

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5572

By Delegates Burkhammer, Kimble, Pinson, and Tully

[Originating in the Committee on the Judiciary;

Reported on February 21, 2024]

1 A BILL to amend and reenact §49-2-128 of the Code of West Virginia, 1931, as amended, relating
2 to prohibiting cameras, for the purpose of unattended surveillance or recording, in
3 bedrooms and bathrooms of foster homes; exemptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

**§49-2-128. Reasonable and prudent foster parent standard; prohibiting cameras in
bedrooms and bathrooms of foster children; exemptions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (h) Regardless of the age of the child or the concerns of the foster parent, there shall be no
41 cameras permitted, for the purpose of unattended surveillance or recording, in the bedrooms or
42 bathrooms of foster children in said foster parent's care with the following exemptions:

43 (1) Baby monitors may be used where age appropriate for the child; and

44 (2) Any equipment used to monitor the health of a child receiving medical care shall not
45 include cameras unless necessary to ensure the health and safety of the child. Any recording
46 device exempted in this subdivision shall require the foster parent to obtain a doctor's
47 recommendation for such.

NOTE: The purpose of this bill is to prohibit cameras in bedrooms and bathrooms of foster homes and provide for exemptions.

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