Governor of this state is authorized and directed to execute a compact on behalf of the State of West Virginia with any state or states of the United States legally joining therein, and substantially as follows:

INTERSTATE COMPACT FOR JUVENILES

ARTICLE I.

PURPOSE.

(a) The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact, through means of joint and cooperative action among the compacting states:

(1) To ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) To ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) To return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(4) To make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) To provide for the effective tracking and supervision of juveniles;

(6) To equitably allocate the costs, benefits and obligations of the compacting states;

(7) To establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any

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other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(8) To ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(9) To establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(10) To establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(11) To monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) To coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in the activity; and

(13) To coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II.

DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

(a) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct.

(b) “Compact administrator” means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

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(c) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(d) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

(e) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(f) "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(g) "Interstate commission" means the interstate commission for juveniles created by Article III of this compact.

(h) "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(1) Accused delinquent – a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated delinquent – a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused status offender – a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated status offender - a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(i) Nonoffender – a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

(j) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(k) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(l) "Rule" means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting

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state, and includes the amendment, repeal, or suspension of an existing rule.

(m) “State” means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III.

INTERSTATE COMMISSION FOR JUVENILES.

(a) The compacting states hereby create the “Interstate Commission for Juveniles.” The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and the additional powers as may be conferred upon it by subsequent action of the respective Legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the interstate commission in the capacity under or pursuant to the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. The noncommissioner members must include a member of the national organizations of Governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the interstate commission shall be ex officio (nonvoting) members. The interstate commission may provide in its bylaws for the additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

(d) Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(e) The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(f) The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive

committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs other duties as directed by the interstate commission or set forth in the bylaws.

(g) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

(h) The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigative records compiled for law-enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

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(8) Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

(9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

(j) For every meeting closed pursuant to subsection (i) of this section, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

(k) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. The methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV.

POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The interstate commission shall have the following powers and duties:

(a) To provide for dispute resolution among compacting states.

(b) To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(c) To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission.

(d) To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

(e) To establish and maintain offices which shall be located within one or more of the compacting states.

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(f) To purchase and maintain insurance and bonds.

(g) To borrow, accept, hire or contract for services of personnel.

(h) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

(i) To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications.

(j) To establish the interstate commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

(k) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

(l) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

(m) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

(n) To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

(o) To sue and be sued.

(p) To adopt a seal and bylaws governing the management and operation of the interstate commission.

(q) To perform functions as may be necessary or appropriate to achieve the purposes of this compact.

(r) To report annually to the Legislatures, Governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Reports shall also include any recommendations that may have been adopted by the interstate commission.

(s) To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in the activity.

(t) To establish uniform standards of the reporting, collecting and exchanging of data.

(u) The interstate commission shall maintain its corporate books and records in accordance

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with the bylaws.

ARTICLE V.

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Section A. Bylaws.

(a) The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establish an executive committee and the other committees as may be necessary to;

(3) Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;

(4) Provide reasonable procedures for calling and conducting meetings of the interstate commission, and ensure reasonable notice of each meeting;

(5) Establish the titles and responsibilities of the officers of the interstate commission;

(6) Provide a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations.

(7) Providing “start-up” rules for initial administration of the compact; and

(8) Establish standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff.

(b) (1) The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have the authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

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(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon terms and conditions and compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member and shall hire and supervise other staff as may be authorized by the interstate commission.

Section C. Qualified Immunity, Defense and Indemnification.

(c)(1) The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of a person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect a person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of a person.

(3) The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(4) The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

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ARTICLE VI.

RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

(a) The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the "Model State Administrative Procedures Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

(c) When promulgating a rule, the interstate commission shall, at a minimum:

(1) Publish the proposed rule's entire text stating the reason(s) for that proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

(3) Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

(d) Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

(e) If a majority of the Legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

(f) The existing rules governing the operation of the "Interstate Compact on Juveniles" superceded by this article shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

(g) Upon determination by the interstate commission that a state-of-emergency exists, it may

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promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rule-making procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

ARTICLE VII.

OVERSIGHT, ENFORCEMENT AND DISPUTE

SOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight.

(a)(1) The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent.

(3) The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules.

(4) In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

(b)(1) The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

(2) The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

(3) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this

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compact.

ARTICLE VIII.

FINANCE.

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs the assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE IX.

THE STATE COUNCIL.

Each member state shall create a state council for interstate juvenile supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X.

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COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

(a) Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The Governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI.

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal.

(a) (1)Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default.

WV Legislature

(b)(1) If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(A) Remedial training and technical assistance as directed by the interstate commission;

(B) Alternative dispute resolution;

(C) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission; and

(D) Suspension or termination of membership in the compact shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the Governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's Legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules.

(3) The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default.

(4) The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(5) Within sixty days of the effective date of termination of a defaulting state, the commission shall notify the Governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's Legislature, and the state council of such termination.

(6) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(7) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

WV Legislature

(8) Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement.

(c) The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact.

(d)(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII.

SEVERABILITY AND CONSTRUCTION.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII.

BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other Laws.

(a)(1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact.

WV Legislature

(b)(1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

WV Legislature

§49-7-302. State council for interstate juvenile supervision; members; authority.

(a) Upon the effective date of the interstate compact for juveniles, there shall be created a state council for interstate juvenile supervision. The state council shall be comprised of a total of nine members, to be selected and designated as follows:

(1) Two members designated by the Legislature, one of whom shall be named and appointed by the Speaker of the House, and the other of whom shall be designated by the President of the Senate;

(2) Two members designated by the judiciary, both of whom shall be named and appointed by the Chief Justice of the Supreme Court of Appeals of West Virginia;

(3) The compact administrator or a designee of the compact administrator; and

(4) Four members to be designated and appointed by the Governor, two of whom must be representatives of state agencies dealing with juvenile corrections, juvenile placement or juvenile services, and one of whom must be a representative of a victims' group.

(b) Within ninety days of the effective date of this compact, the state council shall meet and designate a commissioner who shall represent the state as the compacting state's voting representative under Article III of this compact.

(c) The state council will exercise oversight and advocacy concerning West Virginia's participation in interstate commission activities and rule makings, and engage in other duties and activities as determined by its members, including, but not limited to, the development of policy concerning the operations and procedures for implementing the compact and interstate commission rules within West Virginia.

WV Legislature

§49-7-303. Appointment of compact administrator.

(a) Upon and after the effective date of the interstate compact for juveniles, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like offices of the other party states, shall be responsible for the administration and management of this state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and the policies adopted by the state council under this compact. The compact administrator shall serve subject to the will and pleasure of the Governor, and must meet the minimum qualifications for the position of compact administrator, as established by the state council. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state hereunder.

(b) Until the state council has met and established minimum qualifications for the position of compact administrator the individual or administrator who has been designated to act as the juvenile compact administrator for the interstate compact for juveniles may perform the duties and responsibilities of compact administrator under this article.

(c) Until the state council has met and designated a commissioner to vote on behalf of the State of West Virginia at the interstate commission, the individual or administrator who has been designated to act as the juvenile compact administrator for the interstate compact for juveniles shall function as the acting commissioner for the State of West Virginia before the interstate commission formed under the new compact.

WV Legislature

§49-7-304. Notification of the effective date of the interstate compact for juveniles.

Within ten days of the date that the thirty-fifth state adopts legislation approving this compact, the appointed or designated juvenile compact administrator under section three hundred three, article seven of this chapter shall advise the Governor, the Chief Justice of the Supreme Court of Appeals of West Virginia, the Speaker of the House of Delegates and the President of the Senate of the effective date of this compact.

WV Legislature

§49-8-1. Legislative findings; statement of legislative purpose.

(a) In certain circumstances where a parent, or legal custodian of a child is temporarily unable to care for the child due to a crisis or other circumstances, a less intrusive the Legislature finds that alternative to guardianship or the Department of Human Services taking custody of the child should be available. In such circumstances, a parent, or legal custodian may benefit from the assistance of charitable organizations in their community that assist families by providing safe, temporary care for children and support for families during difficult times.

(b) Accordingly, the Legislature finds that a parent, or legal guardian shall have the right to provide for the temporary care of their child with the assistance of qualified charitable organizations as outlined in this code.

WV Legislature

§49-8-2. Definitions.

For purposes of this article:

(1) “Child” means an individual under eighteen years of age;

(2) “Qualified nonprofit organization” means a charitable or religious institution that is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code, which assists the parent or legal guardian of a child with the process of providing for the temporary care of a child through the execution of a power of attorney as described in this section.

WV Legislature

§49-8-2a. Execution of additional article.

The Governor is further authorized and directed to execute, with any other state or states legally joining in the same, an additional article to said compact in the form substantially as follows:

That this article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

For the purposes of this article, "child," as used herein, means any minor within the jurisdictional age limits of any court in the home state.

When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

WV Legislature

§49-8-2b. Execution of amendment.

The Governor is further authorized and directed to execute, with any other state or states legally joining in the same, an amendment to said compact in the form substantially as follows:

(a) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(b) All provisions and procedures of articles V and VI of the interstate compact on juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

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§49-8-3. Delegation of care and custody of a child

(a) The following shall apply only to situations where a parent, guardian or legal custodian of a child provides for the temporary care and custody of a child with the assistance of a qualified nonprofit organization. Nothing in this section shall be interpreted to restrict the rights of parents, guardians or legal custodians providing for the care of children by power of attorney in other contexts.

(b) A parent, guardian or legal custodian of a child may, by a properly executed power of attorney, delegate to a person, for a period not to exceed one year, the care and custody of the child.

(c) A parent, guardian or legal custodian may not delegate:

(1) The power to consent to marriage or adoption of the child;

(2) The performance or inducement of an abortion on or for the child; or

(3) The termination of parental rights to the child.

(d) A delegation of care and custody of a child, under this article, does not change or modify any parental or legal rights, obligations, or authority established by an existing court order, or deprive the parent, guardian or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.

(e) The parent, guardian or legal custodian of the child may revoke or withdraw this power of attorney at any time. Upon the termination, expiration, or revocation of the power of attorney the child shall be returned to the custody of the parent, guardian or legal custodian within forty-eight hours.

(f) Unless the authority is revoked or withdrawn by the parent, guardian or legal custodian, the designee shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney.

(g) The care and custody of a child may only be delegated to the extent, and so long as, the parent, guardian or legal custodian retains care and custody. If the rights of the parent, guardian or custodian of the child are terminated, the power of attorney shall be deemed to be revoked. A court that revokes the care and custody rights of a parent, guardian or legal custodian shall notify the person to whom those parental rights has been delegated, and the child may remain with that person until the court shall finalize the subsequent placement of the child: *Provided*, That no period of placement with a person pursuant to the provisions of this article shall be considered as a factor in a custody hearing in which a family member seeks to be awarded custody of the child.

(h) The execution of a power of attorney by a parent, guardian or legal custodian does not, without other evidence, constitute abandonment, abuse or neglect unless the parent,

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guardian or legal custodian fails to either take custody of the child or execute a new power of attorney after the one year time limit has elapsed: Provided, That nothing in this article may be interpreted to prevent the West Virginia Bureau for Children and Families or law enforcement from investigating allegations of abuse, abandonment, neglect or other mistreatment of a child.

(i) If a parent, guardian or legal custodian of a child wishes to utilize the power of attorney authorized by this section to delegate any powers regarding the care and custody of the child to another person, the qualified nonprofit organization shall conduct a criminal history and federal and state background check on the person to whom powers are delegated prior to the execution of the power of attorney. The criminal history and federal and state background check shall be paid for by the qualified nonprofit organization, the parent, guardian or legal custodian, or the parent's designee. Additionally, the qualified nonprofit organization shall train the designee in the rights, duties, and limitations associated with providing care for a child under this section, including the prevention and reporting of suspected child abuse or neglect.

(j) The designee may not move from the address listed on the parental rights form without written approval of the parent, guardian or legal custodian.

(k) Any person who accepts care and custody of a child pursuant to the provisions of this article shall be deemed a person mandated to report suspected abuse and neglect pursuant to the provisions of section eight hundred three, article two, chapter forty-nine of this code.

(l) If a parent, guardian or legal custodian dies or becomes incapacitated, then the provisions of article ten, chapter forty-four of this code shall apply.

(m) Nothing in this section is intended, nor shall anything herein be interpreted, to otherwise restrict the rights of custodial parents or non-custodial parents to temporarily delegate or provide for the care and custody of a child, or to assert their right to request custody, in accordance with other provisions of West Virginia law.

WV Legislature

§49-8-4. Delegation of parental rights form.

(a) The following statutory form of power of attorney to delegate parental or legal custody may be used:

STATE OF WEST VIRGINIA

STATUTORY FORM FOR POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAN POWERS

(1) "I, _____, certify that I am the parent or legal custodian of:

_____ _____

(Full name of minor child) (Date of birth)

_____ _____

(Full name of minor child) (Date of birth)

_____ _____

(Full name of minor child) (Date of birth)

who is/are minor children."

(2) "I designate _____ (Full name of designee),

_____

(Street address, city, state and zip code of designee)

_____

(Home phone of designee) (Work phone of designee) as the designee of each minor child named above."

(3) "I delegate to the designee all of my power and authority regarding the care, custody and property of each minor child named above, including but not limited to the right to enroll the child in school, inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function or treatment that may concern the child. This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child."

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Or

(4) “I delegate to the designee the following specific powers and responsibilities

(write in):_____

(In the event paragraph four is completed paragraph three does not apply).

This delegation does not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.”

(5) “This power of attorney is effective for a period not to exceed one year, beginning,

_____, ___, and ending _____, ____. I reserve the right to revoke this authority at any time."

By: _____ (Parent/Legal Custodian signature)

(6) “I hereby accept my designation as designee for the minor child/children specified in this power of attorney.

By: _____ (Designee signature)

State of _____

County of _____

ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public, in and for said County and State on this ____day of _____, ____, personally appeared _____(Name of Parent/Legal Custodian) and _____(Name of designee), to me known to be the identical persons who executed this instrument and acknowledged to me that each executed the same as his or her free and voluntary act and deed for the uses and purposes set forth in the instrument.

Witness my hand and official seal the day and year above written.

_____ (Signature of notarial officer)

_____ (Title and Rank)

My commission expires: _____”

(b) A power of attorney is legally sufficient under this article if the wording of the form substantially complies with this section, the form is properly completed, and the signatures

WV Legislature

of the parties are acknowledged.

(c) A copy of each power of attorney executed pursuant to this article shall be retained by the qualified nonprofit organization for a period of three years following the conclusion of the power of attorney. The qualified nonprofit organization shall, upon request, make these records available to the Department of Health and Human Resources.

WV Legislature

§49-8-5. Mandatory disclosures by child investigative personnel.

During a child protective investigation that does not result in an out-of-home placement, a child protective investigator shall provide information to the parent, guardian or legal custodian about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis.

WV Legislature

§49-8-6. Applicability of licensing and other requirements of childcare facilities.

(a) A delegation under this article by a parent, guardian or legal custodian is not subject to the requirements of the child care facility licensing statutes or foster care licensing statutes, and does not constitute an out of home child placement under this code.

(b) A qualified nonprofit organization as defined herein shall not be considered a child care center, child placing agency, or child welfare agency as defined in section two hundred six of article one, chapter forty-nine of this Code, unless such organization also pursues these activities in addition to providing services outlined under this section.

WV Legislature

§49-8-7. Additional procedures not precluded.

In addition to any procedure provided in articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

WV Legislature

§49-9-101. The Foster Care Ombudsman.

[Repealed.]

WV Legislature

§49-9-102. Investigation of complaints.

[Repealed.]

WV Legislature

§49-9-103. Access to foster care children.

[Repealed.]

WV Legislature

§49-9-104. Access to records.

[Repealed.]

WV Legislature

§49-9-105. Subpoena powers.

[Repealed.]

WV Legislature

§49-9-106. Cooperation among government departments or agencies.

[Repealed.]

WV Legislature

§49-9-107. Confidentiality of investigations.

[Repealed.]

WV Legislature

§49-9-108. Limitations on liability.

[Repealed.]

WV Legislature

§49-9-109. Willful interference; retaliation; penalties.

[Repealed.]

WV Legislature

§49-9-110. Funding for Foster Care Ombudsman Program.

[Repealed.]

WV Legislature

§49-10-101. Legislative findings.

The Legislature finds the State of West Virginia is experiencing a child welfare crisis. From 2016 to 2020, the child protective service vacancy rate has increased from 9.7 percent to 33 percent. This significant lack of staffing has caused a delay in response times to begin investigations. During the same time period, the average hours to start a child protective service investigation after referral went from 119.1 hours in 2016 to now averaging 428.1 hours in 2020. This significant failure to begin the investigation can and has cost lives. The Legislature finds that the Bureau for Social Services is having extreme difficulty recruiting and retaining child protective service workers, youth service workers, adult protective service workers, and other related workers, including necessary casework support personnel and managers at the county level, who assist in the provision of services to vulnerable populations.

WV Legislature

§49-10-102. Bureau for Social Service employees exempt from Division of Personnel.

(a) The Commissioner of the Bureau for Social Services shall develop a merit-based system policy for the bureau. The procedure shall include classification specifications, and may include compensation adjustments, retention incentives, and hiring approval by the commissioner. The commissioner shall have the full authority to evaluate applicants for employment or promotion or make classification determinations for positions within the merit-based system. The pay rates and employment requirements shall be put into effect on or before January 1, 2024. This merit-based system shall apply to new employees in the above referenced job classifications and for existing employees who elect, in writing to enter the merit-based system. The merit-based system is exempt from the Division of Personnel and all requirements of §29-6-1 *et seq*. of this code and any related rules. There is no requirement for uniformity regarding the pay scale for the same classification between regions of the state to account for market rates and demand for specific positions. The provisions of §6C-2-1 *et seq*. of this code are not applicable.

(b) Funding for the pay rates and employment requirements shall be provided from the appropriation to the bureau.

(c) The commissioner may conduct periodic wage and compensation analysis of identified market rates for the above positions as determined by the commissioner.

(d) The commissioner shall report to Legislative Oversight Commission of Health and Human Resources accountability by January 1, 2024.

WV Legislature

§49-10-103. Bureau for Social Service employees no requirement uniformity in pay scale.

The Legislature finds that the Bureau for Social Services is having extreme difficulty retaining child protective service workers, youth service workers, adult protective service workers, and other related workers, including necessary casework support personnel and managers at the county level, who assist in the provision of services to vulnerable populations. To retain qualified employees in these crucial positions, there is no requirement for uniformity regarding the pay scale for the same classification between regions of the state to account for market rates and demand for specific positions. The provisions of §6C-2-1 *et seq*. of this code shall be applicable to the employees of the merit-based system as set forth in §49-10-102 of this code, however, there is no right to a grievance for any such regional pay disparity for the same job classification.

WV Legislature

§49-11-101. Systemic reporting transparency.

(a) The commissioner shall update the existing child welfare data dashboard by July 1, 2026, and shall update the child welfare data dashboard monthly thereafter to report on system-wide issues including, but not limited to, system-level performance indicators, intake hotline performance indicators, field investigation performance indicators, open case performance indicators, out-of-home placement performance indicators, and federally mandated performance indicators including, but not limited to, time to first contact to all children, information on children in non-placement or temporary lodging status.

(b) The Commissioner shall update the existing child welfare data dashboard with information on child fatality and near fatality information related to those cases subject to review by the Critical Incident Review Team as set forth in §61-12B-1 *et seq*. of this code within 48 hours of a child fatality or near fatality. With respect to child fatality or near fatality information, the Department of Human Services shall report the following variables: the date of the incident, the child's sex, and the child's age. The data dashboard shall provide a link to the final report of the Critical Incident Review Team within 24 hours of its completion. The Commissioner shall send a notification, within 24 hours of child fatalities or near fatalities, to the Secretary of Human Services to enable it to convene a meeting of the Critical Incident Review Team.

(c) The child welfare data dashboard shall include workforce information including, but not limited to, the number of child protective services staff that have been hired but who have not completed training, the number and vacancies of adoption workers, and the number and vacancies of home finders.

(d) Starting July 1, 2026, the data reported on the child welfare data dashboard shall be represented as a point in time number and trended over time. Beginning July 1, 2026, the data shall be saved in a way to allow public users to search the dashboard yearly by reporting date, and by county. The Department of Human Services may apply data suppression in order to protect individual identification as necessary.

WV Legislature

§49-12-1. Short title.

This article shall be known and may be cited as the "Parents’ Bill of Rights".

WV Legislature

§49-12-2. Legislative findings and definition.

(a) The Legislature finds that it is a fundamental right of parents to direct the upbringing, education, care, and medical care of their minor children. The Legislature further finds that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district.

(b) For purposes of this article, the term "parent" means a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian.

WV Legislature

§49-12-3. Infringement of parental rights.

The state, any of its political subdivisions, any other governmental entity, or any other state institution may not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means.

WV Legislature

§49-12-4. Parental rights.

(a) All parental rights are reserved to the parent of a minor child in this state without obstruction or interference from the state, any of its political subdivisions, any other governmental entity, or any other state institution, including, but not limited to, all of the following rights of a parent of a minor child in this state:
(1) The right to direct the education and care of his or her minor child.

(2) The right to direct the upbringing and the moral or religious training of his or her minor child.

(3) The right to apply to enroll his or her minor child in a public school or, as an alternative to public education, a private school, including a religious school, a home education program, or other available options, as authorized by law.

(4) The right to access and review all school records relating to his or her minor child.

(5) The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.

(b) The right to parental rights guaranteed by this article shall not be denied or abridged on account of disability.

(c) A parent may raise this article as a defense before any court or administrative tribunal. In addition, any person aggrieved by the provisions of this article may bring an action for injunctive relief against a person who engages in conduct that constitutes a violation of this article in the circuit court of any county in which any part of the conduct occurs. The circuit court may grant any appropriate injunctive relief to prevent or abate the conduct, including a temporary restraining order, preliminary injunction, or permanent injunction.

WV Legislature

§49-12-5. Applicability; limitations.

(a) This article applies to state and local laws, rules, or ordinances, and the implementation of that law, rule, or ordinance, whether statutory or otherwise. Statutory law adopted after the date of the enactment of this article is subject to this article unless such law explicitly excludes such application by reference to this article.

(b) This article does not:

(1) Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.

(2) Condone, authorize, approve, or apply to a parental action or decision that would end life.

(3) Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority; or

(4) Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

WV Legislature