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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 364

(SENATORS PREZIOSO, UNGER, ROWE, KESSLER,
HELMICK, CALDWELL, PLYMALE, SHARPE, ROSS,
DEMPSEY, LOVE, HUNTER, SPROUSE, MINARD,
JENKINS, FANNING, WHITE, MCCABE, BOWMAN, MINEAR
AND TOMBLIN, MR. PRESIDENT, *original sponsors*)

[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact sections seven and twenty-one, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section sixteen-b; to amend and reenact section three, article five-d of said chapter; and to further amend said article by adding thereto two new sections, designated sections three-a and eight, all relating to child welfare and juvenile justice generally; requiring notice of certain proceedings to the department of health and human resources

and the division of juvenile services for purposes of multidisciplinary hearings; providing for greater involvement of multidisciplinary teams in juvenile and abuse and neglect proceedings; providing that quarterly judicial reviews be continued while child remains in custody; exceptions to meeting requirement; providing for when offenses are committed while in custody; providing for recommended court orders; requiring that recommended service plans be considered; requiring written findings when order deviates from treatment team's recommended plan; and affording multidisciplinary treatment team notice and opportunity to present evidence.

Be it enacted by the Legislature of West Virginia:

That sections seven and twenty-one, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section sixteen-b; that section three, article five-d of said chapter be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections three-a and eight, all to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.

1 (a) (1) A petition alleging that a juvenile is a status
2 offender or a juvenile delinquent may be filed by a person
3 who has knowledge of or information concerning the facts
4 alleged. The petition shall be verified by the petitioner,
5 shall set forth the name and address of the juvenile's
6 parents, guardians or custodians, if known to the peti-
7 tioner, and shall be filed in the circuit court in the county
8 where the alleged status offense or act of delinquency
9 occurred: *Provided*, That any proceeding under this
10 chapter may be removed, for good cause shown, in accor-
11 dance with the provisions of section one, article nine,
12 chapter fifty-six of this code. The petition shall contain

13 specific allegations of the conduct and facts upon which
14 the petition is based, including the approximate time and
15 place of the alleged conduct; a statement of the right to
16 have counsel appointed and consult with counsel at every
17 stage of the proceedings; and the relief sought.

18 (2) Upon the filing of the petition, the court shall set a
19 time and place for a preliminary hearing as provided in
20 section nine of this article and may appoint counsel. A
21 copy of the petition and summons may be served upon the
22 respondent juvenile by first class mail or personal service
23 of process. If a juvenile does not appear in response to a
24 summons served by mail, no further proceeding may be
25 held until the juvenile is served a copy of the petition and
26 summons by personal service of process. If a juvenile fails
27 to appear in response to a summons served in person upon
28 him or her, an order of arrest may be issued by the court
29 for that reason alone.

30 (b) The parents, guardians or custodians shall be named
31 in the petition as respondents and shall be served with
32 notice of the proceedings in the same manner as provided
33 in subsection (a) of this section for service upon the
34 juvenile and required to appear with the juvenile at the
35 time and place set for the proceedings unless such respon-
36 dent cannot be found after diligent search. If any such
37 respondent cannot be found after diligent search, the court
38 may proceed without further requirement of notice:
39 *Provided*, That the court may order service by first class
40 mail to the last known address of such respondent. The
41 respondent shall be afforded fifteen days after the date of
42 mailing to appear or answer.

43 (c) The court or referee may order the issuance of a
44 subpoena against the person having custody and control of
45 the juvenile ordering him or her to bring the juvenile
46 before the court or referee.

47 (d) When any case of a juvenile charged with the com-
48 mission of a crime is certified or transferred to the circuit

49 court, the court or referee shall forthwith cause the
50 juvenile and his or her parents, guardians or custodians to
51 be served with a petition as provided in subsections (a) and
52 (b) of this section. In the event the juvenile is in custody,
53 the petition shall be served upon the juvenile within
54 ninety-six hours of the time custody began and if the
55 petition is not served within that time, the juvenile shall be
56 released forthwith.

57 (e) The clerk of the court shall promptly notify the local
58 office of the department of health and human resources of
59 all proceedings under this article, which shall then be
60 responsible for convening and directing the
61 multidisciplinary treatment planning process in accor-
62 dance with the provisions of section three, article five-d of
63 this chapter: *Provided*, That in status offense or delin-
64 quency cases where a case manager has not been assigned,
65 the juvenile probation officer shall be responsible for
66 notifying the local office of the department of health and
67 human services which will assign a case manager who will
68 initiate assessment and be responsible for convening and
69 directing the multidisciplinary treatment planning pro-
70 cess.

§49-5-16b. Conviction for offense while in custody.

1 Notwithstanding any other provision of law to the
2 contrary, any person who is eighteen years of age or older
3 who is convicted as an adult of an offense that he or she
4 committed while in the custody of the division of juvenile
5 services and who is therefor sentenced to a regional jail or
6 state correctional facility for said offense may not be
7 returned to the custody of the division upon the comple-
8 tion of his or her adult sentence until a hearing is held
9 before the court which committed the person to the
10 custody of the division of juvenile services at which
11 hearing the division may present any objections it may
12 have to return the person to its custody. If the division
13 does object and the court overrules the division's objec-
14 tions, it shall make specific written findings as to its

15 rationale for overruling the objections: *Provided*, That no
16 person who is eighteen years of age or older who is con-
17 victed as an adult of a felony crime of violence against the
18 person while in the custody of the division of juvenile
19 services be returned to the custody of the division of
20 juvenile services upon completion of his or her adult
21 sentence.

§49-5-21. Quarterly judicial review of juvenile proceedings.

1 For cases under this article in which the provisions of
2 section three, article five-d of this chapter apply, the court
3 wherein the juvenile proceeding is pending shall conduct
4 regular judicial review of the case with the
5 multidisciplinary treatment team and a juvenile probation
6 officer in attendance. Such judicial review may be con-
7 ducted as often as is considered necessary by the court, but
8 shall be conducted at least once every three calendar
9 months as long as the child remains in the legal or physical
10 custody of the state.

11 In conducting the judicial review required by this
12 section, the court shall address the extent of progress in
13 the case, treatment and service needs, permanent place-
14 ment planning for the juvenile, any uncontested issues and
15 any other matters that the court considers pertinent. An
16 order reflecting the matters considered, any uncontested
17 rulings and the scheduling of an evidentiary hearing on
18 any contested issue shall be issued by the court within ten
19 judicial days of the judicial review.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-3. Multidisciplinary treatment planning process.

1 (a) (1) On or before the first day of January, one thou-
2 sand nine hundred ninety-five, a multidisciplinary treat-
3 ment planning process shall be established within each
4 county of the state, either separately or in conjunction
5 with a contiguous county by the secretary of the depart-
6 ment with advice and assistance from the prosecutor's

7 advisory council as set forth in section four, article four,
8 chapter seven of this code.

9 (2) Treatment teams shall assess, plan and implement a
10 comprehensive, individualized service plan for children
11 who are victims of abuse or neglect and their families
12 when a judicial proceeding has been initiated involving the
13 child or children for juveniles and their families involved
14 in status offense or delinquency proceedings when, in a
15 status offense proceeding, the court refers the juvenile for
16 services pursuant to sections eleven and eleven-a, article
17 five of this chapter and when, in a delinquency proceeding,
18 the court is considering placing the juvenile in the depart-
19 ment's custody or placing the juvenile out-of-home at the
20 department's expense pursuant to the provisions of section
21 thirteen of said article. In any such status offense or
22 delinquency case, the juvenile probation officer shall
23 notify the local office of the department of health and
24 human resources and the division of juvenile services at
25 least five working days before the court proceeding in
26 order to allow the multidisciplinary treatment team to
27 convene and develop a comprehensive individualized
28 service plan for the child: *Provided*, That such notice is not
29 required in cases where the child is already in state
30 custody or there exist exigent circumstances which justify
31 taking the child immediately into custody without a
32 judicial proceeding.

33 (3) Prior to disposition, in each case in which a treatment
34 planning team has been convened, the team shall advise
35 the court as to the types of services the team has deter-
36 mined are needed and the type of placement, if any, which
37 will best serve the needs of the child.

38 (b) Each treatment team shall be convened and directed
39 by the child's or family's case manager. The treatment
40 team shall consist of the child's custodial parent or
41 parents, guardian or guardians, other immediate family
42 members, the attorney or attorneys representing the parent
43 or parents of the child, the guardian ad litem, if any, the

44 prosecuting attorney or his or her designee and any other
45 person or an agency representative who may assist in
46 providing recommendations for the particular needs of the
47 child and family. The child may participate in
48 multidisciplinary treatment team meetings if such is
49 deemed appropriate by the multidisciplinary treatment
50 team. For purposes of delinquency proceedings, the
51 juvenile probation officer shall be a member of the treat-
52 ment team.

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

59 (d) State, county and local agencies shall provide the
60 multidisciplinary treatment teams with any information
61 requested in writing by the team as allowable by law or
62 upon receipt of a certified copy of the circuit court's order
63 directing said agencies to release information in its
64 possession relating to the child. The team shall assure that
65 all information received and developed in connection with
66 the provisions of this article remain confidential. For
67 purposes of this section, the term "confidential" shall be
68 construed in accordance with the provisions of section one,
69 article seven of this chapter.

§49-5D-3a. Recommendation of team to the court; hearing requirement; required findings.

1 In any case in which a multidisciplinary treatment team
2 develops an individualized service plan for a child pursu-
3 ant to the provisions of section three of this article, the
4 court shall review the proposed service plan to determine
5 if implementation of the plan is in the child's best inter-
6 ests. If the court determines not to adopt the team's
7 recommendations, it shall, sua sponte, schedule and hold
8 within ten days of such determination, and prior to the

9 entry of an order placing the child in the custody of the
10 department or in an out-of-home setting, a hearing to
11 consider evidence from the team as to its rationale for the
12 proposed service plan. If, after a hearing held pursuant to
13 the provisions of this section, the court does not adopt the
14 teams's recommended service plan, it shall make specific
15 written findings as to why the team's recommended service
16 plan was not adopted.

**§49-5D-8. Exemption from multidisciplinary team review for
emergency out-of-home placements.**

1 Notwithstanding any provisions of this article to the
2 contrary, a multidisciplinary team recommendation shall
3 not be required for temporary out-of-home placement of
4 a child in an emergency circumstance or for purposes of
5 assessment as provided for by the provisions of this article.

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

Craig A. Nor
.....
Chairman Senate Committee

Jason Spencer
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell Stephens
.....
Clerk of the Senate

Bryan W. Bur
.....
Clerk of the House of Delegates

Carl Ray Tompkins
.....
President of the Senate

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

The within *approved* this the *20*
Day of *March*, 2003.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/03

Time 9:35am