

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 5151**

By Delegates Burkhammer, Pinson, Heckert,  
Winzenreid, Hornby, Riley, Kimble, Petitto,  
and W. Hall

[Originating in the Committee on the Judiciary;

Reported on February 21, 2024]



1 A BILL to amend and reenact §49-1-206 of the Code of West Virginia, 1931, as amended, relating  
2 to adding former foster parents to the definition of fictive kin.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

Part II. Definitions

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

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

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

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

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

15 "Child care services" means direct care and protection of children during a portion of a  
16 24-hour day outside of the child's own home which provides experiences to children that foster  
17 their healthy development and education.

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

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

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

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

- 41 (A) Electronic monitoring;
- 42 (B) Drug and alcohol screening, testing, or monitoring;
- 43 (C) Youth reporting centers;

44 (D) Reporting and supervision requirements;

45 (E) Community service; and

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

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

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

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

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

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

65 "Family resource network" means:

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

69 (i) Has agreed to a single governing entity;

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

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

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

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

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

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

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

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

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

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

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

98 "Health care and treatment" means:

99 (A) Developmental screening;

100 (B) Mental health screening;

101 (C) Mental health treatment;

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

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

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

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

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

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

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

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

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

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

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

128 "Nonviolent misdemeanor offense" means a misdemeanor offense that does not include  
129 any of the following:

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

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

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

134 (D) A criminal sexual conduct offense; or

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to add former foster parents to the definition of fictive kin.

Strike-throughs indicate language that would be stricken from a heading or the present law  
and underscoring indicates new language that would be added.