WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4092

BY DELEGATES HILL, PACK, SUMMERS, ESPINOSA,
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PUSHKIN, C. THOMPSON, AND WALKER

[Passed March 7, 2020; in effect ninety days from passage.]
AN ACT to repeal §49-2-102 and §49-2-104 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-1-206 of said code; to amend and reenact §49-2-108, §49-2-110, §49-2-111, §49-2-111a, §49-2-112, §49-2-118, §49-2-121, §49-2-124, and §49-2-126 of said code; to amend said code by adding thereto five new sections, designated §49-2-111c, §49-2-127, §49-2-127a, §49-2-128, and §49-2-129; to amend said code by adding thereto two new sections, designated §49-4-601a and §49-4-601b; and to amend and reenact §49-4-604, of said code, all relating generally to the child welfare system; defining terms; increasing the number children allowed in a foster family home; removing authorization for the Secretary of the Department of Health and Human Resources to transfer funds between certain accounts; eliminating requirement that the secretary provide public education; requiring certain information to be included in child placing agency data reports; setting a minimum amount that the Department of Health and Human Resources must pay child placing agencies per child adopted; requiring the department to review the rate of payment to foster parents at certain time intervals; authorizing and directing the department to expend funds to achieve certain priorities and objectives related to child placement and other services; requiring the department to expend an amount of appropriated funds in fiscal year 2021 to achieve certain priorities and objectives; requiring the secretary of the department to report annually, and upon request, to the Joint Standing Committee on Government and Finance regarding expenditures and progress toward meeting certain objectives and priorities; specifying when the department shall remit payments to foster families; eliminating summary review requirements for behavioral health care services and facilities for children in out of home placements; establishing the Foster Child Bill of Rights; establishing the Foster and Kinship Parent Bill of Rights; providing that violations of the rights provided to foster children and parents may be reported to and investigated by the foster care ombudsman; setting forth certain duties of foster parents; requiring a number of provisions to be included in the agreement.
between the foster parent and the child placing agency and the department; providing that
neglect of a foster or kinship parent’s duties and violations of agreements may be reported
to and investigated by the foster care ombudsman; requiring the foster care ombudsman
to make certain reports; setting forth the reasonable and prudent foster parent standard;
providing that children in out-of-home care are entitled to participate in certain activities
and requiring caregivers to use the reasonable and prudent foster parent standard to make
certain decisions regarding the child; limiting liability of a person adhering to the
reasonable and prudent foster parent standard; requiring the department to establish
minimum standards for transitional living services by legislative rule; establishing eligibility
criteria for children and transitioning adults to participate in transitional living services;
providing requirements for transitional living arrangements and the agency’s duties in
relation thereto; establishing preference that children removed from the home be placed
with relatives and fictive kin; establishing a process by which the department shall, and
others may assist, in identifying family members and fictive kin; requiring the department
to provide notice to a person against whom an allegation of abuse or neglect, that does
not result in a finding by a court, is substantiated; providing that a person against whom
an allegation of abuse or neglect has been substantiated has a right to contest the
substantiation and the right to appeal a decision of the department to the courts;
establishing requirements for legislative rules of the department regarding substantiation
of abuse and neglect allegations; requiring guardians ad litem to adhere to certain policies
and meet certain requirements; requesting the supreme court to review certain rules;
clarifying when the department, in an abuse and neglect case, is not required to make
efforts to preserve the family; requiring the department to promulgate legislative rules;
requiring the department promulgate emergency rules; making technical corrections; and
eliminating obsolete language from the code.

Be it enacted by the Legislature of West Virginia:
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

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

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

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

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

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

“Child placing agency” means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are 16 or 17 years of age and living in unlicensed residences.
“Child welfare agency” means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Corrections and Rehabilitation, pursuant to §49-2-901 et seq. of this code, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

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

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

(A) Electronic monitoring;
(B) Drug and alcohol screening, testing, or monitoring;
(C) Youth reporting centers;
(D) Reporting and supervision requirements;
(E) Community service; and
(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.
“Community services” means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

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

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

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

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

“Family resource network” means:

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

(i) Has agreed to a single governing entity;

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

(iii) Addresses a geographic area of a county or two or more contiguous counties;
(iv) Has, as the majority of the members of the governing body, nonproviders, which includes family representatives and other members who are not employees of publicly funded agencies, with family representatives as the majority of those members who are nonproviders;
(v) Has members of the governing body who are representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency, and the county school district; and
(vi) Adheres to principles consistent with the cabinet’s mission as part of its philosophy.

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

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

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

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

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

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

“Health care and treatment” means:
(A) Developmental screening;
(B) Mental health screening;
(C) Mental health treatment;
(D) Ordinary and necessary medical and dental examination and treatment;
(E) Preventive care including ordinary immunizations, tuberculin testing, and well-child care; and
(F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment does not include an abortion.

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

(A) Intensive, short-term intervention of four to six weeks; and
(B) Home-based, longer-term after care following intensive intervention.

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

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

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

“Needs Assessment” means an evidence-informed assessment which identifies the needs a child or family has, which, if left unaddressed, will likely increase the chance of reoccurring.
“Nonsecure facility” means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in that facility and which provides its residents access to the surrounding community with supervision.

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

(A) An act resulting in bodily injury or death;
(B) The use of firearm or other deadly weapon in the commission of the offense;
(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;
(D) A criminal sexual conduct offense; or
(E) Any offense for driving under the influence of alcohol or drugs.

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

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

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

“Pre-adjudicatory community supervision” means supervision provided to a youth prior to adjudication, for a period of supervision up to one year for an alleged status or delinquency offense.
“Regional family support council” means the council established by the regional family support agency to carry out the responsibilities specified in §49-2-601 et seq. of this code.

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

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

“Residential services” means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians, or other persons or entities on a continuing or temporary basis. It may include care or treatment, or both, for transitioning adults. Residential services does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the Division of Corrections and Rehabilitation, created pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

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

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

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

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

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

“State family support council” means the council established by the Department of Health
and Human Resources pursuant to §49-2-601 et seq. of this code to carry out the responsibilities
specified in §49-2-101 et seq. of this code.

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

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

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

“Truancy diversion specialist” means a school-based probation officer or truancy social
worker within a school or schools who, among other responsibilities, identifies truants and the
causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior
to court involvement.
ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-102. Minimum staffing complement for child protective services.

[Repealed.]

§49-2-104. Education of the public.

[Repealed.]

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

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


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

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

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

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

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

(a) For purposes of this section:

(1) “Child” means:

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

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

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

(3) “Department” means the Department of Health and Human Resources.

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

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

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

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

(b) No later than December 1, 2020, the department shall enter into performance-based contracts with child placing agencies.
(c) In conducting the procurement, the department shall actively consult with other state agencies and other entities with expertise in performance-based contracting with child placing agencies.

(d) The procurement process shall be developed and implemented in a manner that complies with applicable provisions of this code.

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

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

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

3. Child placing agency data reporting, including data on performance and service outcomes, including, but not limited to:
   - Safety outcomes;
   - Permanency outcomes;
   - Well-being outcomes;
   - Incentives earned;
   - Placement of older children;
   - Placement of children with special needs; and
   - Recruitment and retention of foster parents; and

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

(f) As part of the procurement process under this section, the department shall issue the request for proposals no later than July 1, 2020. The department shall notify the apparently successful bidders no later than September 1, 2020.

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

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

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

(j) The department shall pay child placing agencies contracted to provide adoption services to foster families a minimum of $1,000 per child for each adoption finalized.

(k) The rate of payment to foster parents and child placing agencies shall be reviewed by the department, at a minimum of every two years, to determine whether the level of foster care payments facilitates or hinders the efficient placement of foster children with West Virginia families. The department shall remit payments to foster parents on the same week each month to facilitate foster parents’ ability to budget and appropriately expend payments for the benefit of the children in their custody.
The department shall report the performance of the child placing agency to the Legislative Oversight Commission on Health and Human Resources Accountability by December 31, annually.

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

(a) Subject to appropriations by the Legislature, the department is authorized and directed to:

1. Enhance and increase efforts to provide services to prevent the removal of children from their homes;
2. Identify relatives and fictive kin of children in need of placement outside of the home;
3. Train kinship parents to become certified foster parents;
4. Expand a tiered foster care system that provides higher payments for foster parents providing care to, and child placing agencies providing services to, foster children who have severe emotional, behavioral, or intellectual problems or disabilities, with particular emphasis upon removing children in congregate care and placing them with suitable foster parents. This program shall be operational no later than December 1, 2020; and
5. Develop a pilot program to increase payment to uncertified kinship parents for the purpose of further helping families who have accepted kinship placements.

(b) During fiscal year 2021, the department shall expend at least $16,900,000 for the purposes of implementing the priorities and objectives listed in this section.

(c) On or before July 1, 2022 and on or before July 1 of every year thereafter, the secretary of the department shall present a report to the Joint Standing Committee on Government and Finance regarding the expenditures made pursuant to subsection (b) of this section and the department’s progress in meeting the priorities and objectives listed in subsection (a) of this section: Provided, That the secretary shall provide the information described in this subsection and updates to previous reports at any time, upon request of the Joint Standing Committee on Government and Finance.
§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of articles of incorporation.

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

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

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

§49-2-121. Rule-making.

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

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

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

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

A certificate of need, as provided in §16-2D-1 et seq. of this code, is not required by an entity proposing behavioral health care facilities or behavioral health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home.
§49-2-126. The Foster Child Bill of Rights.

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

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

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

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

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

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

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

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

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

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

10. The right to contact the department or the foster care ombudsman, regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats, retaliation, or punishment for making complaints;
(11) The right to maintain contact with all previous caregivers and other important adults in his or her life, if desired, unless prohibited by court order or determined by the parent, according to the reasonable and prudent parent standard, not to be in the best interests of the child;

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

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

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

(6) The right to receive from the department and the child placing agency, prior to
placement of a child, all known information relating to the child’s behavior, family background,
health, history, or special needs and to receive updates relevant to the care of the child as
information becomes available;
(7) The right to be provided with a written copy of the individual treatment and service plan concerning the child in the foster or kinship parent’s home and to discuss such plan with the case manager, and to receive reasonable notice of any changes to that plan, including timely notice of the need to remove a child from the foster or kinship home and the reasons for the removal;

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

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

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

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

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

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

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

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

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

(b) The rights provided in this section do not create an independent cause of action.

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

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

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

(1) The duty not to violate the rights of the child, provided in §49-2-126 of this code;
(2) The duty to provide all children in the parent’s or parents’ care with appropriate food, clothing, shelter, supervision, medical attention, and educational opportunities using the reasonable and prudent foster parent standard as defined in §49-2-128 of this code;

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

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

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

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

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

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

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

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

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

(c) The terms of the agreement shall include the rights of the foster or kinship parent provided in §49-2-127 of this code. The terms of the agreement shall also include, but not be limited to:
(1) Provisions addressing what child care will be provided while the foster or kinship parent attends required training;
(2) Provisions informing the foster or kinship parent of applicable laws and guidelines regarding the responsibilities of the foster or kinship parent and provisions requiring that the foster or kinship parent receive regular updates on changes to such laws and guidelines in a timely manner;
(3) Provisions regarding required and available training for the foster or kinship parent;
(4) Provisions addressing payment to the foster or kinship parent;
(5) Provisions naming and addressing the emergency 24-hour contact provided by the child placing agency and the department;
(6) Provisions addressing travel, including out-of-state and overnight travel;
(7) Provisions addressing child care for the child;
(8) Provisions addressing when a placement may be terminated by the foster or kinship parent, the child placing agency, or the department;
(9) Provisions addressing medical care for the child, including how to obtain medical consent for procedures; and
(10) Provisions addressing how complaints against the foster or kinship parent will be handled and adjudicated, including provisions for appeal and review of the adjudication.
(d) The agreement may contain such other terms and provisions, not inconsistent with this article, as may be negotiated by the parties and as may be in the best interests of the child.
(e) The requirements of this section apply to agreements, entered into on or after the effective date of this section. Agreements entered into pursuant to this section shall expire on July 1 of each year and shall be renewed by the parties as necessary.
(f) The duties and requirements provided in this section do not create an independent cause of action, including a cause of action for breach of contract. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021
and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: Provided, That the summary required by this section may not include any personally identifying information of a person named in a report or a person submitting a report to the ombudsman.

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

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

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

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

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

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

(c) Caregivers shall use a reasonable and prudent foster parent standard in determining whether to give permission for a child in out-of-home care to participate in extracurricular, enrichment, and social activities. When using the reasonable and prudent foster parent standard, the caregiver shall consider:
(1) The child’s age, maturity, and developmental level, to maintain the overall health and safety of the child;

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

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

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

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

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

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

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

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

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

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

(a) The department shall establish minimum standards, by legislative rule, for transitional living services, such as scattered-site living arrangements and supervised group settings, to which all child placing agencies or child welfare agencies who provide this service must conform.
(b) Agencies shall establish eligibility criteria for serving transitioning children and adults and shall require, at a minimum, the following:

1. That a transitioning child or adult receiving a transitional living placement is between 16 and 26 years of age;
2. Written permission from the child’s parents or guardian for a child less than 18 years of age to enter a scattered-site living arrangement;
3. A written service agreement with a transitioning adult entering a transitional living arrangement;
4. A determination by an agency that a transitioning child or adult has shown that he or she is stable, mature, and responsible enough for entry into the determined level of transitional living arrangement;
5. A life skills assessment by an agency of the transitioning child or adult, prior to placing him or her in a transitional living arrangement, and an annual reassessment; and
6. A written transition plan, developed with the transitioning child or adult, that provides an educational, training, or employment program or a plan for the child or adult to pursue employment while in transitional living.

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

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

(e) After a child or adult is in a transitional living placement, an agency shall assess the child’s or adult’s progress in acquiring basic living skills at a minimum of once every six months.
(f) An agency shall develop and implement policies and procedures to ensure that any child or adult in a transitional living setting receives training and guidance on appropriate health screening and services, including medical and dental screening and services.

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

1. The dwelling is safe and affordable;
2. The dwelling has a working telephone or other means of communication in an emergency;
3. The dwelling has appropriate equipment for indoor cooking; and
4. The dwelling has an appropriate water source for cooking, cleaning, and bathing.

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

ARTICLE 4. COURT ACTIONS.


When a child is removed from his or her home, placement preference is to be given to relatives or fictive kin of the child. If a child requires out-of-home care, placement of a child with a relative is the least restrictive alternative living arrangement. The department must diligently search for relatives of the child and fictive kin within the first days of a child’s removal and must identify and provide notice of the child’s need for a placement to relatives and fictive kin who are willing to act as a foster or kinship parent.

1. After a petition alleging abuse and neglect of a child is filed, the department shall commence a search for every relative and fictive kin of the child.

2. No later than seven calendar days after the petition for removal has been filed, the department shall file, with the court, a list of all of the relatives and fictive kin of the child known
to the department at the time of the filing, whether or not those persons have expressed a willingness to take custody of the child.

(3) Within seven days after the department files the list described in subdivision (2) of this subsection, any party to the case may file, with the court, his or her own list containing names and addresses of relatives and fictive kin of the child.

(4) The department shall investigate and determine whether any of the persons identified in the lists filed pursuant to this section are willing and able to act as foster or kinship parents to the child. The department shall file its determinations with the court within 45 days from the filing of the petition alleging abuse or neglect of a child.

§49-4-601b. Substantiation by the department of abuse and neglect.

(a) Notwithstanding any provision of this code to the contrary, when the department substantiates an allegation of abuse or neglect against a person, but there is no judicial finding of abuse or neglect as a result of the allegation, the department shall provide written notice of the substantiation to the person by certified mail, return receipt requested.

(b) The individual against whom an abuse or neglect allegation has been substantiated, as described in subsection (a) of this section, has the right to contest the substantiation by filing a grievance with the board of review of the department and has the right to appeal the decision of the board of review to the court, in accordance with the provisions of §29A-5-1 et seq. of this code regarding administrative appeals.

(c) The secretary of the department shall promulgate legislative rules in accordance with §29A-3-1 et seq. of this code, within the applicable time limit to be considered by the Legislature during its regular session in the year 2021, which rules shall include, at a minimum:

(1) Provisions for ensuring that an individual against whom the department has substantiated an allegation of abuse and neglect, but against whom there is no judicial finding of abuse or neglect, receives written notice of the substantiation in a timely manner. The written notice must, at a minimum, state the following:
(A) The name of the child the person is alleged to have abused or neglected, the place or places where the abuse or neglect allegedly occurred, and the date or dates on which the abuse or neglect is alleged to have occurred;

(B) That the person has a right to file a grievance protesting the substantiation of abuse and neglect with the board of review of the department and clear instructions regarding how to file a grievance with the board of review, including a description of any applicable time limits;

(C) That the person has a right to appeal an adverse decision of the board of review of the department to the courts and notice of any applicable time limits; and

(D) A description of any public or nonpublic registry on which the person’s name will be included as a result of a substantiated allegation of abuse and neglect and a statement that the inclusion of the person’s name on the registry may prevent the person from holding jobs from which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

(2) Provisions for ensuring that a person against whom an allegation of abuse and neglect has been substantiated, but against whom there is no judicial finding of abuse or neglect, may file a grievance with the department and provisions guaranteeing that any such person will have a full and fair opportunity to be heard; and

(3) Provisions requiring the department to remove a person’s name from an abuse and neglect registry maintained by the department if a substantiation is successfully challenged in the board of review or in a court.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

(a) Child and family case plans. — Following a determination pursuant to §49-4-602 of this code wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child’s case plan, including the permanency plan for the child. The term “case plan” means a written document that includes, where applicable, the requirements of the
family case plan as provided in §49-4-408 of this code and that also includes, at a minimum, the following:

(1) A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child, and foster or kinship parents in order to improve the conditions that made the child unsafe in the care of his or her parent(s), including any reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. §12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(2) A plan to facilitate the return of the child to his or her own home or the concurrent permanent placement of the child; and address the needs of the child while in kinship or foster care, including a discussion of the appropriateness of the services that have been provided to the child.

The term “permanency plan” refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it possible for a child to return to the care of his or her parent(s) safely. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative, concurrent permanent placement plans for the child to include approximate time lines for when the placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall
forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard.

(b) **Requirements for a Guardian ad litem.** —

A guardian ad litem appointed pursuant to §49-4-601(f)(1) of this code, shall, in the performance of his or her duties, adhere to the requirements of the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct and such other rules as the West Virginia Supreme Court of Appeals may promulgate, and any appendices thereto, and must meet all educational requirements for the guardian ad litem. A guardian ad litem may not be paid for his or her services without meeting the certification and educational requirements of the court. The West Virginia Supreme Court of Appeals is requested to provide guidance to the judges of the circuit courts regarding supervision of said guardians ad litem. The West Virginia Supreme Court of Appeals is requested to review the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct specific to guardians ad litem.

(c) **Disposition decisions.** — The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child’s needs, commit the child temporarily to the care, custody, and control of the department, a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court. The court order shall state:
(A) That continuation in the home is contrary to the best interests of the child and why;

(B) Whether or not the department has made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home;

(C) Whether the department has made reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(D) What efforts were made or that the emergency situation made those efforts unreasonable or impossible; and

(E) The specific circumstances of the situation which made those efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child’s commitment to the department are to continue. Considerations pertinent to the determination include whether the child should:

(i) Be considered for legal guardianship;

(ii) Be considered for permanent placement with a fit and willing relative; or

(iii) Be placed in another planned permanent living arrangement, but only in cases where the child has attained 16 years of age and the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 of this code;

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the
abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child's need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child 14 years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home, or that the emergency situation made those efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances.
For purposes of the court’s consideration of the disposition custody of a child pursuant to this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse, and sexual abuse;

(B) The parent has:

(i) Committed murder of the child’s other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child’s other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit murder or voluntary manslaughter, or been an accessory before or after the fact to either crime;

(iv) Committed a malicious assault that results in serious bodily injury to the child, the child’s other parent, guardian, or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(v) Attempted or conspired to commit malicious assault, as outlined in subparagraph (iv), or been an accessory before or after the fact to the same;

(vi) Committed sexual assault or sexual abuse of the child, the child’s other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(vii) Attempted or conspired to commit sexual assault or sexual abuse, as outlined in subparagraph (vi), or been an accessory before or after the fact to the same.
(C) The parental rights of the parent to another child have been terminated involuntarily;

(D) A parent has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child’s interests would not be promoted by a preservation of the family.

(d) As used in this section, “No reasonable likelihood that conditions of neglect or abuse can be substantially corrected” means that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Those conditions exist in the following circumstances, which are not exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and the person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child’s return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family
stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling their responsibilities to the child; and

(6) The battered parent’s parenting skills have been seriously impaired and the person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan, or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(e) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

(f) The court may not terminate the parental rights of a parent on the sole basis that the parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 et seq., for substance use disorder, as long as the parent is successfully fulfilling his or her treatment obligations in the medication-assisted treatment program.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ................................................... this the...........................................

day of ................................................................., 2020.

Governor