

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 393

(By Senators Cole (Mr. President)
and Kessler,
By Request of the Executive)

[Originating in the Committee
on the Judiciary;
reported February 24, 2015.]

A BILL 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

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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

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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 not limited, to child advocacy, care, residential and treatment programs.

1 When used in this chapter, terms defined in this section have the meanings ascribed to them
2 that relate to, but are not limited to, child advocacy, care, residential and treatment programs, except
3 in those instances where a different meaning is provided or the context in which the word is used
4 clearly indicates that a different meaning is intended.

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

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

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

17 “Child care services” means direct care and protection of children during a portion of a
18 twenty-four hour day outside of the child’s own home which provides experiences to children that

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1 foster their healthy development and education.

2 “Child placing agency” means a child welfare agency organized for the purpose of placing
3 children in private family homes for foster care or for adoption. The function of a child-placing
4 agency may include the investigation and certification of foster family homes and foster family group
5 homes as provided in this chapter. The function of a child placing agency may also include the
6 supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

7 “Child welfare agency” means any agency or facility maintained by the state or any county
8 or municipality thereof, or any agency or facility maintained by an individual, firm, corporation,
9 association or organization, public or private, to receive children for care and maintenance or for
10 placement in residential care facilities, including, without limitation, private homes or any facility
11 that provides care for unmarried mothers and their children. A child welfare agency does not include
12 juvenile detention facilities or juvenile correctional facilities operated by or under contract with the
13 Division of Juvenile Services, pursuant to part nine, article two of this chapter, nor any other facility
14 operated by that division for the secure housing or holding of juveniles committed to its custody.

15 “Community based” means a facility, program or service located near the child’s home or
16 family and involving community participation in planning, operation and evaluation and which may
17 include, but is not limited to, medical, educational, vocational, social and psychological guidance,
18 training, special education, counseling, ~~alcoholism~~ substance abuse and any other treatment ~~and other~~
19 or rehabilitation services.

20 “Community-based juvenile probation sanctions” means any of a continuum of nonresidential
21 accountability measures, programs and sanctions in response to a technical violation of probation,

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1 as part of a system of community-based juvenile probation sanctions and incentives, that may
2 include, but are not limited to:

3 (A) Electronic monitoring;

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

5 (C) Youth reporting centers;

6 (D) Reporting and supervision requirements;

7 (E) Community service; and

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

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

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

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

19 “Family child care facility” means any facility which is used to provide nonresidential child
20 care services for compensation for seven to twelve children, including children who are living in the
21 household, who are under six years of age. No more than four of the total number of children may

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1 be under twenty-four months of age. A facility may be in a provider’s residence or a separate
2 building.

3 “Family child care home” means a facility which is used to provide nonresidential child care
4 services for compensation in a provider’s residence. The provider may care for four to six children,
5 at one time including children who are living in the household, who are under six years of age. No
6 more than two of the total number of children may be under twenty-four months of age.

7 “Family resource network” means:

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

- 11 (i) Agreeing to a single governing entity;
- 12 (ii) Agreeing to engage in activities to improve service systems for children and families
13 within the community;
- 14 (iii) Addressing a geographic area of a county or two or more contiguous counties;
- 15 (iv) Having nonproviders, which include family representatives and other members who are
16 not employees of publicly funded agencies, as the majority of the members of the governing body,
17 and having family representatives as the majority of the nonproviders;
- 18 (v) Having representatives of local service agencies, including, but not limited to, the public
19 health department, the behavioral health center, the local health and human resources agency and the
20 county school district, on the governing body; and
- 21 (vi) Accepting principles consistent with the cabinet’s mission as part of its philosophy.

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

3 “Family support”, for the purposes of part six, article two of this chapter, means goods and
4 services needed by families to care for their family members with developmental disabilities and to
5 enjoy a quality of life comparable to other community members.

6 “Family support program” means a coordinated system of family support services
7 administered by the Department of Health and Human Resources through contracts with behavioral
8 health agencies throughout the state.

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

12 “Health care and treatment” means:

13 (A) Developmental screening;

14 (B) Mental health screening;

15 (C) Mental health treatment;

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

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

18 and

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

21 “Home-based family preservation services” means services dispensed by the Division of

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

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

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

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

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

15 Nonviolent misdemeanor offense” means a misdemeanor offense that does not include any
16 of the following:

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

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

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

21 (D) A criminal sexual conduct offense; or

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

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

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

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

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

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

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

19 “Residential services” means child care which includes the provision of nighttime shelter and
20 the personal discipline and supervision of a child by guardians, custodians or other persons or entities
21 on a continuing or temporary basis. It may include care and or treatment for transitioning adults.

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1 Residential services does not include or apply to any juvenile detention facility or juvenile
2 correctional facility operated by the Division of Juvenile Services, created pursuant to this chapter,
3 for the secure housing or holding of juveniles committed to its custody.

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

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

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

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

17 “State family support council” means the council established by the Department of Health and
18 Human Resources pursuant to part six, article two of this chapter to carry out the responsibilities
19 specified in article two of this chapter.

20 “Time-limited reunification services” means individual, group and family counseling,
21 inpatient, residential or outpatient substance abuse treatment services, mental health services,

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1 assistance to address domestic violence, services designed to provide temporary child care and
2 therapeutic services for families, including crisis nurseries and transportation to or from those
3 services, provided during fifteen of the most recent twenty-two months a child or juvenile has been
4 in foster care, as determined by the earlier date of the first judicial finding that the child is subjected
5 to abuse or neglect, or the date which is sixty days after the child or juvenile is removed from home.

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

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

12 **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

13 **§49-2-907. Examination, diagnosis classification and treatment; period of custody.**

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

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

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

16 **§49-2-912. Youth reporting centers.**

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

20 (b) The Division of Juvenile Services shall promulgate guidelines, policies and procedures
21 regarding referrals, assessments, case management, services, education and connection to services

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1 in the community.

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

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

6 **§49-2-913. Juvenile Justice Reform Oversight Committee.**

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

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

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

12 (2) Two members from the House of Delegates, appointed by the Speaker of the House of
13 Delegates;

14 (3) Two members from the Senate, appointed by the President of the Senate;

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

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

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

18 (7) The Administrative Director of the Supreme Court of Appeals, or his or her designee;

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

20 (9) Two circuit court judges, appointed by the Chief Justice of the Supreme Court of
21 Appeals;

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

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

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

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

5 and

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

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

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

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

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

15 and

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

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

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

21 and

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

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

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

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

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

10 and

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

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

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

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

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

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

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

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

9 **§49-2-1002. Responsibilities of the Department of Health and Human Resources and Division**
10 **of Juvenile Services of the Department of Military Affairs and Public Safety; programs**
11 **and services; rehabilitation; cooperative agreements.**

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

19 (1) Community-based programs and services for the prevention and treatment of juvenile
20 delinquency through the development of foster-care and shelter-care homes, group homes, halfway
21 houses, homemaker and home health services, 24-hour intake screening, volunteer and crisis home

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1 programs, day treatment and any other designated community-based diagnostic, treatment or
2 rehabilitative service;

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

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

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

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

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

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

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

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

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1 state upon reaching the age of eighteen years.

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

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

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

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

20 (4) The department may develop an individualized program of rehabilitation for any juvenile
21 referred for noncustodial counseling under section seven hundred ~~two~~ two-a, article four of this

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1 chapter or for any juvenile upon the request of a public or private agency.

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

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

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

12 (4) If further time in residential placement is necessary and the most effective method of
13 attaining the rehabilitation goals identified by the rehabilitation individualized plan created under
14 subsection (c) of this section, then the department shall provide information to the multidisciplinary
15 team to substantiate that further time in a residential facility is necessary. The court, in consultation
16 with the multidisciplinary team, may order an extension of time in residential placement prior to the
17 juvenile's transition to the community if the court finds by clear and convincing evidence that an
18 extension is in the best interest of the child, If the court finds that the evidence does not support an
19 extension, the court shall order that the transition to community services proceed.

20 ~~(e)~~ (e) The Department of Health and Human Resources and the Division of Juvenile
21 Services are directed to enter into cooperative arrangements and agreements with each other and with

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1 private agencies or with agencies of the state and its political subdivisions to fulfill their respective
2 duties under this article and chapter.

3 **§49-2-1003. Rehabilitative facilities for status offenders; requirements; educational**
4 **instruction.**

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

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

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

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

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

8 **ARTICLE 4. COURT ACTIONS.**

9 **§49-4-403. Multidisciplinary treatment planning process; coordination; access to information.**

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

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

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

7 (1) Prior to disposition, in each case in which a treatment planning team has been convened,
8 the team shall advise the court as to the types of services the team has determined are needed and
9 the type of placement, if any, which will best serve the needs of the child. If the team determines
10 that an out-of-home placement will best serve the needs of the child, the team shall first consider
11 placement with appropriate relatives then with foster care homes, facilities or programs located
12 within the state. The team may only recommend placement in an out-of-state facility if it concludes,
13 after considering the best interests and overall needs of the child, that there are no available and
14 suitable in-state facilities which can satisfactorily meet the specific needs of the child.

15 (2) Any person authorized by the provisions of this chapter to convene a multidisciplinary
16 team meeting may seek and receive an order of the circuit court setting such meeting and directing
17 attendance. Members of the multidisciplinary team may participate in team meetings by telephone
18 or video conferencing. This subsection does not prevent the respective agencies from designating
19 a person other than the case manager as a facilitator for treatment team meetings. Written notice
20 shall be provided to all team members of the availability to participate by videoconferencing.

21 (c) The treatment team shall coordinate its activities and membership with local family

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1 resource networks and coordinate with other local and regional child and family service planning
2 committees to assure the efficient planning and delivery of child and family services on a local and
3 regional level.

4 (d) The multidisciplinary treatment team shall be afforded access to information in the
5 possession of the Department of Health and Human Resources, Division of Juvenile Services,
6 law-enforcement agencies and other state, county and local agencies. Those agencies shall cooperate
7 in the sharing of information as may be provided in article five of this chapter or any other relevant
8 provision of law. Any multidisciplinary team member who acquires confidential information may
9 not disclose the information except as permitted by the provisions of this code or court rules.

10 **§49-4-406. Multidisciplinary treatment process for status offenders or delinquents;**
11 **requirements; custody; procedure; reports; cooperation; inadmissibility of certain**
12 **statements.**

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

21 (b) When a juvenile is adjudicated as a delinquent or has been granted a preadjudicatory

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1 community supervision period pursuant to section seven hundred eight of this article, the court,
2 either upon its own motion or motion of a party, may require the Department of Health and Human
3 Resources to convene a multidisciplinary treatment team and conduct an assessment, utilizing a
4 standard uniform comprehensive assessment instrument or protocol, including a risk and needs
5 assessment, to determine the juvenile's mental and physical condition, maturity and education level,
6 home and family environment, rehabilitative needs and recommended service plan, which shall be
7 provided in writing to the court and team members. A referral to the Department of Health and
8 Human Resources to convene a multidisciplinary treatment team and to conduct such an assessment
9 shall be made when the court is considering placing the juvenile in the department's custody or
10 placing the juvenile out-of-home at the department's expense pursuant to section seven hundred
11 fourteen of this article. In any delinquency proceeding in which the court requires the Department
12 of Health and Human Resources to convene a multidisciplinary treatment team, the probation officer
13 shall notify the department at least fifteen working days before the court proceeding in order to allow
14 the department sufficient time to convene and develop an individualized service plan for the juvenile.

15 (c) When a juvenile has been adjudicated and committed to the custody of the Director of the
16 Division of Juvenile Services, including those cases in which the juvenile has been committed for
17 examination and diagnosis, the Division of Juvenile Services shall promptly convene a
18 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform
19 comprehensive assessment instrument or protocol, including a risk and needs assessment, to
20 determine the juvenile's mental and physical condition, maturity and education level, home and
21 family environment, rehabilitative needs and recommended service plan. Upon completion of the

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1 assessment, the treatment team shall prepare and implement a comprehensive, individualized service
2 plan for the juvenile, which shall be provided in writing to the court and team members. In cases
3 where the juvenile is committed as a post-sentence disposition to the custody of the Division of
4 Juvenile Services, the plan shall be reviewed quarterly by the multidisciplinary treatment team.
5 Where a juvenile has been detained in a facility operated by the Division of Juvenile Services
6 without an active service plan for more than sixty days, the director of the facility may call a
7 multidisciplinary team meeting to review the case and discuss the status of the service plan.

8 (d) (1) The rules of juvenile procedure shall govern the procedure for obtaining ~~an~~ any
9 assessment of a juvenile, preparing an individualized service plan and submitting the plan and any
10 assessment to the court.

11 (2) In juvenile proceedings conducted pursuant to part seven of this article, the following
12 representatives shall serve as members and attend each meeting of the multidisciplinary treatment
13 team, so long as they receive notice at least seven days prior to the meeting: ~~the treatment team shall~~
14 consist of

15 (A) The juvenile;

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

18 (C) The juvenile's parent ~~or parents~~, guardian ~~or guardians~~ or ~~custodial relatives~~ custodian;

19 (D) The juvenile's attorney;

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

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

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1 (G) ~~An appropriate school official~~ The county school superintendent or the superintendent's
2 designee;

3 (H) A treatment or service provider with training and clinical experience coordinating
4 behavioral or mental health treatment; and

5 (I) Any other person or agency representative who may assist in providing recommendations
6 for the particular needs of the juvenile and family, including domestic violence service providers.
7 In delinquency proceedings, the probation officer shall be a member of a multidisciplinary treatment
8 team. When appropriate, the juvenile case manager in the Department of Health and Human
9 Resources and the Division of Juvenile Services shall cooperate in conducting multidisciplinary
10 treatment team meetings when it is in the juvenile's best interest.

11 (3) Prior to disposition, in each case in which a treatment planning team has been convened,
12 the team shall advise the court as to the types of services the team has determined are needed and
13 type of placement, if any, which will best serve the needs of the child. If the team determines that
14 an out-of-home placement will best serve the needs of the child, the team shall first consider
15 placement at facilities or programs located within the state. The team may only recommend
16 placement in an out-of-state facility if it concludes, after considering the best interests and overall
17 needs of the child, that there are no available and suitable in-state facilities which can satisfactorily
18 meet the specific needs of the child. The multidisciplinary treatment team shall also determine and
19 advise the court as to the individual treatment and rehabilitation plan recommended for the child for
20 either out-of-home placement or community supervision. The plan may focus on reducing the
21 likelihood of reoffending, requirements for the child to take responsibility for his or her actions,

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1 completion of evidence-based services or programs or any other relevant goal for the child. The plan
2 may also include opportunities to incorporate the family, custodian or guardian into the treatment
3 and rehabilitation process.

4 (4) The multidisciplinary treatment team shall submit written reports to the court as required
5 by applicable law or by the court, shall meet with the court at least every three months, as long as
6 the juvenile remains in the legal or physical custody of the state, and shall be available for status
7 conferences and hearings as required by the court. The multidisciplinary treatment team shall
8 monitor progress of the plan identified in subdivision (3) of this subsection and review progress of
9 the plan at the regular meetings held at least every three months pursuant to this section, or at shorter
10 intervals, as ordered by the court, and shall report to the court on the progress of the plan or if
11 additional modification is necessary.

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

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

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1 **§49-4-409. After-care plans; contents; written comments; contacts; objections; courts.**

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

13 (b) The after-care plan shall contain a detailed description of the education, counseling and
14 treatment which the child received ~~while at the institution or facility~~ at the out-of-home placement
15 and it shall also propose a plan for education, counseling and treatment for the child upon the child's
16 discharge. The plan shall also contain a description of any problems the child has, including the
17 source of those problems, and it shall propose a manner for addressing those problems upon
18 discharge.

19 (c) Within twenty-one days of receiving the plan, the child's probation officer or community
20 mental health center professional shall submit written comments upon the plan to the court which
21 committed the child. Any other person who received a copy of the plan pursuant to subsection (a)

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1 of this section may submit written comments upon the plan to the court which committed the child.
2 Any person who submits comments upon the plan shall send a copy of those comments to every
3 other person who received a copy of the plan.

4 (d) Within twenty-one days of receiving the plan, the child's probation officer or community
5 mental health center professional shall contact all persons, organizations and agencies which are to
6 be involved in executing the plan to determine whether they are capable of executing their
7 responsibilities under the plan and to further determine whether they are willing to execute their
8 responsibilities under the plan.

9 (e) If adverse comments or objections regarding the plan are submitted to the circuit court,
10 it shall, within forty-five days of receiving the plan, hold a hearing to consider the plan and the
11 adverse comments or objections. Any person, organization or agency which has responsibilities in
12 executing the plan, or their representatives, may be required to appear at the hearing unless they are
13 excused by the circuit court. Within five days of the hearing, the circuit court shall issue an order
14 which adopts the plan as submitted or as modified in response to any comments or objections.

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

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

21 (h) The court which committed the child shall appoint the child's probation officer or

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1 community mental health center professional to act as supervisor of the plan. The supervisor shall
2 report the child's progress under the plan to the court every sixty days or until the court determines
3 that no report or no further care is necessary.

4 **§49-4-413. Individualized case planning.**

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

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

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

19 (b) For any juvenile disposed to an out-of-home placement with the department, the
20 department shall ensure that the residential service provider develops and implements an
21 individualized case plan ~~informed by~~ based upon the recommendations ~~made to the court by~~ of the

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1 multidisciplinary team pursuant to section four hundred six, article four of this chapter and ~~informed~~
2 ~~by~~ the results of a risk and needs assessment. At a minimum, the case plan shall include:

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

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

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

10 (c) For any juvenile committed to the Division of Juvenile Services, the Division of Juvenile
11 Services shall develop and implement an individualized case plan ~~informed by~~ based upon the
12 recommendations made to the court by the multidisciplinary team pursuant to section four hundred
13 six, article four of this chapter and ~~informed by~~ the results of a risk and needs assessment. At a
14 minimum, the case plan shall include:

15 (1) Specific correctional goals and the actions to be taken by the juvenile ~~in order~~ to
16 demonstrate satisfactory attainment of each goal;

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

19 (3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her
20 family, guardian, school and community following the satisfactory completion of the case plan
21 treatment goals, including a protocol and timeline for engaging the parents, guardians or custodians

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1 prior to the release of the juvenile.

2 **§49-4-702. Prepetition diversion to informal resolution; mandatory prepetition diversion**
3 **program for status offenses and misdemeanor offenses; prepetition review team.**

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

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

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

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

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

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

20 (c) If the matter is for a nonviolent misdemeanor offense, the prosecutor shall determine
21 whether the case can be resolved informally through a diversion program without the filing of a

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

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

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

7 (B) Create a diversion agreement;

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

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

12 (2) A diversion agreement may include:

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

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

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

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

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

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

21 (3) When a referral to a service provider occurs, the service provider shall make reasonable

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1 efforts to contact the juvenile and his or her parent, custodian or guardian within seventy-two hours
2 of the referral.

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

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

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

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

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

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

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

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

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

2 (A) A case worker knowledgeable about community services available and authorized to
3 facilitate access to services;

4 (B) A service provider;

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

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

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

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

14 (5) After the prepetition review, the prepetition review team may:

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

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

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

20 (g) The requirements of this section are not mandatory until July 1, 2016: *Provided, That*
21 nothing in this section prohibits a judicial circuit from continuing to operate a truancy or other

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1 juvenile treatment program that existed as of January 1, 2015: *Provided, however,* That any judicial
2 circuit desiring to create a diversion program after the effective date of this section and prior to July
3 1, 2016, may only do so pursuant to this section.

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

6 (a) The court at any time, or the department or other official upon a request from a parent,
7 guardian or custodian, may, before a petition is filed under this article, refer a juvenile alleged to be
8 a delinquent or a status offender to a counselor at the department or a community mental health
9 center, ~~or~~ other professional counselor in the community or to a truancy diversion specialist. In the
10 event the juvenile refuses to respond to this referral, the department may serve a notice by first class
11 mail or personal service of process upon the juvenile, setting forth the facts and stating that a
12 noncustodial order will be sought from the court directing the juvenile to submit to counseling or
13 community services. The notice shall set forth the time and place for the hearing on the matter. The
14 court or referee after a hearing may direct the juvenile to participate in a noncustodial period of
15 counseling or community services that may not exceed six months. Upon recommendation of the
16 department or request by the juvenile's parent, custodian or guardian, the court or referee may allow
17 or require the parent, custodian or guardian to participate in this noncustodial counseling or
18 community services. No information obtained as the result of counseling or community services is
19 admissible in a subsequent proceeding under this article.

20 (b) Before a petition is formally filed with the court, the probation officer or other officer of
21 the court designated by it, subject to its direction, may give counsel and advice to the parties with

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1 a view to an informal adjustment period if it appears:

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

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

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

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

10 **§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial**
11 **disposition of status offenders.**

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

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

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

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

6 (4) If the allegations in a petition alleging that the juvenile is a status offender are admitted
7 or sustained by clear and convincing ~~proof~~ evidence, the court shall consider the results of the risk
8 and needs assessment prior to or at the disposition pursuant to section seven hundred twenty-four,
9 article four of this chapter and refer the juvenile to the Department of Health and Human Resources
10 for services, pursuant to section seven hundred twelve of this article, and order the department to
11 report back to the court with regard to the juvenile's progress at least every ninety days or until the
12 court, upon motion or sua sponte, orders further disposition under section seven hundred twelve of
13 this article or dismisses the case from its docket: *Provided*, That in a judicial circuit operating ~~its~~
14 ~~own~~ a truancy program, a circuit judge may, in lieu of referring truant juveniles to the department,
15 order that the juveniles be supervised by his or her probation office: *Provided, however, That a*
16 circuit judge may also refer a truant juvenile to a truancy diversion specialist.

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

20 (6) Findings of fact and conclusions of law addressed to all allegations in the petition shall
21 be stated on the record or reduced to writing and filed with the record or incorporated into the order

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1 of the court. The record shall include the treatment and rehabilitation plan the court has adopted after
2 recommendation by the multidisciplinary team as provided for in section four hundred six, article
3 four of this chapter.

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

8 (a) The services provided by the department for juveniles adjudicated as status offenders shall
9 be consistent with part ten, article two of this chapter and shall be designed to develop skills and
10 supports within families and to resolve problems related to the juveniles or conflicts within their
11 families. Services may include, but are not limited to, referral of juveniles and parents, guardians
12 or custodians and other family members to services for psychiatric or other medical care, or
13 psychological, welfare, legal, educational or other social services, as appropriate to the needs of the
14 juvenile and his or her family.

15 (b) If the ~~child or family of the child~~ juvenile, or his or her parent, guardian or custodian, fails
16 to comply with the ~~service plan~~ services provided in subsection (a) of this section, the department
17 may petition the circuit court:

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

21 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure

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1 setting, and/or to place a juvenile in custody of the department: Provided, That a juvenile
2 adjudicated as a status offender may not be placed in an out-of-home placement, excluding
3 placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status
4 or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or
5 probation for the current matter: Provided, however, That if the court finds by clear and convincing
6 evidence the existence of a significant and likely risk of harm to the juvenile, a family member or
7 the public and continued placement in the home is contrary to the best interests of the juvenile, such
8 juvenile may be ordered to an out-of-home placement: Provided further, That the court finds the
9 department has made all reasonable efforts to prevent removal of the juvenile from his or her home,
10 or that such reasonable efforts are not required due to an emergent situation.

11 (c) In ordering any further disposition under this section, the court is not limited to the relief
12 sought in the department's petition and shall make reasonable efforts to prevent removal of the
13 juvenile from his or her home or, as an alternative, to place the juvenile in a community-based
14 ~~facilities~~ facility which ~~are~~ is the least restrictive alternative appropriate to the needs of the juvenile
15 and the community. The disposition may include reasonable and relevant orders to the parents,
16 guardians or custodians of the juvenile as is necessary and proper to effectuate the disposition.

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

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

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

2 (B) The community services which were previously attempted.

3 ~~(d)~~ (e) The disposition of the juvenile may not be affected by the fact that the juvenile
4 demanded a trial by jury or made a plea of ~~denial~~ not guilty. Any order providing disposition other
5 than mandatory referral to the department for services is subject to appeal to the Supreme Court of
6 Appeals.

7 ~~(e)~~ (f) Following any further disposition by the court, the court shall inquire of the juvenile
8 whether or not appeal is desired and the response shall be transcribed; a negative response may not
9 be construed as a waiver. The evidence shall be transcribed as soon as practicable and made
10 available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings.
11 A judge may grant a stay of execution pending further proceedings.

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

14 **§49-4-714. Disposition of juvenile delinquents; appeal.**

15 (a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the
16 ~~court~~ juvenile shall, upon request of the court, make an investigation of the environment of the
17 juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request
18 of counsel, may order the use of a standardized screener, as defined in section two hundred six,
19 article one of this chapter or, if additional information is necessary, a psychological examination of
20 the juvenile. The report of an examination and other investigative and social reports shall not be
21 made available to relied upon the court until after the adjudicatory hearing in making a determination

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1 of adjudication. Unless waived, copies of the report shall be provided to counsel for the petitioner
2 and counsel for the juvenile no later than seventy-two hours prior to the dispositional hearing.

3 (b) Following the adjudication, the court shall receive and consider the results of a risk and
4 needs assessment conducted pursuant to section seven hundred twenty-four, article four of this
5 chapter and shall conduct the ~~dispositional proceeding~~ disposition, giving all parties an opportunity
6 to be heard. The disposition may include reasonable and relevant orders to the parents, custodians
7 or guardians of the juvenile as is necessary and proper to effectuate the disposition. ~~In~~ At disposition
8 the court shall not be limited to the relief sought in the petition and shall, in electing from the
9 following alternatives, consider the best interests of the juvenile and the welfare of the public:

10 (1) Dismiss the petition;

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

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

20 (4) Upon a finding that a parent or custodian is not willing or able to take custody of the
21 juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that

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1 a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court
2 may place the juvenile in temporary foster care or temporarily commit the juvenile to the department
3 or a child welfare agency. The court order shall state that continuation in the home is contrary to the
4 best interest of the juvenile and why; and whether or not the department made a reasonable effort
5 to prevent the placement or that the emergency situation made ~~such~~ those efforts unreasonable or
6 impossible. Whenever the court transfers custody of a youth to the department, an appropriate order
7 of financial support by the parents or guardians shall be entered in accordance with part eight, article
8 four of this chapter and guidelines promulgated by the Supreme Court of Appeals;

9 (5)(A) Upon a finding that the best interests of the juvenile or the welfare of the public
10 require it, and upon an adjudication of delinquency, the court may commit the juvenile to the custody
11 of the Director of the Division of Juvenile Services for placement in a juvenile services facility for
12 the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider
13 alternative sentencing arrangements.

14 (B) Notwithstanding any provision of this code to the contrary, in the event that the court
15 determines that it is in the juvenile's best interests or required by the public welfare to place the
16 juvenile in the custody of the Division of Juvenile Services, the court shall provide the Division of
17 Juvenile Services with access to all relevant court orders and records involving the underlying
18 offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and
19 presentencing reports and evaluations, and provide the division with access to school records,
20 psychological reports and evaluations, risk and needs assessment results, medical reports and
21 evaluations or any other such records as may be in the court's possession as would enable the

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1 Division of Juvenile Services to better assess and determine the appropriate counseling, education
2 and placement needs for the juvenile offender.

3 (C) Commitments ~~shall~~ may not exceed the maximum term for which an adult could have
4 been sentenced for the same offense and any such maximum allowable ~~sentence~~ term of confinement
5 to be served in a juvenile correctional facility ~~may~~ shall take into account any time served by the
6 juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that
7 continuation in the home is contrary to the best interests of the juvenile and why; and whether or not
8 the state department made a reasonable effort to prevent the placement or that the emergency
9 situation made those efforts unreasonable or impossible; or

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

17 The court shall make all reasonable efforts to place the juvenile in the least restrictive
18 alternative appropriate to the needs of the juvenile and the community: *Provided*, That a juvenile
19 adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-home
20 placement within the Division of Juvenile Services or the department if that juvenile has no prior
21 adjudications as either a status offender or as a delinquent, or no prior dispositions to a

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1 pre-adjudicatory improvement period or probation for the current matter, excluding placements made
2 for abuse or neglect: *Provided, however,* That if the court finds by clear and convincing evidence that
3 there is a significant and likely risk of harm to the juvenile, a family member or the public and that
4 continued placement in the home is contrary to the best interest of the juvenile, such juvenile may
5 be ordered to an out-of-home placement: *Provided further,* That the department has made all
6 reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts
7 are not required due to an emergent situation.

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

11 (d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded
12 a trial by jury or made a plea of ~~denial~~ not guilty. Any ~~dispositional order~~ disposition is subject to
13 appeal to the Supreme Court of Appeals.

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

19 (f) Following a disposition under subdivision (4), (5) or (6), subsection (b) of this section, the
20 court shall include in the findings of fact the treatment and rehabilitation plan the court has adopted
21 upon recommendation of the multidisciplinary team under section four hundred six, article four of this

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1 chapter.

2 (f) (g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged
3 with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted,
4 the court may make its disposition in accordance with this section in lieu of sentencing the person as
5 an adult.

6 **§49-4-718. Modification of dispositional orders; motions; hearings.**

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

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

10 (2) Upon the request of the ~~child~~ juvenile or a ~~child's~~ juvenile's parent, guardian or custodian
11 who alleges a change of circumstances relating to disposition of the ~~child~~ juvenile.

12 (b) Upon such a motion or request, the court shall conduct a review ~~proceeding~~ hearing, except
13 that if the last dispositional order was within the previous six months, the court may deny a request
14 for review. Notice in writing of a review ~~proceeding~~ hearing shall be given to the ~~child~~ juvenile, the
15 ~~child's~~ juvenile's parent, guardian or custodian and all counsel not less than seventy-two hours prior
16 to the proceeding. The court shall review the performance of the ~~child~~ juvenile, the ~~child's~~ juvenile's
17 parent or custodian, the ~~child's~~ juvenile's social case worker and other persons providing assistance
18 to the ~~child~~ juvenile or ~~child's~~ juvenile's family. If the motion or request for review of disposition is
19 based upon an alleged violation of a court order, the court may modify the ~~dispositional~~ disposition
20 order ~~to~~ and impose a more restrictive alternative if it finds clear and convincing proof of substantial
21 violation. In the absence of such ~~proof~~ evidence, the court may decline to modify the dispositional

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1 order or may modify the order ~~to~~ and impose one of the less restrictive alternatives set forth in section
2 seven hundred twelve of this article. A juvenile may not be required to seek a modification order as
3 provided in this section in order to exercise his or her right to seek ~~release~~ relief by habeas corpus.

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

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

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

13 (3) If the juvenile is not compliant with the conditions or has not met his or her goals, the
14 probation officer shall include an accompanying recommendation to the court with additional or
15 changed conditions or goals necessary to achieve compliance. If the court determines that changes to
16 the conditions of probation are warranted, the court shall conduct a review hearing in accordance with
17 subsection (b) of this section.

18 **§49-4-719. Juvenile probation officers; appointment; salary; facilities; expenses; duties;**
19 **powers.**

20 (a) (1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in
21 accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile

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1 probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may
2 not be related by blood or marriage to the appointing judge.

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

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

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

15 (1) Make investigation of the case; and

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

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

20 (2) The community-based juvenile probation sanctions and incentives may consist of a
21 continuum of responses from the least restrictive to the most restrictive, designed to respond swiftly,

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1 proportionally and consistently to violations of the terms and conditions of probation and to reward
2 compliance therewith.

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

7 **§49-4-724. Standardized risk and needs assessment.**

8 (a) The Supreme Court of Appeals is requested to adopt a risk and needs assessment to be used
9 for juvenile dispositions. A validation study of the risk and needs assessment may be conducted at
10 least every three years to ensure that the risk and needs assessment is predictive of the risk of
11 reoffending.

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

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

19 (d) The results of the risk and needs assessment shall be provided to the court prior to
20 disposition or at the time of the dispositional hearing.

21 **§49-4-725. Restorative justice programs.**

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

4 (b) A restorative justice program shall:

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

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

11 (3) Implement sanctions for the juvenile, including, but not limited to, restitution to the victim,
12 restitution to the community, services for the victim or the community, or any other sanction intended
13 to provide restitution to the victim or the community.

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

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

18 **ARTICLE 5. RECORDKEEPING AND DATABASE.**

19 **§49-5-103. Confidentiality of juvenile records; permissible disclosures; penalties; damages.**

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

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

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

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

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

9 (i) Involves violence against another person;

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

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

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

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

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

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

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

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

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

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

8 (i) Copies of the arrest report;

9 (ii) Copies of all investigations;

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

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

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

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

16 (C) If the disclosure of any record to be automatically disclosed under this section is restricted
17 in its disclosure by the Health Insurance Portability and Accountability Act of 1996, PL 104-191, and
18 any amendments and regulations under the act, the person designated by the circuit court shall provide
19 the superintendent and principal any notice of the existence of the record that is permissible under the
20 act and, if applicable, any action that is required to obtain the record; and

21 (D) When multiple disclosures are required by this subsection, the person designated by the

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1 circuit court is required to disclose only material in the juvenile record that had not previously been
2 disclosed to the county superintendent and the principal of the school which the juvenile attends.

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

6 (5) If the juvenile does not attend school at the time the juvenile's case is pending, the person
7 designated by the circuit court may not transmit the juvenile's records to any school. However, the
8 person designated by the circuit court shall transmit the juvenile's records to any school in West
9 Virginia which the juvenile subsequently attends.

10 (6) The person designated by the circuit court may not automatically transmit juvenile records
11 to a school which is not located in West Virginia. Instead, the person designated by the circuit court
12 shall contact the out-of-state school, inform it that juvenile records exist and make an inquiry regarding
13 whether the laws of that state permit the disclosure of juvenile records. If so, the person designated
14 by the circuit court shall consult with the circuit judge who presided over the case to determine
15 whether the juvenile records should be disclosed to the out-of-state school. The circuit judge has
16 discretion in determining whether to disclose the juvenile records and shall consider whether the other
17 state's law regarding disclosure provides for sufficient confidentiality of juvenile records, using this
18 section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be
19 disclosed in accordance with subdivision (7) of this subsection.

20 (7) The person designated by the circuit court shall transmit the juvenile's records to the
21 appropriate school official under cover of a letter emphasizing the confidentiality of those records and

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1 directing the official to consult this section of the code. A copy of this section of the code shall be
2 transmitted with the juvenile's records and cover letter.

3 (8) Juvenile records are absolutely confidential by the school official to whom they are
4 transmitted and nothing contained within the juvenile's records may be noted on the juvenile's
5 permanent educational record. The juvenile records are to be maintained in a secure location and are
6 not to be copied under any circumstances. However, the principal of a school to whom the records are
7 transmitted shall have the duty to disclose the contents of those records to any teacher who teaches a
8 class in which the subject juvenile is enrolled and to the regular driver of a school bus in which the
9 subject juvenile is regularly transported to or from school, except that the disclosure of the juvenile's
10 psychological test results and any mental health records may only be made in accordance with
11 subdivision (14) of this subsection. Furthermore, any school official to whom the juvenile's records
12 are transmitted may disclose the contents of those records to any adult within the school system who,
13 in the discretion of the school official, has the need to be aware of the contents of those records.

14 (9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's records,
15 the appropriate official at that school shall seal the records and return them to the circuit court which
16 sent them to that school. If the juvenile has changed schools for any reason, the former school shall
17 inform the circuit court of the name and location of the new school which the juvenile attends or will
18 be attending. If the new school is located within West Virginia, the person designated by the circuit
19 court shall forward the juvenile's records to the juvenile's new school in the same manner as provided
20 in subdivision (7) of this subsection. If the new school is not located within West Virginia, the person
21 designated by the circuit court shall handle the juvenile records in accordance with subdivision (6) of

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1 this subsection.

2 If the juvenile has been found not guilty of an offense for which records were previously
3 forwarded to the juvenile’s school on the basis of a finding of probable cause, the circuit court may
4 not forward those records to the juvenile’s new school. However, this does not affect records related
5 to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be
6 attending another school, the circuit court shall retain the juvenile's records and handle them as
7 otherwise provided in this article.

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

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

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

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

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1 (14) The county superintendent shall designate the school psychologist or psychologists to
2 receive the juvenile's psychological test results and any mental health records. The psychologist
3 designated shall review the juvenile's psychological test results and any mental health records and, in
4 the psychologist's professional judgment, may disclose to the principal of the school that the juvenile
5 attends and other school employees who would have a need to know the psychological test results,
6 mental health records and any behavior that may trigger violence or other disruptive behavior by the
7 juvenile. Other school employees include, but are not limited to, any teacher who teaches a class in
8 which the subject juvenile is enrolled and the regular driver of a school bus in which the subject
9 juvenile is regularly transported to or from school.

10 ~~(e)~~ (d) Notwithstanding the provisions of subsection ~~(a)~~ (b) of this section, juvenile records
11 may be disclosed, subject to the following terms and conditions:

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

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

20 (3) If a juvenile is fourteen years of age or older and a court has determined there is a probable
21 cause to believe the juvenile committed an offense set forth in subsection (g), section seven hundred

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1 ten, article four of this chapter, but the case is not transferred to criminal jurisdiction, the juvenile
2 records are open to public inspection pending trial only if the juvenile is released on bond and no
3 longer detained or adjudicated delinquent of the offense.

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

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

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

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

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

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

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

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

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

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

11 ~~(d)~~ (e) Any records open to public inspection pursuant to this section are subject to the same
12 requirements governing the disclosure of adult criminal records.

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

17 **§49-5-106. Data collection.**

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

21 (b) For each juvenile who enters into a diversion agreement, is placed on an improvement

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1 period, is placed on probation or is placed in an out-of-home placement as defined by section two
2 hundred six, article one of this chapter, the data and procedures developed in subsection (a) shall
3 include:

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

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

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

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

16 (c) For youth placed in programs operated or funded by the Division of Juvenile Services, the
17 department or the Supreme Court of Appeals, including youth reporting centers, juvenile drug courts,
18 restorative justice programs and teen courts, the division, department and Supreme Court shall develop
19 procedures using, at a minimum, the measures in subsection (b) of this section to track and record
20 outcomes of each program, and to demonstrate that the program reduces the likelihood of reoffending
21 for the youth referred to the program.

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1 (d) For youth referred to truancy diversion specialists or other truancy diversion programs
2 operated or funded by the Supreme Court of Appeals, the Division of Juvenile Services, the
3 Department of Health and Human Resources, the Department of Education or other political
4 subdivisions, that branch of government or agency shall develop procedures to track and record
5 outcomes of each program, and to evaluate the effectiveness in reducing unexcused absences for the
6 youth referred to the program. At a minimum, this outcome data shall include:

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

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

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

12 (e) The Supreme Court of Appeals, the Division of Juvenile Services, the Department of Health
13 and Human Resources and the Department of Education shall also establish procedures to jointly
14 collect and compile data relating to disproportionate minority contact, which is defined as the
15 proportion of minority youth who come into contact with the juvenile justice system in relation to the
16 proportion of minority youth in the general population, and the compilation shall include data
17 indicating the prevalence of such disproportionality in each county. Data shall include, at a minimum,
18 the race and gender of youth arrested or referred to court, entered into a diversion program, adjudicated
19 and disposed.