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WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 393

**(BY SENATOR COLE (MR. PRESIDENT) AND KESSLER,
BY REQUEST OF THE EXECUTIVE)**

[PASSED MARCH 14, 2015; IN EFFECT MAY 17, 2015.]

SB 393

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(SENATORS COLE (MR. PRESIDENT)
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[Passed March 14, 2015; in effect May 17, 2015.]

AN ACT to amend and reenact §49-1-206 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-2-907, §49-2-1002 and §49-2-1003 of said code; to amend said code by adding thereto two new sections, designated §49-2-912 and §49-2-913; to amend and reenact §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718 and §49-4-719 of said code; to amend said code by adding thereto four new sections, designated §49-4-413, §49-4-702a, §49-4-724 and §49-4-725; to amend and reenact §49-5-103 of said code; and to amend said code by adding thereto a new section, designated §49-5-106, all relating generally to juvenile justice reform; defining terms; providing that juveniles may only be transferred to juvenile diagnostic centers under certain circumstances; requiring dedication of a percentage of funding for community services to evidence-based practices; establishing criteria for transition to juvenile's home setting following out-of-home placement; providing for cooperative agreements solely between the Department of Health and

Human Resources and private agencies to house status offenders; establishing community-based youth reporting centers; establishing Juvenile Justice Reform Oversight Committee; providing for multidisciplinary team meetings; establishing members of multidisciplinary team; providing that multidisciplinary team shall advise court on treatment and rehabilitation plans for juvenile; providing that multidisciplinary team shall monitor juvenile's progress; requiring aftercare plan for all juvenile out-of-home placements; providing prepetition diversion process for juveniles who commit truancy offenses, status offenses and nonviolent misdemeanor offenses, effective July 1, 2016; providing requirements for prepetition diversion programs; authorizing probation officers to participate in prepetition diversion programs; allowing truancy or treatment programs existing in a judicial circuit as of January 1, 2015, to continue to operate notwithstanding new requirements; establishing prepetition review team; requiring court to consider results of risk and needs assessment of the juvenile prior to dispositional proceedings; requiring inclusion of accepted treatment and rehabilitation plan for juveniles in certain findings of fact; providing that a juvenile adjudicated as a status offender may not be placed in out-of-home placement in certain circumstances; prohibiting placement of a juvenile adjudicated as a status offender within a Division of Juvenile Services facility on or after January 1, 2016; providing that a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in out-of-home placement in certain circumstances; providing that time served by a juvenile in a detention center pending adjudication, disposition or transfer be taken into account during sentencing; requiring court to issue certain findings of fact if a juvenile is to be placed in a residential facility; providing for standardized screener to conduct an evaluation of the juvenile in certain circumstances; permitting court to include reasonable and relevant orders to parents in its disposition order for a juvenile; establishing

review and modification procedures for probation dispositional orders; authorizing Supreme Court of Appeals to develop community-based juvenile probation sanctions and incentives; establishing individualized case planning; providing that a juvenile may be referred to a truancy diversion specialist prior to filing of petition; providing for prepetition counsel and advice; providing for adoption of risk and needs assessment and validation; authorizing creation of restorative justice programs; providing for disclosure of juvenile records to Department of Health and Human Resources and Division of Juvenile Services for case planning; providing for data collection related to juvenile justice outcomes and disproportional minority contact; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That §49-1-206 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §49-2-907, §49-2-1002 and §49-2-1003 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §49-2-912 and §49-2-913; that §49-4-403, §49-4-406, §49-4-409, §49-4-702, §49-4-711, §49-4-712, §49-4-714, §49-4-718 and §49-4-719 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §49-4-413, §49-4-702a, §49-4-724 and §49-4-725; that §49-5-103 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-5-106, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

- 1 When used in this chapter, terms defined in this section
- 2 have the meanings ascribed to them that relate to, but are not
- 3 limited to, child advocacy, care, residential and treatment

4 programs, except in those instances where a different
5 meaning is provided or the context in which the word is used
6 clearly indicates that a different meaning is intended.

7 “Child advocacy center (CAC)” means a
8 community-based organization that is a member in good
9 standing with the West Virginia Child Abuse Network, Inc.,
10 as set forth in section one hundred one, article three of this
11 chapter.

12 “Child care” means responsibilities assumed and services
13 performed in relation to a child’s physical, emotional,
14 psychological, social and personal needs and the
15 consideration of the child’s rights and entitlements, but does
16 not include secure detention or incarceration under the
17 jurisdiction of the Division of Juvenile Services pursuant to
18 part nine, article two of this chapter. It includes the provision
19 of child care services or residential services.

20 “Child care center” means a facility maintained by the
21 state or any county or municipality thereof, or any agency or
22 facility maintained by an individual, firm, corporation,
23 association or organization, public or private for the care of
24 thirteen or more children for child care services in any
25 setting, if the facility is open for more than thirty days per
26 year per child.

27 “Child care services” means direct care and protection of
28 children during a portion of a twenty-four hour day outside
29 of the child’s own home which provides experiences to
30 children that foster their healthy development and education.

31 “Child placing agency” means a child welfare agency
32 organized for the purpose of placing children in private
33 family homes for foster care or for adoption. The function of
34 a child-placing agency may include the investigation and

35 certification of foster family homes and foster family group
36 homes as provided in this chapter. The function of a child
37 placing agency may also include the supervision of children
38 who are sixteen or seventeen years old and living in
39 unlicensed residences.

40 “Child welfare agency” means any agency or facility
41 maintained by the state or any county or municipality thereof,
42 or any agency or facility maintained by an individual, firm,
43 corporation, association or organization, public or private, to
44 receive children for care and maintenance or for placement in
45 residential care facilities, including, without limitation,
46 private homes or any facility that provides care for unmarried
47 mothers and their children. A child welfare agency does not
48 include juvenile detention facilities or juvenile correctional
49 facilities operated by or under contract with the Division of
50 Juvenile Services, pursuant to part nine, article two of this
51 chapter, nor any other facility operated by that division for
52 the secure housing or holding of juveniles committed to its
53 custody.

54 “Community based” means a facility, program or service
55 located near the child’s home or family and involving
56 community participation in planning, operation and
57 evaluation and which may include, but is not limited to,
58 medical, educational, vocational, social and psychological
59 guidance, training, special education, counseling, substance
60 abuse and any other treatment or rehabilitation services.

61 “Community-based juvenile probation sanctions” means
62 any of a continuum of nonresidential accountability
63 measures, programs and sanctions in response to a technical
64 violation of probation, as part of a system of
65 community-based juvenile probation sanctions and
66 incentives, that may include, but are not limited to:

67 (A) Electronic monitoring;

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

69 (C) Youth reporting centers;

70 (D) Reporting and supervision requirements;

71 (E) Community service; and

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

75 “Community services” means nonresidential prevention
76 or intervention services or programs that are intended to
77 reduce delinquency and future court involvement.

78 “Evidence-based practices” means policies, procedures,
79 programs and practices demonstrated by research to reliably
80 produce reductions in the likelihood of reoffending.

81 “Facility” means a place or residence, including
82 personnel, structures, grounds and equipment used for the
83 care of a child or children on a residential or other basis for
84 any number of hours a day in any shelter or structure
85 maintained for that purpose. Facility does not include any
86 juvenile detention facility or juvenile correctional facility
87 operated by or under contract with the Division of Juvenile
88 Services for the secure housing or holding of juveniles
89 committed to its custody.

90 “Family child care facility” means any facility which is
91 used to provide nonresidential child care services for
92 compensation for seven to twelve children, including children
93 who are living in the household, who are under six years of

94 age. No more than four of the total number of children may
95 be under twenty-four months of age. A facility may be in a
96 provider's residence or a separate building.

97 "Family child care home" means a facility which is used
98 to provide nonresidential child care services for
99 compensation in a provider's residence. The provider may
100 care for four to six children at one time, including children
101 who are living in the household, who are under six years of
102 age. No more than two of the total number of children may be
103 under twenty-four months of age.

104 "Family resource network" means:

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

109 (i) Agreeing to a single governing entity;

110 (ii) Agreeing to engage in activities to improve service
111 systems for children and families within the community;

112 (iii) Addressing a geographic area of a county or two or
113 more contiguous counties;

114 (iv) Having nonproviders, which include family
115 representatives and other members who are not employees of
116 publicly funded agencies, as the majority of the members of
117 the governing body, and having family representatives as the
118 majority of the nonproviders;

119 (v) Having representatives of local service agencies,
120 including, but not limited to, the public health department, the
121 behavioral health center, the local health and human
122 resources agency and the county school district, on the
123 governing body; and

124 (vi) Accepting principles consistent with the cabinet's
125 mission as part of its philosophy.

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

129 "Family support", for the purposes of part six, article two
130 of this chapter, means goods and services needed by families
131 to care for their family members with developmental
132 disabilities and to enjoy a quality of life comparable to other
133 community members.

134 "Family support program" means a coordinated system of
135 family support services administered by the Department of
136 Health and Human Resources through contracts with
137 behavioral health agencies throughout the state.

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

142 "Health care and treatment" means:

143 (A) Developmental screening;

144 (B) Mental health screening;

145 (C) Mental health treatment;

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

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

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

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

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

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

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

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

177 Nonviolent misdemeanor offense” means a misdemeanor
178 offense that does not include any of the following:

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

180 (B) The use of a weapon in the commission of the
181 offense;

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

184 (D) A criminal sexual conduct offense; or

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

187 “Out-of-home placement” means a post-adjudication
188 placement in a foster family home, group home, nonsecure
189 facility, emergency shelter, hospital, psychiatric residential
190 treatment facility, staff-secure facility, hardware secure
191 facility, detention facility or other residential placement other
192 than placement in the home of a parent, custodian or
193 guardian.

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

198 “Placement” means any temporary or permanent
199 placement of a child who is in the custody of the state in any
200 foster home, group home or other facility or residence.

201 “Pre-adjudicatory community supervision” means
202 supervision provided to a youth prior to adjudication, a
203 period of supervision up to one year for an alleged status or
204 delinquency offense.

205 “Regional family support council” means the council
206 established by the regional family support agency to carry out
207 the responsibilities specified in part six, article two of this
208 chapter.

209 **“Relative family child care” means a home that provides**
210 **nonresidential child care services only to children related to**
211 **the caregiver. The caregiver is a grandparent, great**
212 **grandparent, aunt, uncle, great-aunt, great-uncle or adult**
213 **sibling of the child or children receiving care. Care is given**
214 **in the provider’s home.**

215 **“Residential services” means child care which includes**
216 **the provision of nighttime shelter and the personal discipline**
217 **and supervision of a child by guardians, custodians or other**
218 **persons or entities on a continuing or temporary basis. It may**
219 **include care and/or treatment for transitioning adults.**
220 **Residential services does not include or apply to any juvenile**
221 **detention facility or juvenile correctional facility operated by**
222 **the Division of Juvenile Services, created pursuant to this**
223 **chapter, for the secure housing or holding of juveniles**
224 **committed to its custody.**

225 **“Risk and needs assessment” means a validated,**
226 **standardized actuarial tool which identifies specific risk**
227 **factors that increase the likelihood of reoffending and the**
228 **factors that, when properly addressed, can reduce the**
229 **likelihood of reoffending.**

230 **“Secure facility” means any public or private residential**
231 **facility which includes construction fixtures designed to**
232 **physically restrict the movements and activities of juveniles**
233 **or other individuals held in lawful custody in such facility.**

234 **“Staff-secure facility” means any public or private**
235 **residential facility characterized by staff restrictions of the**
236 **movements and activities of individuals held in lawful**
237 **custody in such facility and which limits its residents’ access**
238 **to the surrounding community, but is not characterized by**
239 **construction fixtures designed to physically restrict the**
240 **movements and activities of residents.**

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

246 “State family support council” means the council
247 established by the Department of Health and Human
248 Resources pursuant to part six, article two of this chapter to
249 carry out the responsibilities specified in article two of this
250 chapter.

251 “Time-limited reunification services” means individual,
252 group and family counseling, inpatient, residential or
253 outpatient substance abuse treatment services, mental health
254 services, assistance to address domestic violence, services
255 designed to provide temporary child care and therapeutic
256 services for families, including crisis nurseries and
257 transportation to or from those services, provided during
258 fifteen of the most recent twenty-two months a child or
259 juvenile has been in foster care, as determined by the earlier
260 date of the first judicial finding that the child is subjected to
261 abuse or neglect, or the date which is sixty days after the
262 child or juvenile is removed from home.

263 “Technical violation” means an act that violates the terms
264 or conditions of probation or a court order that does not
265 constitute a new delinquent offense.

266 “Truancy diversion specialist” means a school-based
267 probation officer or truancy social worker within a school or
268 schools who, among other responsibilities, identifies truant
269 and the causes of the truant behavior, and assists in
270 developing a plan to reduce the truant behavior prior to court
271 involvement.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**§49-2-907. Examination, diagnosis classification and treatment; period of custody.**

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

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

28 (c) Not later than thirty days after commitment pursuant
29 to this section the juvenile shall be remanded and delivered
30 to the custody of the director, an appropriate agency or any

31 other person that the court by its order directs. Within ten
32 days after the end of the examination, diagnosis and
33 classification, the Director of the Division of Juvenile
34 Services shall make or cause to be made a report to the court
35 containing the results, findings, conclusions and
36 recommendations of the multidisciplinary team with respect
37 to that juvenile.

§49-2-912. Youth reporting centers.

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

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

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

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

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

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

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

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

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

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

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

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

15 (4) The Secretary of the Department of Health and
16 Human Resources, or his or her designee;

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

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

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

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

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

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

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

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

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

37 (14) The Director of the Juvenile Justice Commission.

38 (c) The committee shall perform the following duties:

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

42 (2) Obtain and review the juvenile recidivism and
43 program outcome data collected pursuant to section one
44 hundred six, article five of this chapter;

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

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

54 (A) The performance and outcome measures for the
55 court, the Department of Health and Human Resources and
56 the Division of Juvenile Services; and

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

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

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

63 (7) Issue an annual report to the Governor, the President
64 of the Senate, the Speaker of the House of Delegates and the
65 Chief Justice of the Supreme Court of Appeals of West
66 Virginia on or before November 30th of each year, starting in
67 2016, which shall include:

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

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

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

74 (D) A summary of the averted costs calculated by the
75 committee under this section and a recommendation for any
76 reinvestment of the averted costs to fund services or
77 programs to expand West Virginia's continuum of

78 alternatives for youth who would otherwise be placed in
79 out-of-home placement;

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

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

88 (e) The committee shall meet within ninety days after
89 appointment and shall thereafter meet at least quarterly, upon
90 notice by the chair. Eight members shall be considered a
91 quorum.

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

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

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

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

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

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

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

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

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

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

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

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

48 (9) Transitional programs designed to assist juveniles
49 who are in the custody of the state upon reaching the age of
50 eighteen years.

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

58 (c) (1) The Department of Health and Human Resources
59 shall establish an individualized program of rehabilitation for
60 each status offender referred to the department and to each
61 alleged juvenile delinquent referred to the department after
62 being allowed a pre-adjudicatory community supervision

63 period by the juvenile court, and for each adjudicated
64 juvenile delinquent who, after adjudication, is referred to the
65 department for investigation or treatment or whose custody
66 is vested in the department.

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

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

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

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

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

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

98 (4) If further time in residential placement is necessary
99 and the most effective method of attaining the rehabilitation
100 goals identified by the rehabilitation individualized plan
101 created under subsection (c) of this section, then the
102 department shall provide information to the multidisciplinary
103 team to substantiate that further time in a residential facility
104 is necessary. The court, in consultation with the
105 multidisciplinary team, may order an extension of time in
106 residential placement prior to the juvenile's transition to the
107 community if the court finds by clear and convincing
108 evidence that an extension is in the best interest of the child.
109 If the court finds that the evidence does not support an
110 extension, the court shall order that the transition to
111 community services proceed.

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

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

1 (a) The Department of Health and Human Resources shall
2 establish and maintain one or more rehabilitative facilities to
3 be used exclusively for the lawful custody of status offenders.
4 Each facility will be a nonsecure facility having as its
5 purpose the rehabilitation of status offenders. The facility

6 will have a bed capacity for not more than twenty juveniles
7 and shall minimize the institutional atmosphere and prepare
8 the juvenile for reintegration into the community.

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

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

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

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

ARTICLE 4. COURT ACTIONS.

§49-4-403. Multidisciplinary treatment planning process; coordination; access to information.

1 (a)(1) A multidisciplinary treatment planning process for
2 cases initiated pursuant to part six and part seven of article
3 four of this chapter shall be established within each county of
4 the state, either separately or in conjunction with a
5 contiguous county, by the secretary of the department with
6 advice and assistance from the prosecutor's advisory council
7 as set forth in section four, article four, chapter seven of this
8 code. In each circuit, the department shall coordinate with the
9 prosecutor's office, the public defender's office or other
10 counsel representing juveniles to designate, with the approval
11 of the court, at least one day per month on which
12 multidisciplinary team meetings for that circuit shall be held:
13 *Provided*, That multidisciplinary team meetings may be held
14 on days other than the designated day or days when
15 necessary. The Division of Juvenile Services shall establish
16 a similar treatment planning process for delinquency cases in
17 which the juvenile has been committed to its custody,
18 including those cases in which the juvenile has been
19 committed for examination and diagnosis.

20 (2) This section does not require a multidisciplinary team
21 meeting to be held prior to temporarily placing a child or
22 juvenile out-of-home under exigent circumstances or upon a
23 court order placing a juvenile in a facility operated by the
24 Division of Juvenile Services.

25 (b) The case manager in the Department of Health and
26 Human Resources for the child, family or juvenile or the case
27 manager in the Division of Juvenile Services for a juvenile
28 shall convene a treatment team in each case when it is
29 required pursuant to this article.

30 (1) Prior to disposition, in each case in which a treatment
31 planning team has been convened, the team shall advise the
32 court as to the types of services the team has determined are
33 needed and the type of placement, if any, which will best
34 serve the needs of the child. If the team determines that an
35 out-of-home placement will best serve the needs of the child,
36 the team shall first consider placement with appropriate
37 relatives then with foster care homes, facilities or programs
38 located within the state. The team may only recommend
39 placement in an out-of-state facility if it concludes, after
40 considering the best interests and overall needs of the child,
41 that there are no available and suitable in-state facilities
42 which can satisfactorily meet the specific needs of the child.

43 (2) Any person authorized by the provisions of this
44 chapter to convene a multidisciplinary team meeting may
45 seek and receive an order of the circuit court setting such
46 meeting and directing attendance. Members of the
47 multidisciplinary team may participate in team meetings by
48 telephone or video conferencing. This subsection does not
49 prevent the respective agencies from designating a person
50 other than the case manager as a facilitator for treatment team
51 meetings. Written notice shall be provided to all team
52 members of the availability to participate by
53 videoconferencing.

54 (c) The treatment team shall coordinate its activities and
55 membership with local family resource networks and
56 coordinate with other local and regional child and family
57 service planning committees to assure the efficient planning
58 and delivery of child and family services on a local and
59 regional level.

60 (d) The multidisciplinary treatment team shall be afforded
61 access to information in the possession of the Department of

62 Health and Human Resources, Division of Juvenile Services,
63 law-enforcement agencies and other state, county and local
64 agencies. Those agencies shall cooperate in the sharing of
65 information as may be provided in article five of this chapter
66 or any other relevant provision of law. Any multidisciplinary
67 team member who acquires confidential information may not
68 disclose the information except as permitted by the provisions
69 of this code or court rules.

**§49-4-406. Multidisciplinary treatment process for status offenders or
delinquents; requirements; custody; procedure; reports;
cooperation; inadmissibility of certain statements.**

1 (a) When a juvenile is adjudicated as a status offender
2 pursuant to section seven hundred eleven of this article, the
3 Department of Health and Human Resources shall promptly
4 convene a multidisciplinary treatment team and conduct an
5 assessment, utilizing a standard uniform comprehensive
6 assessment instrument or protocol, including a risk and needs
7 assessment, to determine the juvenile's mental and physical
8 condition, maturity and education level, home and family
9 environment, rehabilitative needs and recommended service
10 plan, which shall be provided in writing to the court and team
11 members. Upon completion of the assessment, the treatment
12 team shall prepare and implement a comprehensive,
13 individualized service plan for the juvenile.

14 (b) When a juvenile is adjudicated as a delinquent or has
15 been granted a preadjudicatory community supervision
16 period pursuant to section seven hundred eight of this article,
17 the court, either upon its own motion or motion of a party,
18 may require the Department of Health and Human Resources
19 to convene a multidisciplinary treatment team and conduct an
20 assessment, utilizing a standard uniform comprehensive
21 assessment instrument or protocol, including a risk and needs
22 assessment, to determine the juvenile's mental and physical

23 condition, maturity and education level, home and family
24 environment, rehabilitative needs and recommended service
25 plan, which shall be provided in writing to the court and team
26 members. A referral to the Department of Health and Human
27 Resources to convene a multidisciplinary treatment team and
28 to conduct such an assessment shall be made when the court
29 is considering placing the juvenile in the department's
30 custody or placing the juvenile out-of-home at the
31 department's expense pursuant to section seven hundred
32 fourteen of this article. In any delinquency proceeding in
33 which the court requires the Department of Health and
34 Human Resources to convene a multidisciplinary treatment
35 team, the probation officer shall notify the department at least
36 fifteen working days before the court proceeding in order to
37 allow the department sufficient time to convene and develop
38 an individualized service plan for the juvenile.

39 (c) When a juvenile has been adjudicated and committed
40 to the custody of the Director of the Division of Juvenile
41 Services, including those cases in which the juvenile has been
42 committed for examination and diagnosis, the Division of
43 Juvenile Services shall promptly convene a multidisciplinary
44 treatment team and conduct an assessment, utilizing a
45 standard uniform comprehensive assessment instrument or
46 protocol, including a risk and needs assessment, to determine
47 the juvenile's mental and physical condition, maturity and
48 education level, home and family environment, rehabilitative
49 needs and recommended service plan. Upon completion of
50 the assessment, the treatment team shall prepare and
51 implement a comprehensive, individualized service plan for
52 the juvenile, which shall be provided in writing to the court
53 and team members. In cases where the juvenile is committed
54 as a post-sentence disposition to the custody of the Division
55 of Juvenile Services, the plan shall be reviewed quarterly by
56 the multidisciplinary treatment team. Where a juvenile has
57 been detained in a facility operated by the Division of

58 Juvenile Services without an active service plan for more
59 than sixty days, the director of the facility may call a
60 multidisciplinary team meeting to review the case and discuss
61 the status of the service plan.

62 (d) (1) The rules of juvenile procedure shall govern the
63 procedure for obtaining any assessment of a juvenile,
64 preparing an individualized service plan and submitting the
65 plan and any assessment to the court.

66 (2) In juvenile proceedings conducted pursuant to part
67 seven of this article, the following representatives shall serve
68 as members and attend each meeting of the multidisciplinary
69 treatment team, so long as they receive notice at least seven
70 days prior to the meeting:

71 (A) The juvenile;

72 (B) The juvenile's case manager in the Department of
73 Health and Human Resources or the Division of Juvenile
74 Services;

75 (C) The juvenile's parent, guardian or custodian;

76 (D) The juvenile's attorney;

77 (E) Any attorney representing a member of the
78 multidisciplinary treatment team;

79 (F) The prosecuting attorney or his or her designee;

80 (G) The county school superintendent or the
81 superintendent's designee;

82 (H) A treatment or service provider with training and
83 clinical experience coordinating behavioral or mental health
84 treatment; and

85 (1) Any other person or agency representative who may
86 assist in providing recommendations for the particular needs
87 of the juvenile and family, including domestic violence
88 service providers. In delinquency proceedings, the probation
89 officer shall be a member of a multidisciplinary treatment
90 team. When appropriate, the juvenile case manager in the
91 Department of Health and Human Resources and the Division
92 of Juvenile Services shall cooperate in conducting
93 multidisciplinary treatment team meetings when it is in the
94 juvenile's best interest.

95 (3) Prior to disposition, in each case in which a treatment
96 planning team has been convened, the team shall advise the
97 court as to the types of services the team has determined are
98 needed and type of placement, if any, which will best serve
99 the needs of the child. If the team determines that an
100 out-of-home placement will best serve the needs of the child,
101 the team shall first consider placement at facilities or
102 programs located within the state. The team may only
103 recommend placement in an out-of-state facility if it
104 concludes, after considering the best interests and overall
105 needs of the child, that there are no available and suitable
106 in-state facilities which can satisfactorily meet the specific
107 needs of the child. The multidisciplinary treatment team shall
108 also determine and advise the court as to the individual
109 treatment and rehabilitation plan recommended for the child
110 for either out-of-home placement or community supervision.
111 The plan may focus on reducing the likelihood of
112 reoffending, requirements for the child to take responsibility
113 for his or her actions, completion of evidence-based services
114 or programs or any other relevant goal for the child. The plan
115 may also include opportunities to incorporate the family,
116 custodian or guardian into the treatment and rehabilitation
117 process.

118 (4) The multidisciplinary treatment team shall submit
119 written reports to the court as required by applicable law or
120 by the court, shall meet with the court at least every three
121 months, as long as the juvenile remains in the legal or
122 physical custody of the state, and shall be available for status
123 conferences and hearings as required by the court. The
124 multidisciplinary treatment team shall monitor progress of the
125 plan identified in subdivision (3) of this subsection and
126 review progress of the plan at the regular meetings held at
127 least every three months pursuant to this section, or at shorter
128 intervals, as ordered by the court, and shall report to the court
129 on the progress of the plan or if additional modification is
130 necessary.

131 (5) In any case in which a juvenile has been placed out of
132 his or her home except for a temporary placement in a shelter
133 or detention center, the multidisciplinary treatment team shall
134 cooperate with the state agency in whose custody the juvenile
135 is placed to develop an after-care plan. The rules of juvenile
136 procedure and section four hundred nine of this article govern
137 the development of an after-care plan for a juvenile, the
138 submission of the plan to the court and any objection to the
139 after-care plan.

140 (6) If a juvenile respondent admits the underlying
141 allegations of the case initiated pursuant to part VII of this
142 article, in the multidisciplinary treatment planning process,
143 his or her statements may not be used in any juvenile or
144 criminal proceedings against the juvenile, except for perjury
145 or false swearing.

**§49-4-409. After-care plans; contents; written comments; contacts;
objections; courts.**

1 (a) Prior to the discharge of a child from any out-of-home
2 placement to which the juvenile was committed pursuant to

3 this chapter, the department or the Division of Juvenile
4 Services shall convene a meeting of the multidisciplinary
5 treatment team to which the child has been referred or, if no
6 referral has been made, convene a multidisciplinary treatment
7 team for any child for which a multidisciplinary treatment
8 plan is required by this article and forward a copy of the
9 juvenile's proposed after-care plan to the court which
10 committed the juvenile. A copy of the plan shall also be sent
11 to: (1) The child's parent, guardian or custodian; (2) the
12 child's lawyer; (3) the child's probation officer or community
13 mental health center professional; (4) the prosecuting
14 attorney of the county in which the original commitment
15 proceedings were held; and (5) the principal of the school
16 which the child will attend. The plan shall have a list of the
17 names and addresses of these persons attached to it.

18 (b) The after-care plan shall contain a detailed description
19 of the education, counseling and treatment which the child
20 received at the out-of-home placement and it shall also
21 propose a plan for education, counseling and treatment for
22 the child upon the child's discharge. The plan shall also
23 contain a description of any problems the child has, including
24 the source of those problems, and it shall propose a manner
25 for addressing those problems upon discharge.

26 (c) Within twenty-one days of receiving the plan, the
27 child's probation officer or community mental health center
28 professional shall submit written comments upon the plan to
29 the court which committed the child. Any other person who
30 received a copy of the plan pursuant to subsection (a) of this
31 section may submit written comments upon the plan to the
32 court which committed the child. Any person who submits
33 comments upon the plan shall send a copy of those comments
34 to every other person who received a copy of the plan.

35 (d) Within twenty-one days of receiving the plan, the
36 child's probation officer or community mental health center
37 professional shall contact all persons, organizations and
38 agencies which are to be involved in executing the plan to
39 determine whether they are capable of executing their
40 responsibilities under the plan and to further determine
41 whether they are willing to execute their responsibilities
42 under the plan.

43 (e) If adverse comments or objections regarding the plan
44 are submitted to the circuit court, it shall, within forty-five
45 days of receiving the plan, hold a hearing to consider the plan
46 and the adverse comments or objections. Any person,
47 organization or agency which has responsibilities in
48 executing the plan, or their representatives, may be required
49 to appear at the hearing unless they are excused by the circuit
50 court. Within five days of the hearing, the circuit court shall
51 issue an order which adopts the plan as submitted or as
52 modified in response to any comments or objections.

53 (f) If no adverse comments or objections are submitted,
54 a hearing need not be held. In that case, the circuit court shall
55 consider the plan as submitted and shall, within forty-five
56 days of receiving the plan, issue an order which adopts the
57 plan as submitted.

58 (g) Notwithstanding the provisions of subsections (e) and
59 (f) of this section, the plan which is adopted by the circuit
60 court shall be in the best interests of the child and shall also
61 be in conformity with West Virginia's interest in youths as
62 embodied in this chapter.

63 (h) The court which committed the child shall appoint the
64 child's probation officer or community mental health center
65 professional to act as supervisor of the plan. The supervisor
66 shall report the child's progress under the plan to the court

67 every sixty days or until the court determines that no report
68 or no further care is necessary.

§49-4-413. Individualized case planning.

1 (a) For any juvenile ordered to probation supervision
2 pursuant to section seven hundred fourteen, article four of
3 this chapter, the probation officer assigned to the juvenile
4 shall develop and implement an individualized case plan in
5 consultation with the juvenile's parents, guardian or
6 custodian, and other appropriate parties, and based upon the
7 results of a risk and needs assessment conducted within the
8 last six months prior to the disposition to probation. The
9 probation officer shall work with the juvenile and his or her
10 family, guardian or custodian to implement the case plan
11 following disposition. At a minimum, the case plan shall:

12 (1) Identify the actions to be taken by the juvenile and, if
13 appropriate, the juvenile's parents, guardian or custodian to
14 ensure future lawful conduct and compliance with the court's
15 disposition order; and

16 (2) Identify the services to be offered and provided to the
17 juvenile and, if appropriate, the juvenile's parents, guardian
18 or custodian and may include services to address: Mental
19 health and substance abuse issues; education; individual,
20 group and family counseling services; community restoration;
21 or other relevant concerns identified by the probation officer.

22 (b) For any juvenile disposed to an out-of-home
23 placement with the department, the department shall ensure
24 that the residential service provider develops and implements
25 an individualized case plan based upon the recommendations
26 of the multidisciplinary team pursuant to section four hundred
27 six, article four of this chapter and the results of a risk and
28 needs assessment. At a minimum, the case plan shall include:

29 (1) Specific treatment goals and the actions to be taken by
30 the juvenile in order to demonstrate satisfactory attainment of
31 each goal;

32 (2) The services to be offered and provided by the
33 residential service providers; and

34 (3) A detailed plan designed to assure appropriate
35 reintegration of the juvenile to his or her family, guardian,
36 school and community following the satisfactory completion
37 of the case plan treatment goals, including a protocol and
38 timeline for engaging the parents, guardians or custodians
39 prior to the release of the juvenile.

40 (c) For any juvenile committed to the Division of
41 Juvenile Services, the Division of Juvenile Services shall
42 develop and implement an individualized case plan based
43 upon the recommendations made to the court by the
44 multidisciplinary team pursuant to section four hundred six,
45 article four of this chapter and the results of a risk and needs
46 assessment. At a minimum, the case plan shall include:

47 (1) Specific correctional goals and the actions to be taken
48 by the juvenile to demonstrate satisfactory attainment of each
49 goal;

50 (2) The services to be offered and provided by the
51 Division of Juvenile Services and any contracted service
52 providers; and

53 (3) A detailed plan designed to assure appropriate
54 reintegration of the juvenile to his or her family, guardian,
55 school and community following the satisfactory completion
56 of the case plan treatment goals, including a protocol and
57 timeline for engaging the parents, guardians or custodians
58 prior to the release of the juvenile.

§49-4-702. Prepetition diversion to informal resolution; mandatory prepetition diversion program for status offenses and misdemeanor offenses; prepetition review team.

1 (a) Before a juvenile petition is formally filed with the
2 court, the court may refer the matter to a case worker,
3 probation officer or truancy diversion specialist for
4 preliminary inquiry to determine whether the matter can be
5 resolved informally without the formal filing of a petition
6 with the court.

7 (b) (1) If the matter is for a truancy offense, the
8 prosecutor shall refer the matter to a state department worker,
9 probation officer or truancy diversion specialist who shall
10 develop a diversion program pursuant to subsection (d) of
11 this section.

12 (2) If the matter is for a status offense other than truancy,
13 the prosecutor shall refer the juvenile to a case worker or
14 probation officer who shall develop a diversion program
15 pursuant to subsection (d) of this section.

16 (3) The prosecutor is not required to refer the juvenile for
17 development of a diversion program pursuant to subdivision
18 (1) or (2) of this subsection and may proceed to file a petition
19 with the court if he or she determines:

20 (A) The juvenile has a prior adjudication for a status or
21 delinquency offense; or

22 (B) There exists a significant and likely risk of harm to
23 the juvenile, a family member or the public.

24 (c) If the matter is for a nonviolent misdemeanor offense,
25 the prosecutor shall determine whether the case can be
26 resolved informally through a diversion program without the

27 filing of a petition. If the prosecutor determines that a
28 diversion program is appropriate, it shall refer the matter to
29 a case worker or probation officer who shall develop a
30 diversion program pursuant to subsection (d) of this section.

31 (d) (1) When developing a diversion program, the case
32 worker, probation officer or truancy diversion specialist shall:

33 (A) Conduct an assessment of the juvenile to develop a
34 diversion agreement;

35 (B) Create a diversion agreement;

36 (C) Obtain consent from the juvenile and his or her
37 parent, guardian or custodian to the terms of the diversion
38 agreement;

39 (D) Refer the juvenile and, if necessary, his or her parent,
40 guardian or custodian to services in the community pursuant
41 to the diversion agreement.

42 (2) A diversion agreement may include:

43 (A) Referral to community services as defined in section
44 two hundred six, article one of this chapter for the juvenile to
45 address the assessed need;

46 (B) Referral to services for the parent, guardian or
47 custodian of the juvenile;

48 (C) Referral to one or more community work service
49 programs for the juvenile;

50 (D) A requirement that the juvenile regularly attend
51 school;

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52 (E) Community-based sanctions to address
53 noncompliance; or

54 (F) Any other efforts which may reasonably benefit the
55 community, the juvenile and his or her parent, guardian or
56 custodian.

57 (3) When a referral to a service provider occurs, the
58 service provider shall make reasonable efforts to contact the
59 juvenile and his or her parent, custodian or guardian within
60 seventy-two hours of the referral.

61 (4) Upon request by the case worker, probation officer or
62 truancy diversion specialist, the court may enter reasonable
63 and relevant orders to the parent, custodian or guardian of the
64 juvenile who have consented to the diversion agreement as is
65 necessary and proper to carry out the agreement.

66 (5) If the juvenile and his or her parent, custodian or
67 guardian do not consent to the terms of the diversion
68 agreement created by the case worker, probation officer or
69 truancy diversion specialist, the petition may be filed with the
70 court.

71 (6) Referral to a prepetition diversion program shall toll
72 the statute of limitations for status and delinquency offenses.

73 (7) Probation officers may be authorized by the court to
74 participate in a diversion program.

75 (e) The case worker, probation officer or truancy
76 diversion specialist shall monitor the juvenile's compliance
77 with any diversion agreement.

78 (1) If the juvenile successfully completes the terms of the
79 diversion agreement, a petition shall not be filed with the
80 court and no further action shall be taken.

81 (2) If the juvenile is unsuccessful in or noncompliant with
82 the diversion agreement, the diversion agreement shall be
83 referred to a prepetition review team convened by the case
84 worker, probation officer or the truancy diversion specialist:
85 *Provided*, That if a new delinquency offense occurs, a
86 petition may be filed with the court.

87 (f) (1) The prepetition review team may be a subset of a
88 multidisciplinary team established pursuant to section four
89 hundred six, article four of this chapter.

90 (2) The prepetition review team may consist of:

91 (A) A case worker knowledgeable about community
92 services available and authorized to facilitate access to
93 services;

94 (B) A service provider;

95 (C) A school superintendent or his or her designee; or

96 (D) Any other person, agency representative, member of
97 the juvenile's family, or a custodian or guardian who may
98 assist in providing recommendations on community services
99 for the particular needs of the juvenile and his or her family.

100 (3) The prepetition review team shall review the
101 diversion agreement and the service referrals completed and
102 determine whether other appropriate services are available to
103 address the needs of the juvenile and his or her family.

104 (4) The prepetition review shall occur within fourteen
105 days of referral from the state department worker, probation
106 officer or truancy diversion specialist.

107 (5) After the prepetition review, the prepetition review
108 team may:

109 (A) Refer a modified diversion agreement back to the
110 case worker, probation officer or truancy diversion specialist;

111 (B) Advise the case worker, probation officer or truancy
112 diversion specialist to file a petition with the court; or

113 (C) Advise the case worker to open an investigation for
114 child abuse or neglect.

115 (g) The requirements of this section are not mandatory
116 until July 1, 2016: *Provided*, That nothing in this section
117 prohibits a judicial circuit from continuing to operate a
118 truancy or other juvenile treatment program that existed as of
119 January 1, 2015: *Provided, however*, That any judicial circuit
120 desiring to create a diversion program after the effective date
121 of this section and prior to July 1, 2016, may only do so
122 pursuant to this section.

**§49-4-702a. Noncustodial counseling or community services provided to
a juvenile; prepetition counsel and advice.**

1 (a) The court at any time, or the department or other
2 official upon a request from a parent, guardian or custodian,
3 may, before a petition is filed under this article, refer a
4 juvenile alleged to be a delinquent or a status offender to a
5 counselor at the department or a community mental health
6 center, other professional counselor in the community or to
7 a truancy diversion specialist. In the event the juvenile
8 refuses to respond to this referral, the department may serve

9 a notice by first class mail or personal service of process
10 upon the juvenile, setting forth the facts and stating that a
11 noncustodial order will be sought from the court directing the
12 juvenile to submit to counseling or community services. The
13 notice shall set forth the time and place for the hearing on the
14 matter. The court or referee after a hearing may direct the
15 juvenile to participate in a noncustodial period of counseling
16 or community services that may not exceed six months.
17 Upon recommendation of the department or request by the
18 juvenile's parent, custodian or guardian, the court or referee
19 may allow or require the parent, custodian or guardian to
20 participate in this noncustodial counseling or community
21 services. No information obtained as the result of counseling
22 or community services is admissible in a subsequent
23 proceeding under this article.

24 (b) Before a petition is formally filed with the court, the
25 probation officer or other officer of the court designated by
26 it, subject to its direction, may give counsel and advice to the
27 parties with a view to an informal adjustment period if it
28 appears:

29 (1) The admitted facts bring the case within the
30 jurisdiction of the court;

31 (2) Counsel and advice without an adjudication would be
32 in the best interest of the public and the juvenile; and

33 (3) The juvenile and his or her parents, guardian or other
34 custodian consent thereto with knowledge that consent is not
35 obligatory.

36 (c) The giving of counsel and advice pursuant to this
37 section may not continue longer than six months from the day
38 it is commenced unless extended by the court for an
39 additional period not to exceed six months.

**§49-4-711. Adjudication for alleged status offenders and delinquents;
mandatory initial disposition of status offenders.**

1 At the outset of an adjudicatory hearing, the court shall
2 inquire of the juvenile whether he or she wishes to admit or
3 deny the allegations in the petition. The juvenile may elect
4 to stand silent, in which event the court shall enter a general
5 denial of all allegations in the petition.

6 (1) If the respondent juvenile admits the allegations of the
7 petition, the court shall consider the admission to be proof of
8 the allegations if the court finds: (1) The respondent fully
9 understands all of his or her rights under this article; (2) the
10 respondent voluntarily, intelligently and knowingly admits all
11 facts requisite for an adjudication; and (3) the respondent in
12 his or her admission has not set forth facts which constitute
13 a defense to the allegations.

14 (2) If the respondent juvenile denies the allegations, the
15 court shall dispose of all pretrial motions and the court or jury
16 shall proceed to hear evidence.

17 (3) If the allegations in a petition alleging that the
18 juvenile is delinquent are admitted or are sustained by proof
19 beyond a reasonable doubt, the court shall schedule the
20 matter for disposition pursuant to section seven hundred four
21 of this article. The court shall receive and consider the results
22 of the risk and needs assessment prior to or at the disposition
23 pursuant to section seven hundred twenty-four, article four of
24 this chapter.

25 (4) If the allegations in a petition alleging that the
26 juvenile is a status offender are admitted or sustained by clear
27 and convincing evidence, the court shall consider the results
28 of the risk and needs assessment prior to or at the disposition
29 pursuant to section seven hundred twenty-four, article four of

30 this chapter and refer the juvenile to the Department of
31 Health and Human Resources for services, pursuant to
32 section seven hundred twelve of this article, and order the
33 department to report back to the court with regard to the
34 juvenile's progress at least every ninety days or until the
35 court, upon motion or sua sponte, orders further disposition
36 under section seven hundred twelve of this article or
37 dismisses the case from its docket: *Provided*, That in a
38 judicial circuit operating a truancy program, a circuit judge
39 may, in lieu of referring truant juveniles to the department,
40 order that the juveniles be supervised by his or her probation
41 office: *Provided, however*, That a circuit judge may also
42 refer a truant juvenile to a truancy diversion specialist.

43 (5) If the allegations in a petition are not sustained by
44 evidence as provided in subsections (c) and (d) of this
45 section, the petition shall be dismissed and the juvenile shall
46 be discharged if he or she is in custody.

47 (6) Findings of fact and conclusions of law addressed to
48 all allegations in the petition shall be stated on the record or
49 reduced to writing and filed with the record or incorporated
50 into the order of the court. The record shall include the
51 treatment and rehabilitation plan the court has adopted after
52 recommendation by the multidisciplinary team as provided
53 for in section four hundred six, article four of this chapter.

**§49-4-712. Intervention and services by the department pursuant to
initial disposition for status offenders; enforcement;
further disposition; detention; out-of-home placement;
department custody; least restrictive alternative; appeal;
prohibiting placement of status offenders in a Division of
Juvenile Services facility on or after January 1, 2016.**

1 (a) The services provided by the department for juveniles
2 adjudicated as status offenders shall be consistent with part

3 ten, article two of this chapter and shall be designed to
4 develop skills and supports within families and to resolve
5 problems related to the juveniles or conflicts within their
6 families. Services may include, but are not limited to, referral
7 of juveniles and parents, guardians or custodians and other
8 family members to services for psychiatric or other medical
9 care, or psychological, welfare, legal, educational or other
10 social services, as appropriate to the needs of the juvenile and
11 his or her family.

12 (b) If the juvenile, or his or her parent, guardian or
13 custodian, fails to comply with the services provided in
14 subsection (a) of this section, the department may petition the
15 circuit court:

16 (1) For a valid court order, as defined in section two
17 hundred seven, article one of this chapter, to enforce
18 compliance with a service plan or to restrain actions that
19 interfere with or defeat a service plan; or

20 (2) For a valid court order to place a juvenile out of home
21 in a nonsecure or staff-secure setting, and/or to place a
22 juvenile in custody of the department: *Provided*, That a
23 juvenile adjudicated as a status offender may not be placed in
24 an out-of-home placement, excluding placements made for
25 abuse and neglect, if that juvenile has had no prior
26 adjudications for a status or delinquency offense, or no prior
27 disposition to a pre-adjudicatory improvement period or
28 probation for the current matter: *Provided, however*, That if
29 the court finds by clear and convincing evidence the
30 existence of a significant and likely risk of harm to the
31 juvenile, a family member or the public and continued
32 placement in the home is contrary to the best interests of the
33 juvenile, such juvenile may be ordered to an out-of-home
34 placement: *Provided further*, That the court finds the
35 department has made all reasonable efforts to prevent

36 removal of the juvenile from his or her home, or that such
37 reasonable efforts are not required due to an emergent
38 situation.

39 (c) In ordering any further disposition under this section,
40 the court is not limited to the relief sought in the department's
41 petition and shall make reasonable efforts to prevent removal
42 of the juvenile from his or her home or, as an alternative, to
43 place the juvenile in a community-based facility which is the
44 least restrictive alternative appropriate to the needs of the
45 juvenile and the community. The disposition may include
46 reasonable and relevant orders to the parents, guardians or
47 custodians of the juvenile as is necessary and proper to
48 effectuate the disposition.

49 (d) (1) If the court finds that placement in a residential
50 facility is necessary to provide the services under subsection
51 (a) of this section, except as prohibited by subdivision (2),
52 subsection (b) of this section, the court shall make findings of
53 fact as to the necessity of this placement, stated on the record
54 or reduced to writing and filed with the record or
55 incorporated into the order of the court.

56 (2) The findings of fact shall include the factors that
57 indicate:

58 (A) The likely effectiveness of placement in a residential
59 facility for the juvenile; and

60 (B) The community services which were previously
61 attempted.

62 (e) The disposition of the juvenile may not be affected by
63 the fact that the juvenile demanded a trial by jury or made a
64 plea of not guilty. Any order providing disposition other than
65 mandatory referral to the department for services is subject to
66 appeal to the Supreme Court of Appeals.

67 (f) Following any further disposition by the court, the
68 court shall inquire of the juvenile whether or not appeal is
69 desired and the response shall be transcribed; a negative
70 response may not be construed as a waiver. The evidence
71 shall be transcribed as soon as practicable and made available
72 to the juvenile or his or her counsel, if it is requested for
73 purposes of further proceedings. A judge may grant a stay of
74 execution pending further proceedings.

75 (g) A juvenile adjudicated solely as a status offender on
76 or after January 1, 2016, may not be placed in a Division of
77 Juvenile Services facility.

§49-4-714. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the juvenile shall, upon
3 request of the court, make an investigation of the
4 environment of the juvenile and the alternative dispositions
5 possible. The court, upon its own motion, or upon request of
6 counsel, may order the use of a standardized screener, as
7 defined in section two hundred six, article one of this chapter
8 or, if additional information is necessary, a psychological
9 examination of the juvenile. The report of an examination
10 and other investigative and social reports shall not be relied
11 upon the court in making a determination of adjudication.
12 Unless waived, copies of the report shall be provided to
13 counsel for the petitioner and counsel for the juvenile no later
14 than seventy-two hours prior to the dispositional hearing.

15 (b) Following the adjudication, the court shall receive and
16 consider the results of a risk and needs assessment conducted
17 pursuant to section seven hundred twenty-four, article four of
18 this chapter and shall conduct the disposition, giving all
19 parties an opportunity to be heard. The disposition may
20 include reasonable and relevant orders to the parents,

21 custodians or guardians of the juvenile as is necessary and
22 proper to effectuate the disposition. At disposition the court
23 shall not be limited to the relief sought in the petition and
24 shall, in electing from the following alternatives, consider the
25 best interests of the juvenile and the welfare of the public:

26 (1) Dismiss the petition;

27 (2) Refer the juvenile and the juvenile's parent or
28 custodian to a community agency for needed assistance and
29 dismiss the petition;

30 (3) Upon a finding that the juvenile is in need of
31 extra-parental supervision: (A) Place the juvenile under the
32 supervision of a probation officer of the court or of the court
33 of the county where the juvenile has his or her usual place of
34 abode or other person while leaving the juvenile in custody
35 of his or her parent or custodian; and (B) prescribe a program
36 of treatment or therapy or limit the juvenile's activities under
37 terms which are reasonable and within the child's ability to
38 perform, including participation in the litter control program
39 established pursuant to section three, article fifteen-a, chapter
40 twenty-two of this code or other appropriate programs of
41 community service;

42 (4) Upon a finding that a parent or custodian is not
43 willing or able to take custody of the juvenile, that a juvenile
44 is not willing to reside in the custody of his or her parent or
45 custodian or that a parent or custodian cannot provide the
46 necessary supervision and care of the juvenile, the court may
47 place the juvenile in temporary foster care or temporarily
48 commit the juvenile to the department or a child welfare
49 agency. The court order shall state that continuation in the
50 home is contrary to the best interest of the juvenile and why;
51 and whether or not the department made a reasonable effort
52 to prevent the placement or that the emergency situation

53 made those efforts unreasonable or impossible. Whenever
54 the court transfers custody of a youth to the department, an
55 appropriate order of financial support by the parents or
56 guardians shall be entered in accordance with part eight,
57 article four of this chapter and guidelines promulgated by the
58 Supreme Court of Appeals;

59 . (5) (A) Upon a finding that the best interests of the
60 juvenile or the welfare of the public require it, and upon an
61 adjudication of delinquency, the court may commit the
62 juvenile to the custody of the Director of the Division of
63 Juvenile Services for placement in a juvenile services facility
64 for the treatment, instruction and rehabilitation of juveniles.
65 The court maintains discretion to consider alternative
66 sentencing arrangements.

67 (B) Notwithstanding any provision of this code to the
68 contrary, in the event that the court determines that it is in the
69 juvenile's best interests or required by the public welfare to
70 place the juvenile in the custody of the Division of Juvenile
71 Services, the court shall provide the Division of Juvenile
72 Services with access to all relevant court orders and records
73 involving the underlying offense or offenses for which the
74 juvenile was adjudicated delinquent, including sentencing
75 and presentencing reports and evaluations, and provide the
76 division with access to school records, psychological reports
77 and evaluations, risk and needs assessment results, medical
78 reports and evaluations or any other such records as may be
79 in the court's possession as would enable the Division of
80 Juvenile Services to better assess and determine the
81 appropriate counseling, education and placement needs for
82 the juvenile offender.

83 (C) Commitments may not exceed the maximum term for
84 which an adult could have been sentenced for the same
85 offense and any such maximum allowable term of

86 confinement to be served in a juvenile correctional facility
87 shall take into account any time served by the juvenile in a
88 detention center pending adjudication, disposition or transfer.
89 The order shall state that continuation in the home is contrary
90 to the best interests of the juvenile and why; and whether or
91 not the state department made a reasonable effort to prevent
92 the placement or that the emergency situation made those
93 efforts unreasonable or impossible; or

94 (6) After a hearing conducted under the procedures set
95 out in subsections (c) and (d), section four, article five,
96 chapter twenty-seven of this code, commit the juvenile to a
97 mental health facility in accordance with the juvenile's
98 treatment plan; the director of the mental health facility may
99 release a juvenile and return him or her to the court for
100 further disposition. The order shall state that continuation in
101 the home is contrary to the best interests of the juvenile and
102 why; and whether or not the state department made a
103 reasonable effort to prevent the placement or that the
104 emergency situation made those efforts unreasonable or
105 impossible.

106 The court shall make all reasonable efforts to place the
107 juvenile in the least restrictive alternative appropriate to the
108 needs of the juvenile and the community: *Provided*, That a
109 juvenile adjudicated delinquent for a nonviolent misdemeanor
110 offense may not be placed in an out-of-home placement
111 within the Division of Juvenile Services or the department if
112 that juvenile has no prior adjudications as either a status
113 offender or as a delinquent, or no prior dispositions to a
114 pre-adjudatory improvement period or probation for the
115 current matter, excluding placements made for abuse or
116 neglect: *Provided, however*, That if the court finds by clear
117 and convincing evidence that there is a significant and likely
118 risk of harm, as determined by a risk and needs assessment,
119 to the juvenile, a family member or the public and that

120 continued placement in the home is contrary to the best
121 interest of the juvenile, such juvenile may be ordered to an
122 out-of-home placement: *Provided further*, That the
123 department has made all reasonable efforts to prevent
124 removal of the juvenile from his or her home, or that
125 reasonable efforts are not required due to an emergent
126 situation.

127 (c) In any case in which the court decides to order the
128 juvenile placed in an out-of-state facility or program, it shall
129 set forth in the order directing the placement the reasons the
130 juvenile was not placed in an in-state facility or program.

131 (d) The disposition of the juvenile shall not be affected by
132 the fact that the juvenile demanded a trial by jury or made a
133 plea of not guilty. Any disposition is subject to appeal to the
134 Supreme Court of Appeals.

135 (e) Following disposition, the court shall inquire whether
136 the juvenile wishes to appeal and the response shall be
137 transcribed; a negative response shall not be construed as a
138 waiver. The evidence shall be transcribed as soon as
139 practicable and made available to the juvenile or his or her
140 counsel, if the same is requested for purposes of further
141 proceedings. A judge may grant a stay of execution pending
142 further proceedings.

143 (f) Following a disposition under subdivision (4), (5) or
144 (6), subsection (b) of this section, the court shall include in
145 the findings of fact the treatment and rehabilitation plan the
146 court has adopted upon recommendation of the
147 multidisciplinary team under section four hundred six, article
148 four of this chapter.

149 (g) Notwithstanding any other provision of this code to
150 the contrary, if a juvenile charged with delinquency under

151 this chapter is transferred to adult jurisdiction and there tried
152 and convicted, the court may make its disposition in
153 accordance with this section in lieu of sentencing the person
154 as an adult.

§49-4-718. Modification of dispositional orders; motions; hearings.

1 (a) A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a
3 department official, the director of the Division of Juvenile
4 Services or prosecuting attorney; or

5 (2) Upon the request of the juvenile or a juvenile's
6 parent, guardian or custodian who alleges a change of
7 circumstances relating to disposition of the juvenile.

8 (b) Upon such a motion or request, the court shall
9 conduct a review hearing, except that if the last dispositional
10 order was within the previous six months, the court may deny
11 a request for review. Notice in writing of a review hearing
12 shall be given to the juvenile, the juvenile's parent, guardian
13 or custodian and all counsel not less than seventy-two hours
14 prior to the proceeding. The court shall review the
15 performance of the juvenile, the juvenile's parent or
16 custodian, the juvenile's case worker and other persons
17 providing assistance to the juvenile or juvenile's family. If
18 the motion or request for review of disposition is based upon
19 an alleged violation of a court order, the court may modify
20 the disposition order and impose a more restrictive alternative
21 if it finds clear and convincing proof of substantial violation.
22 In the absence of such evidence, the court may decline to
23 modify the dispositional order or may modify the order and
24 impose one of the less restrictive alternatives set forth in
25 section seven hundred twelve of this article. A juvenile may
26 not be required to seek a modification order as provided in

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27 this section in order to exercise his or her right to seek relief
28 by habeas corpus.

29 (c) In a hearing for modification of a dispositional order,
30 or in any other dispositional hearing, the court shall consider
31 the best interests of the child and the welfare of the public.

32 (d) (1) For dispositional orders that include probation, the
33 juvenile's probation officer shall submit an overview to the
34 court of the juvenile's compliance with the conditions of
35 probation and goals of his or her case plan every ninety days.

36 (2) If the juvenile is compliant and no longer in need of
37 probation supervision, the probation officer shall submit a
38 recommendation for discharge from probation supervision.
39 If the court determines that early termination of the probation
40 term is warranted, it may issue an order discharging the
41 juvenile from probation without conducting a review hearing.

42 (3) If the juvenile is not compliant with the conditions or
43 has not met his or her goals, the probation officer shall
44 include an accompanying recommendation to the court with
45 additional or changed conditions or goals necessary to
46 achieve compliance. If the court determines that changes to
47 the conditions of probation are warranted, the court shall
48 conduct a review hearing in accordance with subsection (b)
49 of this section.

**§49-4-719. Juvenile probation officers; appointment; salary; facilities;
expenses; duties; powers.**

1 (a) (1) Each circuit court, subject to the approval of the
2 Supreme Court of Appeals and in accordance with the rules
3 of the Supreme Court of Appeals, shall appoint one or more
4 juvenile probation officers and clerical assistants for the
5 circuit. A probation officer or clerical assistant may not be
6 related by blood or marriage to the appointing judge.

7 (2) The salary for juvenile probation officers and clerical
8 assistants shall be determined and fixed by the Supreme
9 Court of Appeals. All expenses and costs incurred by the
10 juvenile probation officers and their staff shall be paid by the
11 Supreme Court of Appeals in accordance with its rules. The
12 county commission of each county shall provide adequate
13 office facilities for juvenile probation officers and their staff.
14 All equipment and supplies required by juvenile probation
15 officers and their staff shall be provided by the Supreme
16 Court of Appeals.

17 (3) A juvenile probation officer may not be considered a
18 law-enforcement official under this chapter.

19 (b) The clerk of a court shall notify, if practicable, the
20 chief probation officer of the county, or his or her designee,
21 when a juvenile is brought before the court or judge for
22 proceedings under this article. When notified, or if the
23 probation officer otherwise obtains knowledge of such fact,
24 he or she or one of his or her assistants shall:

25 (1) Make investigation of the case; and

26 (2) Furnish information and assistance that the court or
27 judge may require.

28 (c) (1) The Supreme Court of Appeals may develop a
29 system of community-based juvenile probation sanctions and
30 incentives to be used by probation officers in response to
31 violations of terms and conditions of probation and to award
32 incentives for positive behavior.

33 (2) The community-based juvenile probation sanctions
34 and incentives may consist of a continuum of responses from
35 the least restrictive to the most restrictive, designed to
36 respond swiftly, proportionally and consistently to violations

37 of the terms and conditions of probation and to reward
38 compliance therewith.

39 (3) The purpose of community-based juvenile probation
40 sanctions and incentives is to reduce the amount of resources
41 and time spent by the court addressing probation violations,
42 to reduce the likelihood of a new status or delinquent act, and
43 to encourage and reward positive behavior by the juvenile on
44 probation prior to any attempt to place a juvenile in an
45 out-of-home placement.

§49-4-724. Standardized risk and needs assessment.

1 (a) The Supreme Court of Appeals is requested to adopt
2 a risk and needs assessment to be used for juvenile
3 dispositions. A validation study of the risk and needs
4 assessment may be conducted at least every three years to
5 ensure that the risk and needs assessment is predictive of the
6 risk of reoffending.

7 (b) Each juvenile adjudicated for a status or delinquency
8 offense in accordance with this chapter shall undergo a risk
9 and needs assessment prior to disposition to identify specific
10 factors that predict a juvenile's likelihood of reoffending and,
11 when appropriately addressed, may reduce the likelihood of
12 reoffending. The risk and needs assessment may be
13 conducted by a probation officer, other court official or the
14 state department worker trained to conduct the risk and needs
15 assessment.

16 (c) Each multidisciplinary team convened pursuant to
17 section four hundred six, article four of this chapter shall
18 receive and consider the results of the risk and needs
19 assessment of the juvenile.

20 (d) The results of the risk and needs assessment shall be

21 provided to the court prior to disposition or at the time of the
22 dispositional hearing.

§49-4-725. Restorative justice programs.

1 (a) The court or prosecuting attorney may divert a
2 juvenile referred to the court for a status offense or for a
3 nonviolent misdemeanor offense to a restorative justice
4 program, where available, prior to adjudication.

5 (b) A restorative justice program shall:

6 (1) Emphasize repairing the harm against the victim and
7 the community caused by the juvenile;

8 (2) Include victim-offender dialogues or family group
9 conferencing attended voluntarily by the victim, the juvenile
10 offender, a facilitator, a victim advocate, community
11 members, or supporters of the victim or the juvenile offender
12 that provide an opportunity for the offender to accept
13 responsibility for the harm caused to those affected by the
14 crime and to participate in setting consequences to repair the
15 harm; and

16 (3) Implement sanctions for the juvenile, including, but
17 not limited to, restitution to the victim, restitution to the
18 community, services for the victim or the community, or any
19 other sanction intended to provide restitution to the victim or
20 the community.

21 (c) If a juvenile is referred to, and successfully completes,
22 a restorative justice program, the petition against the juvenile
23 shall be dismissed.

24 (d) No information obtained as the result of a restorative
25 justice program is admissible in a subsequent proceeding
26 under this article.

ARTICLE 5. RECORDKEEPING AND DATABASE.**§49-5-103. Confidentiality of juvenile records; permissible disclosures; penalties; damages.**

1 (a) Any findings or orders of the court in a juvenile
2 proceeding shall be known as the juvenile record and shall be
3 maintained by the clerk of the court.

4 (b) Records of a juvenile proceeding conducted under this
5 chapter are not public records and shall not be disclosed to
6 anyone unless disclosure is otherwise authorized by this
7 section.

8 (c) Notwithstanding the provisions of subsection (b) of
9 this section, a copy of a juvenile's records shall automatically
10 be disclosed to certain school officials, subject to the
11 following terms and conditions:

12 (1) Only the records of certain juveniles shall be
13 disclosed. These include, and are limited to, cases in which:

14 (A) The juvenile has been charged with an offense which:

15 (i) Involves violence against another person;

16 (ii) Involves possession of a dangerous or deadly weapon;
17 or

18 (iii) Involves possession or delivery of a controlled
19 substance as that term is defined in section one hundred one,
20 article one, chapter sixty-a of this code; and

21 (B) The juvenile's case has proceeded to a point where
22 one or more of the following has occurred:

23 (i) A circuit court judge or magistrate has determined that
24 there is probable cause to believe that the juvenile committed
25 the offense as charged;

26 (ii) A circuit court judge or magistrate has placed the
27 juvenile on probation for the offense;

28 (iii) A circuit court judge or magistrate has placed the
29 juvenile into a preadjudicatory community supervision period
30 in accordance with section seven hundred eight, article four
31 of this chapter; or

32 (iv) Some other type of disposition has been made of the
33 case other than dismissal.

34 (2) The circuit court for each judicial circuit in West
35 Virginia shall designate one person to supervise the
36 disclosure of juvenile records to certain school officials.

37 (3) If the juvenile attends a West Virginia public school,
38 the person designated by the circuit court shall automatically
39 disclose all records of the juvenile's case to the county
40 superintendent of schools in the county in which the juvenile
41 attends school and to the principal of the school which the
42 juvenile attends, subject to the following:

43 (A) At a minimum, the records shall disclose the
44 following information:

45 (i) Copies of the arrest report;

46 (ii) Copies of all investigations;

47 (iii) Copies of any psychological test results and any
48 mental health records;

49 (iv) Copies of any evaluation reports for probation or
50 facility placement; and

51 (v) Any other material that would alert the school to
52 potential danger that the juvenile may pose to himself, herself
53 or others;

54 (B) The disclosure of the juvenile's psychological test
55 results and any mental health records shall only be made in
56 accordance with subdivision (14) of this subsection;

57 (C) If the disclosure of any record to be automatically
58 disclosed under this section is restricted in its disclosure by
59 the Health Insurance Portability and Accountability Act of
60 1996, PL 104-191, and any amendments and regulations
61 under the act, the person designated by the circuit court shall
62 provide the superintendent and principal any notice of the
63 existence of the record that is permissible under the act and,
64 if applicable, any action that is required to obtain the record;
65 and

66 (D) When multiple disclosures are required by this
67 subsection, the person designated by the circuit court is
68 required to disclose only material in the juvenile record that
69 had not previously been disclosed to the county
70 superintendent and the principal of the school which the
71 juvenile attends.

72 (4) If the juvenile attends a private school in West
73 Virginia, the person designated by the circuit court shall
74 determine the identity of the highest ranking person at that
75 school and shall automatically disclose all records of a
76 juvenile's case to that person.

77 (5) If the juvenile does not attend school at the time the
78 juvenile's case is pending, the person designated by the

79 circuit court may not transmit the juvenile's records to any
80 school. However, the person designated by the circuit court
81 shall transmit the juvenile's records to any school in West
82 Virginia which the juvenile subsequently attends.

83 (6) The person designated by the circuit court may not
84 automatically transmit juvenile records to a school which is
85 not located in West Virginia. Instead, the person designated
86 by the circuit court shall contact the out-of-state school,
87 inform it that juvenile records exist and make an inquiry
88 regarding whether the laws of that state permit the disclosure
89 of juvenile records. If so, the person designated by the circuit
90 court shall consult with the circuit judge who presided over
91 the case to determine whether the juvenile records should be
92 disclosed to the out-of-state school. The circuit judge has
93 discretion in determining whether to disclose the juvenile
94 records and shall consider whether the other state's law
95 regarding disclosure provides for sufficient confidentiality of
96 juvenile records, using this section as a guide. If the circuit
97 judge orders the juvenile records to be disclosed, they shall
98 be disclosed in accordance with subdivision (7) of this
99 subsection.

100 (7) The person designated by the circuit court shall
101 transmit the juvenile's records to the appropriate school
102 official under cover of a letter emphasizing the confidentiality
103 of those records and directing the official to consult this
104 section of the code. A copy of this section of the code shall
105 be transmitted with the juvenile's records and cover letter.

106 (8) Juvenile records are absolutely confidential by the
107 school official to whom they are transmitted and nothing
108 contained within the juvenile's records may be noted on the
109 juvenile's permanent educational record. The juvenile
110 records are to be maintained in a secure location and are not
111 to be copied under any circumstances. However, the

112 principal of a school to whom the records are transmitted
113 shall have the duty to disclose the contents of those records
114 to any teacher who teaches a class in which the subject
115 juvenile is enrolled and to the regular driver of a school bus
116 in which the subject juvenile is regularly transported to or
117 from school, except that the disclosure of the juvenile's
118 psychological test results and any mental health records may
119 only be made in accordance with subdivision (14) of this
120 subsection. Furthermore, any school official to whom the
121 juvenile's records are transmitted may disclose the contents
122 of those records to any adult within the school system who,
123 in the discretion of the school official, has the need to be
124 aware of the contents of those records.

125 (9) If for any reason a juvenile ceases to attend a school
126 which possesses that juvenile's records, the appropriate
127 official at that school shall seal the records and return them
128 to the circuit court which sent them to that school. If the
129 juvenile has changed schools for any reason, the former
130 school shall inform the circuit court of the name and location
131 of the new school which the juvenile attends or will be
132 attending. If the new school is located within West Virginia,
133 the person designated by the circuit court shall forward the
134 juvenile's records to the juvenile's new school in the same
135 manner as provided in subdivision (7) of this subsection. If
136 the new school is not located within West Virginia, the
137 person designated by the circuit court shall handle the
138 juvenile records in accordance with subdivision (6) of this
139 subsection.

140 If the juvenile has been found not guilty of an offense for
141 which records were previously forwarded to the juvenile's
142 school on the basis of a finding of probable cause, the circuit
143 court may not forward those records to the juvenile's new
144 school. However, this does not affect records related to other
145 prior or future offenses. If the juvenile has graduated or quit

146 school or will otherwise not be attending another school, the
147 circuit court shall retain the juvenile's records and handle
148 them as otherwise provided in this article.

149 (10) Under no circumstances may one school transmit a
150 juvenile's records to another school.

151 (11) Under no circumstances may juvenile records be
152 automatically transmitted to a college, university or other
153 post-secondary school.

154 (12) No one may suffer any penalty, civil or criminal, for
155 accidentally or negligently attributing certain juvenile records
156 to the wrong person. However, that person has the
157 affirmative duty to promptly correct any mistake that he or
158 she has made in disclosing juvenile records when the mistake
159 is brought to his or her attention. A person who intentionally
160 attributes false information to a certain person shall be
161 subjected to both criminal and civil penalties in accordance
162 with subsection (e) of this section.

163 (13) If a circuit judge or magistrate has determined that
164 there is probable cause to believe that a juvenile has
165 committed an offense but there has been no final adjudication
166 of the charge, the records which are transmitted by the circuit
167 court shall be accompanied by a notice which clearly states
168 in bold print that there has been no determination of
169 delinquency and that our legal system requires a presumption
170 of innocence.

171 (14) The county superintendent shall designate the school
172 psychologist or psychologists to receive the juvenile's
173 psychological test results and any mental health records. The
174 psychologist designated shall review the juvenile's
175 psychological test results and any mental health records and,
176 in the psychologist's professional judgment, may disclose to

177 the principal of the school that the juvenile attends and other
178 school employees who would have a need to know the
179 psychological test results, mental health records and any
180 behavior that may trigger violence or other disruptive
181 behavior by the juvenile. Other school employees include,
182 but are not limited to, any teacher who teaches a class in
183 which the subject juvenile is enrolled and the regular driver
184 of a school bus in which the subject juvenile is regularly
185 transported to or from school.

186 (d) Notwithstanding the provisions of subsection (b) of
187 this section, juvenile records may be disclosed, subject to the
188 following terms and conditions:

189 (1) If a juvenile case is transferred to the criminal
190 jurisdiction of the circuit court pursuant to the provisions of
191 subsection (c) or (d), section seven hundred ten, article four
192 of this chapter, the juvenile records are open to public
193 inspection.

194 (2) If a juvenile case is transferred to the criminal
195 jurisdiction of the circuit court pursuant to the provisions of
196 subsection (e), (f) or (g), section seven hundred ten, article
197 four of this chapter, the juvenile records are open to public
198 inspection only if the juvenile fails to file a timely appeal of
199 the transfer order, or the Supreme Court of Appeals refuses
200 to hear or denies an appeal which has been timely filed.

201 (3) If a juvenile is fourteen years of age or older and a
202 court has determined there is a probable cause to believe the
203 juvenile committed an offense set forth in subsection (g),
204 section seven hundred ten, article four of this chapter, but the
205 case is not transferred to criminal jurisdiction, the juvenile
206 records are open to public inspection pending trial only if the
207 juvenile is released on bond and no longer detained or
208 adjudicated delinquent of the offense.

209 (4) If a juvenile is younger than fourteen years of age and
210 a court has determined there is probable cause to believe that
211 the juvenile committed the crime of murder under section
212 one, two or three, article two, chapter sixty-one of this code,
213 or the crime of sexual assault in the first degree under section
214 three, article eight-b of chapter sixty-one, but the case is not
215 transferred to criminal jurisdiction, the juvenile records shall
216 be open to public inspection pending trial only if the juvenile
217 is released on bond and no longer detained or adjudicated
218 delinquent of the offense.

219 (5) Upon a written petition and pursuant to a written
220 order, the circuit court may permit disclosure of juvenile
221 records to:

222 (A) A court, in this state or another state, which has
223 juvenile jurisdiction and has the juvenile before it in a
224 juvenile proceeding;

225 (B) A court, in this state or another state, exercising
226 criminal jurisdiction over the juvenile which requests records
227 for the purpose of a presentence report or disposition
228 proceeding;

229 (C) The juvenile, the juvenile's parents or legal guardian,
230 or the juvenile's counsel;

231 (D) The officials of a public institution to which the
232 juvenile is committed if they require those records for
233 transfer, parole or discharge; or

234 (E) A person who is conducting research. However,
235 juvenile records may be disclosed for research purposes only
236 upon the condition that information which would identify the
237 subject juvenile or the juvenile's family may not be disclosed.

238 (6) Notwithstanding any other provision of this code,
239 juvenile records shall be disclosed, or copies made available,
240 to a probation officer upon his or her request. Any probation
241 officer may access relevant juvenile case information
242 contained in any electronic database maintained by or for the
243 Supreme Court of Appeals and share it with any other
244 probation officer.

245 (7) Notwithstanding any other provision of this code,
246 juvenile records shall be disclosed, or copies made available,
247 in response to any lawfully issued subpoena from a federal
248 court or federal agency.

249 (8) Notwithstanding any other provision of this code,
250 juvenile records shall be disclosed, or copies made available,
251 to the department or the Division of Juvenile Services for
252 purposes of case planning for the juvenile and his or her
253 parents, custodians or guardians.

254 (e) Any records open to public inspection pursuant to this
255 section are subject to the same requirements governing the
256 disclosure of adult criminal records.

257 (f) Any person who willfully violates this section is guilty
258 of a misdemeanor and, upon conviction, shall be fined not
259 more than \$1,000, or confined in jail for not more than six
260 months, or both fined and confined. A person who violates
261 this section is also liable for damages in the amount of \$300
262 or actual damages, whichever is greater.

§49-5-106. Data collection.

1 (a) The Division of Juvenile Services, the department and
2 the Supreme Court of Appeals shall establish procedures to
3 jointly collect and compile data necessary to calculate
4 juvenile recidivism and the outcome of programs.

5 (b) For each juvenile who enters into a diversion
6 agreement, is placed on an improvement period, is placed on
7 probation or is placed in an out-of-home placement as
8 defined by section two hundred six, article one of this
9 chapter, the data and procedures developed in subsection (a)
10 shall include:

11 (1) New offense referrals to juvenile court or criminal
12 court within three years of completion of the diversion
13 agreement, release from court jurisdiction or release from
14 agency custody;

15 (2) Adjudications for a delinquent or status offense by a
16 juvenile or a conviction by a criminal court within three years
17 of completion of the diversion agreement, release from court
18 jurisdiction or release from agency custody;

19 (3) Commitments to the Division of Juvenile Services, the
20 department, excluding out-of-home placements made for
21 child welfare or abuse and neglect purposes, or incarceration
22 with the Division of Corrections within three years of
23 completion of the diversion agreement, release from court
24 jurisdiction or release from agency custody; and

25 (4) The number of out-of-home placements ordered
26 where the judge found by clear and convincing evidence the
27 existence of a significant and likely risk of harm to the
28 juvenile, a family member or the public.

29 (c) For youth placed in programs operated or funded by
30 the Division of Juvenile Services, the department or the
31 Supreme Court of Appeals, including youth reporting centers,
32 juvenile drug courts, restorative justice programs and teen
33 courts, the division, department and Supreme Court shall
34 develop procedures using, at a minimum, the measures in
35 subsection (b) of this section to track and record outcomes of

36 each program, and to demonstrate that the program reduces
37 the likelihood of reoffending for the youth referred to the
38 program.

39 (d) For youth referred to truancy diversion specialists or
40 other truancy diversion programs operated or funded by the
41 Supreme Court of Appeals, the Division of Juvenile Services,
42 the Department of Health and Human Resources, the
43 Department of Education or other political subdivisions, that
44 branch of government or agency shall develop procedures to
45 track and record outcomes of each program, and to evaluate
46 the effectiveness in reducing unexcused absences for the
47 youth referred to the program. At a minimum, this outcome
48 data shall include:

49 (1) The number of youth successfully completing the
50 truancy diversion program;

51 (2) The number of youth who are referred to the court
52 system after failing to complete a truancy diversion program;
53 and

54 (3) The number of youth who, after successfully
55 completing a truancy diversion program, accumulate five or
56 more unexcused absences in the current or subsequent school
57 year.

58 (e) The Supreme Court of Appeals, the Division of
59 Juvenile Services, the Department of Health and Human
60 Resources and the Department of Education shall also
61 establish procedures to jointly collect and compile data
62 relating to disproportionate minority contact, which is
63 defined as the proportion of minority youth who come into
64 contact with the juvenile justice system in relation to the
65 proportion of minority youth in the general population, and
66 the compilation shall include data indicating the prevalence

67 of such disproportionality in each county. Data shall include,
68 at a minimum, the race and gender of youth arrested or
69 referred to court, entered into a diversion program,
70 adjudicated and disposed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect May 17, 2015.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

The within *is approved* this the *2nd*
April
Day of, 2015.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2015

Time 3:15 pm