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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 626

(BY SENATORS CARUTH, PREZIOSO,
FOSTER AND PLYMALE)

[Passed March 5, 2007; in effect ninety days from passage.]

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[Passed March 5, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §49-1-3 and §49-1-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5D-2 and §49-5D-3 of said code, all relating to child advocacy centers; defining terms; providing for role of child advocacy center in multidisciplinary teams; and providing for the role of a child advocacy center in multidisciplinary treatment teams.

Be it enacted by the Legislature of West Virginia:

That §49-1-3 and §49-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5D-2 and §49-5D-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PURPOSES AND DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

1 (a) "Abused child" means a child whose health or
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or
4 intentionally inflicts, attempts to inflict or knowingly
5 allows another person to inflict, physical injury or
6 mental or emotional injury, upon the child or another
7 child in the home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,
10 guardian or custodian in violation of section sixteen,
11 article four, chapter forty-eight of this code; or

12 (4) Domestic violence as defined in section two
13 hundred two, article twenty-seven, chapter forty-eight
14 of this code.

15 In addition to its broader meaning, physical injury
16 may include an injury to the child as a result of
17 excessive corporal punishment.

18 (b) "Abusing parent" means a parent, guardian or
19 other custodian, regardless of his or her age, whose
20 conduct, as alleged in the petition charging child abuse
21 or neglect, has been adjudged by the court to constitute
22 child abuse or neglect.

23 (c) "Battered parent" means a parent, guardian or
24 other custodian who has been judicially determined not
25 to have condoned the abuse or neglect and has not been
26 able to stop the abuse or neglect of the child or children
27 due to being the victim of domestic violence as defined
28 by section two hundred two, article twenty-seven,
29 chapter forty-eight of this code, which domestic
30 violence was perpetrated by the person or persons
31 determined to have abused or neglected the child or
32 children.

33 (d) "Child abuse and neglect" or "child abuse or

34 neglect” means physical injury, mental or emotional
35 injury, sexual abuse, sexual exploitation, sale or
36 attempted sale or negligent treatment or maltreatment
37 of a child by a parent, guardian or custodian who is
38 responsible for the child’s welfare, under circumstances
39 which harm or threaten the health and welfare of the
40 child.

41 (e) “Child abuse and neglect services” means social
42 services which are directed toward:

43 (1) Protecting and promoting the welfare of children
44 who are abused or neglected;

45 (2) Identifying, preventing and remedying conditions
46 which cause child abuse and neglect;

47 (3) Preventing the unnecessary removal of children
48 from their families by identifying family problems and
49 assisting families in resolving problems which could
50 lead to a removal of children and a breakup of the
51 family;

52 (4) In cases where children have been removed from
53 their families, providing services to the children and the
54 families so as to reunify such children with their
55 families or some portion thereof;

56 (5) Placing children in suitable adoptive homes when
57 reunifying the children with their families, or some
58 portion thereof, is not possible or appropriate; and

59 (6) Assuring the adequate care of children who have
60 been placed in the custody of the department or third
61 parties.

62 (f) “Child advocacy center” means a community-based
63 organization that is a member in good standing with the
64 West Virginia Child Abuse Network, Inc., and is
65 working to implement the following program
66 components:

67 (1) Child-appropriate/child-friendly facility: A child

68 advocacy center provides a comfortable, private, child-
69 friendly setting that is both physically and
70 psychologically safe for clients.

71 (2) Multidisciplinary team (MDT): A multidisciplinary
72 team for response to child abuse allegations includes
73 representation from the following: Law enforcement;
74 child protective services; prosecution; mental health;
75 medical; victim advocacy; child advocacy center.

76 (3) Organizational capacity: A designated legal entity
77 responsible for program and fiscal operations has been
78 established and implements basic sound administrative
79 practices.

80 (4) Cultural competency and diversity: The CAC
81 promotes policies, practices and procedures that are
82 culturally competent. Cultural competency is defined
83 as the capacity to function in more than one culture,
84 requiring the ability to appreciate, understand and
85 interact with members of diverse populations within the
86 local community.

87 (5) Forensic interviews: Forensic interviews are
88 conducted in a manner which is of a neutral, fact-
89 finding nature and coordinated to avoid duplicative
90 interviewing.

91 (6) Medical evaluation: Specialized medical evaluation
92 and treatment are to be made available to CAC clients
93 as part of the team response, either at the CAC or
94 through coordination and referral with other
95 specialized medical providers.

96 (7) Therapeutic intervention: Specialized mental
97 health services are to be made available as part of the
98 team response, either at the CAC or through
99 coordination and referral with other appropriate
100 treatment providers.

101 (8) Victim support/advocacy: Victim support and

102 advocacy are to be made available as part of the team
103 response, either at the CAC or through coordination
104 with other providers, throughout the investigation and
105 subsequent legal proceedings.

106 (9) Case review: Team discussion and information
107 sharing regarding the investigation, case status and
108 services needed by the child and family are to occur on
109 a routine basis.

110 (10) Case tracking: CACs must develop and implement
111 a system for monitoring case progress and tracking case
112 outcomes for team components: *Provided*, That a child
113 advocacy center may establish a safe exchange location
114 for children and families who have a parenting
115 agreement or an order providing for visitation or
116 custody of the children that require a safe exchange
117 location.

118 (g) "Imminent danger to the physical well-being of the
119 child" means an emergency situation in which the
120 welfare or the life of the child is threatened. Such
121 emergency situation exists when there is reasonable
122 cause to believe that any child in the home is or has
123 been sexually abused or sexually exploited, or
124 reasonable cause to believe that the following
125 conditions threaten the health or life of any child in the
126 home:

127 (1) Nonaccidental trauma inflicted by a parent,
128 guardian, custodian, sibling or a babysitter or other
129 caretaker;

130 (2) A combination of physical and other signs
131 indicating a pattern of abuse which may be medically
132 diagnosed as battered child syndrome;

133 (3) Nutritional deprivation;

134 (4) Abandonment by the parent, guardian or
135 custodian;

136 (5) Inadequate treatment of serious illness or disease;

137 (6) Substantial emotional injury inflicted by a parent,
138 guardian or custodian; or

139 (7) Sale or attempted sale of the child by the parent,
140 guardian or custodian.

141 (h) "Legal guardianship" means the permanent
142 relationship between a child and caretaker, established
143 by order of the circuit court having jurisdiction over the
144 child, pursuant to the provisions of this chapter and
145 chapter forty-eight of this code.

146 (i) "Multidisciplinary team" means a group of
147 professionals and paraprofessionals representing a
148 variety of disciplines who interact and coordinate their
149 efforts to identify, diagnose and treat specific cases of
150 child abuse and neglect. Multidisciplinary teams may
151 include, but are not limited to, medical, educational,
152 child care and law-enforcement personnel, social
153 workers, psychologists and psychiatrists. Their goal is
154 to pool their respective skills in order to formulate
155 accurate diagnoses and to provide comprehensive
156 coordinated treatment with continuity and follow-up
157 for both parents and children. "Community team"
158 means a multidisciplinary group which addresses the
159 general problem of child abuse and neglect in a given
160 community and may consist of several multidisciplinary
161 teams with different functions.

162 (j) (1) "Neglected child" means a child:

163 (A) Whose physical or mental health is harmed or
164 threatened by a present refusal, failure or inability of
165 the child's parent, guardian or custodian to supply the
166 child with necessary food, clothing, shelter, supervision,
167 medical care or education, when such refusal, failure or
168 inability is not due primarily to a lack of financial
169 means on the part of the parent, guardian or custodian;
170 or

171 (B) Who is presently without necessary food, clothing,

172 shelter, medical care, education or supervision because
173 of the disappearance or absence of the child's parent or
174 custodian;

175 (2) "Neglected child" does not mean a child whose
176 education is conducted within the provisions of section
177 one, article eight, chapter eighteen of this code.

178 (k) "Parenting skills" means a parent's competencies
179 in providing physical care, protection, supervision and
180 psychological support appropriate to a child's age and
181 state of development.

182 (l) "Sexual abuse" means:

183 (A) As to a child who is less than sixteen years of age,
184 any of the following acts which a parent, guardian or
185 custodian shall engage in, attempt to engage in, or
186 knowingly procure another person to engage in, with
187 such child, notwithstanding the fact that the child may
188 have willingly participated in such conduct or the fact
189 that the child may have suffered no apparent physical
190 injury or mental or emotional injury as a result of such
191 conduct:

192 (i) Sexual intercourse;

193 (ii) Sexual intrusion; or

194 (iii) Sexual contact;

195 (B) As to a child who is sixteen years of age or older,
196 any of the following acts which a parent, guardian or
197 custodian shall engage in, attempt to engage in, or
198 knowingly procure another person to engage in, with
199 such child, notwithstanding the fact that the child may
200 have consented to such conduct or the fact that the
201 child may have suffered no apparent physical injury or
202 mental or emotional injury as a result of such conduct:

203 (i) Sexual intercourse;

204 (ii) Sexual intrusion; or

10 (2) "Child advocacy center" means a community-
11 based organization that is a member in good standing
12 with the West Virginia Child Abuse Network, Inc., and
13 is working to implement the following program
14 components:

15 (A) Child-appropriate/child-friendly facility: A child
16 advocacy center provides a comfortable, private, child-
17 friendly setting that is both physically and
18 psychologically safe for clients.

19 (B) Multidisciplinary team (MDT): A multidisciplinary
20 team for response to child abuse allegations includes
21 representation from the following: Law enforcement;
22 child protective services; prosecution; mental health;
23 medical; victim advocacy; child advocacy center.

24 (C) Organizational capacity: A designated legal entity
25 responsible for program and fiscal operations has been
26 established and implements basic sound administrative
27 practices.

28 (D) Cultural competency and diversity: The child
29 advocacy center promotes policies, practices and
30 procedures that are culturally competent. Cultural
31 competency is defined as the capacity to function in
32 more than one culture, requiring the ability to
33 appreciate, understand and interact with members of
34 diverse populations within the local community.

35 (E) Forensic interviews: Forensic interviews are
36 conducted in a manner which is of a neutral, fact-
37 finding nature, and coordinated to avoid duplicative
38 interviewing.

39 (F) Medical evaluation: Specialized medical
40 evaluation and treatment are to be made available to
41 child advocacy center clients as part of the team
42 response, either at the child advocacy center or through
43 coordination and referral with other specialized medical
44 providers.

45 (G) Therapeutic intervention: Specialized mental
46 health services are to be made available as part of the
47 team response, either at the child advocacy center or
48 through coordination and referral with other
49 appropriate treatment providers.

50 (H) Victim support/advocacy: Victim support and
51 advocacy are to be made available as part of the team
52 response, either at the child advocacy center or through
53 coordination with other providers, throughout the
54 investigation and subsequent legal proceedings.

55 (I) Case review: Team discussion and information
56 sharing regarding the investigation, case status and
57 services needed by the child and family are to occur on
58 a routine basis.

59 (J) Case tracking: Child advocacy centers must
60 develop and implement a system for monitoring case
61 progress and tracking case outcomes for team
62 components: *Provided*, That a child advocacy center
63 may establish a safe exchange location for children and
64 families who have a parenting agreement or an order
65 providing for visitation or custody of the children that
66 require a safe exchange location.

67 (3) "Community based", when referring to a facility,
68 program, or service, means located near the juvenile's
69 home or family and involving community participation
70 in planning, operation and evaluation and which may
71 include, but is not limited to, medical, educational,
72 vocational, social and psychological guidance, training,
73 special education, counseling, alcoholism and any
74 treatment and other rehabilitation services;

75 (4) "Court" means the circuit court of the county with
76 jurisdiction of the case or the judge thereof in vacation
77 unless otherwise specifically provided;

78 (5) "Custodian" means a person who has or shares
79 actual physical possession or care and custody of a

80 child, regardless of whether such person has been
81 granted custody of the child by any contract, agreement
82 or legal proceedings;

83 (6) "Department" or "state department" means the
84 state Department of Health and Human Resources;

85 (7) "Division of Juvenile Services" means the division
86 within the Department of Military Affairs and Public
87 Safety pursuant to article five-e of this chapter;

88 (8) "Guardian" means a person who has care and
89 custody of a child as a result of any contract, agreement
90 or legal proceeding;

91 (9) "Juvenile delinquent" means a juvenile who has
92 been adjudicated as one who commits an act which
93 would be a crime under state law or a municipal
94 ordinance if committed by an adult;

95 (10) "Nonsecure facility" means any public or private
96 residential facility not characterized by construction
97 fixtures designed to physically restrict the movements
98 and activities of individuals held in lawful custody in
99 such facility and which provides its residents access to
100 the surrounding community with supervision;

101 (11) "Referee" means a juvenile referee appointed
102 pursuant to section one, article five-a of this chapter,
103 except that in any county which does not have a
104 juvenile referee, the judge or judges of the circuit court
105 may designate one or more magistrates of the county to
106 perform the functions and duties which may be
107 performed by a referee under this chapter;

108 (12) "Secretary" means the Secretary of Health and
109 Human Resources;

110 (13) "Secure facility" means any public or private
111 residential facility which includes construction fixtures
112 designed to physically restrict the movements and
113 activities of juveniles or other individuals held in lawful
114 custody in such facility;

115 (14) "Staff-secure facility" means any public or
116 private residential facility characterized by staff
117 restrictions of the movements and activities of
118 individuals held in lawful custody in such facility and
119 which limits its residents' access to the surrounding
120 community, but is not characterized by construction
121 fixtures designed to physically restrict the movements
122 and activities of residents;

123 (15) "Status offender" means a juvenile who has been
124 adjudicated as one:

125 (A) Who habitually and continually refuses to respond
126 to the lawful supervision by his or her parents, guardian
127 or legal custodian such that the child's behavior
128 substantially endangers the health, safety or welfare of
129 the juvenile or any other person;

130 (B) Who has left the care of his or her parents,
131 guardian or custodian without the consent of such
132 person or without good cause;

133 (C) Who is habitually absent from school without good
134 cause; or

135 (D) Who violates any West Virginia municipal, county
136 or state law regarding use of alcoholic beverages by
137 minors;

138 (16) "Valid court order" means a court order given to
139 a juvenile who was brought before the court and made
140 subject to such order and who received, before the
141 issuance of such order, the full due process rights
142 guaranteed to such juvenile by the constitutions of the
143 United States and the State of West Virginia.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

1 (a) The prosecuting attorney shall establish a

2 multidisciplinary investigative team in each county.
3 The multidisciplinary team shall be headed and directed
4 by the prosecuting attorney or his or her designee and
5 shall include as permanent members the prosecuting
6 attorney or his or her designee, a local child protective
7 services caseworker from the Department of Health and
8 Human Resources, a local law-enforcement officer
9 employed by a law-enforcement agency in the county,
10 a child advocacy center representative where available
11 and, where appropriate to the particular case under
12 consideration and available, a representative from the
13 licensed domestic violence program serving the county.
14 The Department of Health and Human Resources and
15 any local law-enforcement agency or agencies selected
16 by the prosecuting attorney shall appoint their
17 representatives to the team by submitting a written
18 designation of the team to the prosecuting attorney of
19 each county within thirty days of the prosecutor's
20 request that the appointment be made. Within fifteen
21 days of the appointment, the prosecuting attorney shall
22 notify the chief judge of each circuit within which the
23 county is situated of the names of the representatives so
24 appointed. Any other person or any other appointee of
25 an agency who may contribute to the team's efforts to
26 assist a minor child as may be determined by the
27 permanent members of the team may also be appointed
28 as a member of the team by the prosecutor with
29 notification to the chief judge.

30 (b) Any permanent member of the multidisciplinary
31 investigative team shall refer all cases of accidental
32 death of any child reported to their agency and all cases
33 when a child dies while in the custody of the state for
34 investigation and review by the team. The
35 multidisciplinary investigative team shall meet at
36 regular intervals at least once every calendar month.

37 (c) The investigative team shall be responsible for
38 coordinating or cooperating in the initial and ongoing
39 investigation of all civil and criminal allegations
40 pertinent to cases involving child sexual assault, child
41 sexual abuse, child abuse and neglect and shall make a
42 recommendation to the county prosecuting attorney as

43 to the initiation or commencement of a civil petition
44 and/or criminal prosecution.

45 (d) State, county and local agencies shall provide the
46 multidisciplinary investigative team with any
47 information requested in writing by the team as
48 allowable by law or upon receipt of a certified copy of
49 the circuit court's order directing said agencies to
50 release information in its possession relating to the
51 child. The team shall assure that all information
52 received and developed in connection with the
53 provisions of this article remains confidential. For
54 purposes of this section, the term "confidential" shall be
55 construed in accordance with the provisions of section
56 one, article seven of this chapter.

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

1 (a)(1) A multidisciplinary treatment planning process
2 shall be established within each county of the state,
3 either separately or in conjunction with a contiguous
4 county, by the secretary of the department with advice
5 and assistance from the prosecutor's advisory council as
6 set forth in section four, article four, chapter seven of
7 this code. The Division of Juvenile Services shall
8 establish a similar treatment planning process for
9 delinquency cases in which the juvenile has been
10 committed to the custody of the director of the division.

11 (2) Treatment teams shall assess, plan and implement
12 a comprehensive, individualized service plan for
13 children who are victims of abuse or neglect and their
14 families when a judicial proceeding has been initiated
15 involving the child or children for juveniles and their
16 families involved in status offense or delinquency
17 proceedings when, in a status offense proceeding, the
18 court refers the juvenile for services pursuant to
19 sections eleven and eleven-a, article five of this chapter
20 and when, in a delinquency proceeding, the court is
21 considering placing the juvenile in the department's
22 custody or placing the juvenile out of home at the
23 department's expense pursuant to the provisions of
24 section thirteen of said article. In any such status

25 offense or delinquency case, the juvenile probation
26 officer shall notify the local office of the Department of
27 Health and Human Resources and the Division of
28 Juvenile Services at least five working days before the
29 court proceeding in order to allow the multidisciplinary
30 treatment team to convene and develop a
31 comprehensive individualized service plan for the child:
32 *Provided*, That such notice is not required in cases
33 where the child is already in state custody or there exist
34 exigent circumstances which justify taking the child
35 immediately into custody without a judicial proceeding.
36 In developing an individualized service plan for a child,
37 the team shall utilize a uniform comprehensive
38 assessment of the child. The department shall adopt a
39 standard uniform comprehensive assessment instrument
40 or protocol to be used by treatment teams.

41 (3) Prior to disposition, in each case in which a
42 treatment planning team has been convened, the team
43 shall advise the court as to the types of services the team
44 has determined are needed and the type of placement,
45 if any, which will best serve the needs of the child. If
46 the team determines that an out-of-home placement
47 will best serve the needs of the child, the team shall first
48 consider placement at facilities or programs located
49 within the state. The team may only recommend
50 placement in an out-of-state facility if it concludes,
51 after considering the best interests and overall needs of
52 the child, that there are no available and suitable in-
53 state facilities which can satisfactorily meet the specific
54 needs of the child.

55 (b) Each treatment team shall be convened by the
56 child's or family's case manager in the Department of
57 Health and Human Resources or the Division of
58 Juvenile Services if the juvenile has been ordered into
59 its custody for examination and diagnosis pursuant to
60 section thirteen, article five of this chapter. The
61 treatment team shall consist of the child's custodial
62 parent or parents, guardian or guardians, other
63 immediate family members, the attorney or attorneys
64 representing the child, the parent or parents of the
65 child, the child's attorney, the guardian ad litem, if any,

66 the prosecuting attorney or his or her designee, a
67 member of a child advocacy center when the child has
68 been processed through the child advocacy center
69 program(s) and, where appropriate to the particular
70 case under consideration and available, a court-
71 appointed special advocate, a member of a child
72 advocacy center, an appropriate school official and any
73 other person or an agency representative who may assist
74 in providing recommendations for the particular needs
75 of the child and family. The child may participate in
76 multidisciplinary treatment team meetings if such is
77 deemed appropriate by the multidisciplinary treatment
78 team. For purposes of delinquency proceedings, the
79 juvenile probation officer shall be a member of the
80 treatment team. Any person authorized by the
81 provisions of this chapter to convene a multidisciplinary
82 team meeting may seek and receive an order of the
83 circuit court setting such meeting and directing
84 attendance. Members of the multidisciplinary team
85 may participate in team meetings by telephone or video
86 conferencing: *Provided*, That a member of a child
87 advocacy center should participate in any case when
88 appropriate to the particular case under consideration.

89 (c) The treatment team shall coordinate its activities
90 and membership with local family resource networks
91 and coordinate with other local and regional child and
92 family service planning committees to assure the
93 efficient planning and delivery of child and family
94 services on a local and regional level.

95 (d) State, county and local agencies shall provide the
96 multidisciplinary treatment teams with any information
97 requested in writing by the team as allowable by law or
98 upon receipt of a certified copy of the circuit court's
99 order directing said agencies to release information in
100 its possession relating to the child. The team shall
101 assure that all information received and developed in
102 connection with the provisions of this article remain
103 confidential. For purposes of this section, the term
104 "confidential" shall be construed in accordance with
105 the provisions of section one, article seven of this
106 chapter.

107 (e) Nothing in this section may be construed to require
108 a multidisciplinary team meeting to be held prior to
109 temporarily placing a child out-of-home under exigent
110 circumstances or upon a court order placing the juvenile
111 in a juvenile facility operated by the Division of
112 Juvenile Services.

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

Randy White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell Thomas
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

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

The within *is* approved this
the *19th* Day of *April*, 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 14 2007

Time 3:15 pm