

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2010

BY DELEGATES KESSINGER, ELLINGTON, HILL, SUMMERS,
PACK, STORCH, ROWAN, SYPOLT, HARSHBARGER,
PHILLIPS AND CAPITO

[Passed March 8, 2019; in effect from passage.]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §9-5-27; to amend and reenact §49-1-206 of said code; to amend and reenact
3 §49-2-107, §49-2-113, and §49-2-708 of said code; to amend said code by adding thereto
4 two new sections, designated §49-2-111a and §49-2-111b; and to amend and reenact
5 §49-4-108, §49-4-406, §49-4-413, §49-4-604, §49-4-608, §49-4-711, §49-4-714 and §49-
6 4-724 of said code, all relating to foster care; defining terms; transitioning the foster care
7 population to a managed care organization; allowing the secretary to apply for waivers;
8 setting out requirements for the managed care program; providing for an effective date;
9 providing a sunset date; require the department to enter into certain types of contracts
10 with child placing agencies; creating a state foster care ombudsman; setting out
11 experience requirements for an ombudsman; providing duties and authority of the
12 ombudsman; setting out preclusions for employment of certain department employees;
13 providing for managed care employees allocation to foster care in West Virginia; providing
14 for performance based contracting with child placement agencies; setting out procurement
15 and contract requirements; requiring a study of kinship care; requiring the department to
16 review certain legislative rules; extending the time to file legislative rules; extending the
17 time a foster care certification is authorized; requiring home safety assessment to take
18 place annually; prohibiting the removal of a child from a residential child care program in
19 certain circumstances; providing exceptions to permit the removal of a child from a
20 residential child care program; establishing payment rates for services; permitting those
21 rates be exceeded when certain conditions are met; prohibiting the termination of parental
22 rights solely based upon participation in a medically assisted treatment program;
23 prohibiting the placement of a foster child in an out of state facility; providing exceptions
24 to the placement of a foster child in an out of state facility; setting out standard
25 assessments of certain juveniles; and requiring reporting.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-27. Transitioning foster care into managed care.

1 (a) “Eligible services” means acute care, including medical, pharmacy, dental, and
2 behavioral health services.

3 (b) The secretary shall transition to a capitated Medicaid program for a child classified as
4 a foster child and a child placed in foster care under Title IV-E of the Social Security Act who is
5 living in the state by January 1, 2020. The program shall be statewide, fully integrated, and risk
6 based; shall integrate Medicaid-reimbursed eligible services; and shall align incentives to ensure
7 the appropriate care is delivered in the most appropriate place and time.

8 (c) The secretary shall make payments for the eligible services, including home and
9 community-based services, using a managed care model.

10 (d) The secretary shall submit, if necessary, applications to the United States Department
11 of Health and Human Services for waivers of federal Medicaid requirements that would otherwise
12 be violated in the implementation of the program, and shall consolidate any additional waivers
13 where appropriate: *Provided*, That this subsection does not apply to the Aged and Disabled
14 Waiver, the Intellectual/Developmental Disabilities Waiver, and the Traumatic Brain Injury Waiver.

15 (e) If a selected managed care organization ceases to contract with the Department of
16 Health and Human Services to provide Medicaid managed care services, it must provide all
17 patient records, including medical records, to the next selected managed care organization to
18 ensure the Eligible Medicaid Beneficiaries do not experience an interruption in care.

19 (f) In designing the program, the secretary shall ensure that the program:

20 (1) Reduces fragmentation and offers a seamless approach to meeting participants’
21 needs;

22 (2) Delivers needed supports and services in the most integrated, appropriate, and cost-
23 effective way possible;

24 (3) Offers a continuum of acute care services, which includes an array of home and
25 community-based options;

26 (4) Includes a comprehensive quality approach across the entire continuum of care
27 services; and

28 (5) Consult stakeholders in the program development process, and the managed care
29 organization that is awarded the contract shall create a voluntary advisory group of foster,
30 adoptive, and kinship parents, which shall meet every quarter for the first year following the
31 effective date of the changes made to this section during the 2019 Regular Session of the
32 Legislature and then every six months thereafter, to discuss issues they are encountering with
33 the managed care organization and recommend solutions. The managed care organization shall
34 report on the recommendations of the advisory group and address how and why procedures have
35 or have not changed based on those recommendations. This report shall be submitted to the
36 secretary and the Legislative Oversight Commission on Health and Human Resources
37 Accountability as set forth in §16-29E-1 *et seq.* of this code, and the public in a timely fashion and
38 shall be available on the managed care organization's webpage.

39 (g) The department shall evaluate the transition to managed care and shall collect and
40 annually report on the following items: the number of claims submitted, the number of claims
41 approved, the number of claims denied, the number of claims appealed, the resolution of
42 appealed claims, the average time of an appeal, the average length of stay in a child residential
43 care center, and health outcomes. The initial report will be filed by July 1, 2021, with the
44 Legislative Oversight Commission on Health and Human Resources Accountability and the Foster
45 Care Ombudsman with a final report submitted July 1, 2023.

46 (h) The transition of foster care to managed care shall terminate on June 30, 2024, unless
47 cancelled by the secretary at an earlier date.

48 (i) (1) The Office of the Inspector General shall employ an independent foster care
49 ombudsman, with experience as a former foster parent or experience in the area of child welfare;

50 (2) The duties of the ombudsman shall include, but are not limited to, the following:

51 (A) Advocating for the rights of foster children and foster parents;

52 (B) Participating in any procedure to investigate, and resolve complaints filed on behalf of
53 a foster child or foster parent, relating to action, inaction or decisions of providers of managed
54 care services, or the representatives of such providers, of public agencies, or of social service
55 agencies, which may adversely affect the health, safety, welfare and rights of the foster child or
56 foster parent;

57 (C) Monitoring the development and implementation of federal, state and local legislation,
58 regulations and policies with respect to foster care services; and

59 (D) Establishing and maintaining a statewide uniform reporting system to collect and
60 analyze data relating to complaints for the purpose of identifying and resolving significant
61 problems faced by foster children and foster parents as a class. The data shall be submitted to
62 the Bureau of Children and Families within the Department of Health and Human Resources and
63 the Legislative Oversight Commission on Health and Human Resources Accountability on a
64 quarterly basis;

65 (3) The ombudsman shall participate in ongoing training programs related to his or her
66 duties or responsibilities.

67 (j) An employee of the department who, as a function of that employment, has engaged in
68 the development of any contract developed pursuant to the requirements of this section may not
69 for a period of two years thereafter be employed by any agency or company that has benefitted
70 or stands to benefit directly from a contract between the department and that agency or company.

71 (k) Any managed care company selected as the managed care contractor pursuant to the
72 provisions of this article shall have at least 80 percent of the total full-time equivalent positions
73 allocated to manage care of foster children in West Virginia according to the contract must have
74 a primary work place in the state of West Virginia.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, child advocacy, care, residential, and treatment
3 programs, except in those instances where a different meaning is provided or the context in which
4 the word used clearly indicates that a different meaning is intended.

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

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

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

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

20 “Child placing agency” means a child welfare agency organized for the purpose of placing
21 children in private family homes for foster care or for adoption. The function of a child placing

22 agency may include the investigation and certification of foster family homes and foster family
23 group homes as provided in this chapter. The function of a child placing agency may also include
24 the supervision of children who are 16 or 17 years old and living in unlicensed residences.

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

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

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

- 43 (A) Electronic monitoring;
- 44 (B) Drug and alcohol screening, testing, or monitoring;
- 45 (C) Youth reporting centers;
- 46 (D) Reporting and supervision requirements;
- 47 (E) Community service; and

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

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

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

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

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

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

68 "Family resource network" means:

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

72 (i) Agreeing to a single governing entity;

73 (ii) Agreeing to engage in activities to improve service systems for children and families
74 within the community;

75 (iii) Addressing a geographic area of a county or two or more contiguous counties;

76 (iv) Having nonproviders, which include family representatives and other members who
77 are not employees of publicly funded agencies, as the majority of the members of the governing
78 body, and having family representatives as the majority of the nonproviders;

79 (v) Having representatives of local service agencies, including, but not limited to, the public
80 health department, the behavioral health center, the local health and human resources agency,
81 and the county school district, on the governing body; and

82 (vi) Accepting principles consistent with the cabinet's mission as part of its philosophy.

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

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

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

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

94 "Health care and treatment" means:

95 (A) Developmental screening;

96 (B) Mental health screening;

97 (C) Mental health treatment;

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

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

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

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

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

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

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

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

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

120 "Nonviolent misdemeanor offense" means a misdemeanor offense that does not include
121 any of the following:

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

123 (B) The use of a weapon in the commission of the offense;

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

126 (D) A criminal sexual conduct offense; or

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

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

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

135 "Placement" means any temporary or permanent placement of a child who is in the
136 custody of the state in any foster home, group home, or other facility or residence.

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

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

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

146 "Residential services" means child care which includes the provision of nighttime shelter
147 and the personal discipline and supervision of a child by guardians, custodians, or other persons
148 or entities on a continuing or temporary basis. It may include care or treatment, or both, for
149 transitioning adults. Residential services does not include or apply to any juvenile detention facility

150 or juvenile correctional facility operated by the Division of Corrections and Rehabilitation, created
151 pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

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

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

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

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

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

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

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

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

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection.

1 (a) The department shall establish minimum standards for foster-home care to which all
2 certified foster homes must conform by legislative rule. Any home that conforms to the standards
3 of care set by the department shall receive a certificate of operation.

4 (b) The certificate of operation shall be in force for three years from the date of issuance
5 and may be renewed unless revoked because of willful violation of this chapter.

6 (c) The certificate shall show the name of the person or persons authorized to conduct the
7 home, its exact location and the number of children that may be received and cared for at one
8 time and other information as set forth in legislative rule. No certified foster home shall provide
9 care for more children than are specified in the certificate.

10 (d) No unsupervised foster home shall be certified until an investigation of the home and
11 its standards of care has been made by the department or by a licensed child welfare agency
12 serving as a representative of the department.

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

1 (a) For purposes of this section:

2 (1) “Child” means:

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

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

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

8 (3) "Department" means the Department of Health and Human Resources.

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

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

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

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

20 (b) No later than December 1, 2020, the department shall enter into performance-based
21 contracts with child placing agencies.

22 (c) In conducting the procurement, the department shall actively consult with other state
23 agencies and other entities with expertise in performance-based contracting with child placing
24 agencies.

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

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

29 (1) Adequate capacity to meet the anticipated service needs in the contracted service area
30 of the child placing agency;

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

33 (3) Child placing agency data reporting, including data on performance and service
34 outcomes; including but not limited to:

35 (A) Safety outcomes;

36 (B) Permanency outcomes;

37 (C) Well-being outcomes;

38 (D) Incentives earned; and

39 (E) Recruitment and retention of foster parents; and

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

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

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

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

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

63 (j) The department shall report the performance of the child placing agency to the
64 Legislative Oversight Commission on Health and Human Resources Accountability by December
65 31, annually.

§49-2-111b. Study of kinship foster care families.

1 (a) The department shall conduct a study and make recommendations for improving
2 services provided for kinship foster care families. This study shall include at a minimum:

3 (1) A review of best practices in other states;

4 (2) A proposal for an alternate system of regulation for kinship foster care that includes
5 the same reimbursement as other foster care families as well as a reasonable time period for
6 obtaining certification;

7 (3) An evaluation of what training and supports are needed to ensure that kinship care
8 homes are successful.

9 (b) The results of this shall be shared with all members of the Legislature by October 1,
10 2019.

**§49-2-113. Residential child-care centers; licensure, certification, approval and
registration; requirements.**

1 (a) Any person, corporation or child welfare agency, other than a state agency, which
2 operates a residential child-care center shall obtain a license from the department.

3 (b) Any residential child-care facility, day-care center or any child-placing agency operated
4 by the state shall obtain approval of its operations from the secretary.

5 (c) Any family day-care facility which operates in this state, including family day-care
6 facilities approved by the department for receipt of funding, shall obtain a statement of certification
7 from the department.

8 (d) Every family day-care home which operates in this state, including family day-care
9 homes approved by the department for receipt of funding, shall obtain a certificate of registration
10 from the department. The facilities and placing agencies shall maintain the same standards of
11 care applicable to licensed facilities, centers or placing agencies of the same category.

12 (e) This section does not apply to:

13 (1) A kindergarten, preschool or school education program which is operated by a public
14 school or which is accredited by the state Department of Education or any other kindergarten,
15 preschool or school programs which operate with sessions not exceeding four hours per day for
16 any child;

17 (2) An individual or facility which offers occasional care of children for brief periods while
18 parents are shopping, engaging in recreational activities, attending religious services or engaging
19 in other business or personal affairs;

20 (3) Summer recreation camps operated for children attending sessions for periods not
21 exceeding 30 days;

22 (4) Hospitals or other medical facilities which are primarily used for temporary residential
23 care of children for treatment, convalescence or testing;

24 (5) Persons providing family day care solely for children related to them;

25 (6) Any juvenile detention facility or juvenile correctional facility operated by or under
26 contract with the Division of Corrections and Rehabilitation for the secure housing or holding of
27 juveniles committed to its custody;

28 (7) Any out-of-school time program that has been awarded a grant by the West Virginia
29 Department of Education to provide out-of-school time programs to kindergarten through 12th
30 grade students when the program is monitored by the West Virginia Department of Education; or

31 (8) Any out-of-school time program serving children six years of age or older and meets
32 all of the following requirements, or is an out-of-school time program that is affiliated and in good
33 standing with a national congressionally chartered organization or is operated by a county parks
34 and recreation commission, boards and municipalities and meets all of the following requirements:

35 (A) The program is located in a facility that meets all fire and health codes;

36 (B) The program performs state and federal background checks on all volunteers and staff;

37 (C) The programs' primary source of funding is not from fees for service except for
38 programs operated by county parks and recreation commissions, boards and municipalities; and

39 (D) The program has a formalized monitoring system in place.

40 (f) The secretary is authorized to issue an emergency rule relating to conducting a survey
41 of existing facilities in this state in which children reside on a temporary basis in order to ascertain
42 whether they should be subject to licensing under this article or applicable licensing provisions
43 relating to behavioral health treatment providers.

44 (g) Any informal family child-care home or relative family child-care home may voluntarily
45 register and obtain a certificate of registration from the department.

46 (h) All facilities or programs that provide out-of-school time care shall register with the
47 department upon commencement of operations and on an annual basis thereafter. The
48 department shall obtain information, such as the name of the facility or program, the description
49 of the services provided and any other information relevant to the determination by the department
50 as to whether the facility or program meets the criteria for exemption under this section.

51 (i) Any child-care service that is licensed or receives a certificate of registration shall have
52 a written plan for evacuation in the event of fire, natural disaster or other threatening situation that
53 may pose a health or safety hazard to the children in the child-care service.

54 (1) The plan shall include, but not be limited to:

55 (A) A designated relocation site and evacuation;

56 (B) Procedures for notifying parents of the relocation and ensuring family reunification;

57 (C) Procedures to address the needs of individual children including children with special
58 needs;

59 (D) Instructions relating to the training of staff or the reassignment of staff duties, as
60 appropriate;

61 (E) Coordination with local emergency management officials; and

62 (F) A program to ensure that appropriate staff are familiar with the components of the plan.

63 (2) A child-care service shall update the evacuation plan by December 31 of each year. If
64 a child-care service fails to update the plan, no action shall be taken against the child-care
65 services license or registration until notice is provided and the child-care service is given 30 days
66 after the receipt of notice to provide an updated plan.

67 (3) A child-care service shall retain an updated copy of the plan for evacuation and shall
68 provide notice of the plan and notification that a copy of the plan will be provided upon request to
69 any parent, custodian or guardian of each child at the time of the child's enrollment in the child-
70 care service and when the plan is updated.

71 (4) All child-care centers and family child-care facilities shall provide the plan and each
72 updated copy of the plan to the Director of the Office of Emergency Services in the county where
73 the center or facility is located.

74 (j) A residential child care center which has entered into a contract with the department to
75 provide services to a certain number of foster children, shall accept any foster child who meets
76 the residential child care center's program criteria, if the residential child care center has not met
77 its maximum capacity as provided for in the contract. Any residential child-care center who has
78 entered into a contract with the department may not discharge any child in its program, except as
79 provided in the contract, including that if the youth does not meet the residential treatment level
80 and target population, the provider shall request a MDT and work toward an alternative
81 placement.

§49-2-708. Rule-making authority.

1 (a) The Secretary of the Department of Health and Human Resources is authorized to
2 propose rules for legislative approval necessary to implement this article in accordance with §29A-
3 3-1 *et seq.* of this code.

4 (b) The rules:

5 (1) Shall create a three year certification period for a foster home, unless a substantial
6 change occurs. A home safety assessment is performed at least annually. The department has
7 sole authority to determine if a substantial change has occurred;

8 (2) Shall require that a criminal background check be conducted at the time of the
9 recertification;

10 (3) May not prevent the placement or cause the removal of a foster child for cosmetic
11 damage to a residence. "Cosmetic damages" means damage that does not affect the safety or
12 wellbeing of a child;

13 (4) Shall permit the use of dedicated sleeping spaces as appropriate for the child's needs
14 and age, and similar to the sleeping spaces for other household members; and

15 (5) Shall review and update the legislative rules while considering normalcy and the
16 reasonable and prudent parent standard.

17 (c) Notwithstanding the time frames in §29A-3-1 *et seq.*, of this code the department shall
18 revise the foster care legislative rules and shall submit for review and approval to the Rule-Making
19 Review Committee by October 31, 2019.

ARTICLE 4. COURT ACTIONS.

§49-4-108. Payment of services.

1 (a) At any time during any proceedings brought pursuant to this chapter, the court may
2 upon its own motion, or upon a motion of any party, order the Department of Health and Human
3 Resources to pay the Medicaid rates for professional services rendered by a health care
4 professional to a child or other party to the proceedings. Professional services include, but are

5 not limited to, treatment, therapy, counseling, evaluation, report preparation, consultation and
6 preparation of expert testimony. A health care professional shall be paid by the Department of
7 Health and Human Resources upon completion of services and submission of a final report or
8 other information and documentation as required by the policies implemented by the Department
9 of Health and Human Resources: *Provided*, That if the service is covered by Medicaid and the
10 service is not provided within 30 days, the court may order the service to be provided by a provider
11 at a rate higher than the Medicaid rate. The department may object and request to be heard, after
12 which the court shall issue findings of fact and conclusions of law supporting its decision.

13 (b) At any time during any proceeding brought pursuant to this chapter, the court may
14 upon its own motion, or upon a motion of any party, order the Department of Health and Human
15 Resources to pay for socially necessary services rendered by an entity who has agreed to comply
16 with §9-2-6(21) of this code. The Department of Health and Human Resources shall set the
17 reimbursement rates for the socially necessary services: *Provided*, That if services are not
18 provided within 30 days, the court may order a service to be provided by a provider at a rate
19 higher than the department established rate. The department may object and request to be heard,
20 after which the court shall issue findings of fact and conclusions of law supporting its decision.

**§49-4-406. Multidisciplinary treatment process for status offenders or delinquents;
requirements; custody; procedure; reports; cooperation; inadmissibility of certain
statements.**

1 (a) When a juvenile is adjudicated as a status offender pursuant to §49-4-711 of this code,
2 the Department of Health and Human Resources shall promptly convene a multidisciplinary
3 treatment team and conduct an assessment, utilizing a standard uniform comprehensive
4 assessment instrument or protocol, including a needs assessment, to determine the juvenile's
5 mental and physical condition, maturity and education level, home and family environment,
6 rehabilitative needs and recommended service plan, which shall be provided in writing to the court

7 and team members. Upon completion of the assessment, the treatment team shall prepare and
8 implement a comprehensive, individualized service plan for the juvenile.

9 (b) When a juvenile is adjudicated as a delinquent or has been granted a pre-adjudicatory
10 community supervision period pursuant to §49-4-708 of this code, the court, either upon its own
11 motion or motion of a party, may require the Department of Health and Human Resources to
12 convene a multidisciplinary treatment team and conduct an assessment, utilizing a standard
13 uniform comprehensive assessment instrument or protocol, including a needs assessment, to
14 determine the juvenile's mental and physical condition, maturity and education level, home and
15 family environment, rehabilitative needs and recommended service plan, which shall be provided
16 in writing to the court and team members. A referral to the Department of Health and Human
17 Resources to convene a multidisciplinary treatment team and to conduct such an assessment
18 shall be made when the court is considering placing the juvenile in the department's custody or
19 placing the juvenile out-of-home at the department's expense pursuant to §49-4-714 of this code.
20 In any delinquency proceeding in which the court requires the Department of Health and Human
21 Resources to convene a multidisciplinary treatment team, the probation officer shall notify the
22 department at least 15 working days before the court proceeding in order to allow the department
23 sufficient time to convene and develop an individualized service plan for the juvenile.

24 (c) When a juvenile has been adjudicated and committed to the custody of the Director of
25 the Division of Corrections and Rehabilitation, including those cases in which the juvenile has
26 been committed for examination and diagnosis, or the court considers commitment for
27 examination and diagnosis, the Division of Corrections and Rehabilitation shall promptly convene
28 a multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform
29 comprehensive assessment instrument or protocol, including a needs assessment, to determine
30 the juvenile's mental and physical condition, maturity and education level, home and family
31 environment, rehabilitative needs and recommended service plan. Upon completion of the
32 assessment, the treatment team shall prepare and implement a comprehensive, individualized

33 service plan for the juvenile, which shall be provided in writing to the court and team members. In
34 cases where the juvenile is committed as a post-sentence disposition to the custody of the
35 Division of Corrections and Rehabilitation, the plan shall be reviewed quarterly by the
36 multidisciplinary treatment team. Where a juvenile has been detained in a facility operated by the
37 Division of Corrections and Rehabilitation without an active service plan for more than 60 days,
38 the director of the facility may call a multidisciplinary team meeting to review the case and discuss
39 the status of the service plan.

40 (d)(1) The rules of juvenile procedure shall govern the procedure for obtaining any
41 assessment of a juvenile, preparing an individualized service plan and submitting the plan and
42 any assessment to the court.

43 (2) In juvenile proceedings conducted pursuant to §49-4-701 *et seq.* of this code, the
44 following representatives shall serve as members and attend each meeting of the multidisciplinary
45 treatment team, so long as they receive notice at least seven days prior to the meeting:

46 (A) The juvenile;

47 (B) The juvenile's case manager in the Department of Health and Human Resources or
48 the Division of Corrections and Rehabilitation;

49 (C) The juvenile's parent, guardian or custodian;

50 (D) The juvenile's attorney;

51 (E) Any attorney representing a member of the multidisciplinary treatment team;

52 (F) The prosecuting attorney or his or her designee;

53 (G) The county school superintendent or the superintendent's designee;

54 (H) A treatment or service provider with training and clinical experience coordinating
55 behavioral or mental health treatment; and

56 (I) Any other person or agency representative who may assist in providing
57 recommendations for the particular needs of the juvenile and family, including domestic violence
58 service providers. In delinquency proceedings, the probation officer shall be a member of a

59 multidisciplinary treatment team. When appropriate, the juvenile case manager in the Department
60 of Health and Human Resources and the Division of Corrections and Rehabilitation shall
61 cooperate in conducting multidisciplinary treatment team meetings when it is in the juvenile's best
62 interest.

63 (3) Prior to disposition, in each case in which a treatment planning team has been
64 convened, the team shall advise the court as to the types of services the team has determined
65 are needed and type of placement, if any, which will best serve the needs of the child. If the team
66 determines that an out-of-home placement will best serve the needs of the child, the team shall
67 first consider placement at facilities or programs located within the state. The team may only
68 recommend placement in an out-of-state facility if it concludes, after considering the best interests
69 and overall needs of the child, that there are no available and suitable in-state facilities which can
70 satisfactorily meet the specific needs of the child. The multidisciplinary treatment team shall also
71 determine and advise the court as to the individual treatment and rehabilitation plan
72 recommended for the child for either out-of-home placement or community supervision. The plan
73 may focus on reducing the likelihood of reoffending, requirements for the child to take
74 responsibility for his or her actions, completion of evidence-based services or programs or any
75 other relevant goal for the child. The plan may also include opportunities to incorporate the family,
76 custodian or guardian into the treatment and rehabilitation process.

77 (4) The multidisciplinary treatment team shall submit written reports to the court as
78 required by applicable law or by the court, shall meet with the court at least every three months,
79 as long as the juvenile remains in the legal or physical custody of the state, and shall be available
80 for status conferences and hearings as required by the court. The multidisciplinary treatment team
81 shall monitor progress of the plan identified in subdivision (3) of this subsection and review
82 progress of the plan at the regular meetings held at least every three months pursuant to this
83 section, or at shorter intervals, as ordered by the court, and shall report to the court on the
84 progress of the plan or if additional modification is necessary.

85 (5) In any case in which a juvenile has been placed out of his or her home except for a
86 temporary placement in a shelter or detention center, the multidisciplinary treatment team shall
87 cooperate with the state agency in whose custody the juvenile is placed to develop an after-care
88 plan. The rules of juvenile procedure and §49-4-409 of this code govern the development of an
89 after-care plan for a juvenile, the submission of the plan to the court and any objection to the after-
90 care plan.

91 (6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant
92 to §49-4-701 through §49-4-725 of this code, in the multidisciplinary treatment planning process,
93 his or her statements may not be used in any juvenile or criminal proceedings against the juvenile,
94 except for perjury or false swearing.

§49-4-413. Individualized case planning.

1 (a) For any juvenile ordered to probation supervision pursuant to §49-4-714 of this code,
2 the probation officer assigned to the juvenile shall develop and implement an individualized case
3 plan in consultation with the juvenile's parents, guardian or custodian, and other appropriate
4 parties, and based upon the results of a needs assessment conducted within 90 days prior to the
5 disposition to probation. The probation officer shall work with the juvenile and his or her family,
6 guardian or custodian to implement the case plan following disposition. At a minimum, the case
7 plan shall:

8 (1) Identify the actions to be taken by the juvenile and, if appropriate, the juvenile's parents,
9 guardian or custodian to ensure future lawful conduct and compliance with the court's disposition
10 order; and

11 (2) Identify the services to be offered and provided to the juvenile and, if appropriate, the
12 juvenile's parents, guardian or custodian and may include services to address: Mental health and
13 substance abuse issues; education; individual, group and family counseling services; community
14 restoration; or other relevant concerns identified by the probation officer.

15 (b) For any juvenile disposed to an out-of-home placement with the department, the
16 department shall ensure that the residential service provider develops and implements an
17 individualized case plan based upon the recommendations of the multidisciplinary team pursuant
18 to §49-4-406 of this code and the results of a needs assessment. At a minimum, the case plan
19 shall include:

20 (1) Specific treatment goals and the actions to be taken by the juvenile in order to
21 demonstrate satisfactory attainment of each goal;

22 (2) The services to be offered and provided by the residential service providers; and

23 (3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or
24 her family, guardian, school and community following the satisfactory completion of the case plan
25 treatment goals, including a protocol and timeline for engaging the parents, guardians or
26 custodians prior to the release of the juvenile.

27 (c) For any juvenile committed to the Division of Corrections and Rehabilitation, the
28 Division of Corrections and Rehabilitation shall develop and implement an individualized case
29 plan based upon the recommendations made to the court by the multidisciplinary team pursuant
30 to §49-4-406(c) of this code and the results of a risk and needs assessment. At a minimum, the
31 case plan shall include:

32 (1) Specific correctional goals and the actions to be taken by the juvenile to demonstrate
33 satisfactory attainment of each goal;

34 (2) The services to be offered and provided by the Division of Corrections and
35 Rehabilitation and any contracted service providers; and

36 (3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or
37 her family, guardian, school and community following the satisfactory completion of the case plan
38 treatment goals, including a protocol and timeline for engaging the parents, guardians or
39 custodians prior to the release of the juvenile.

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

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

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

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

19 The term “permanency plan” refers to that part of the case plan which is designed to
20 achieve a permanent home for the child in the least restrictive setting available. The plan must
21 document efforts to ensure that the child is returned home within approximate time lines for
22 reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal
23 guardian should be made at the same time, or concurrent with, reasonable efforts to prevent
24 removal or to make it possible for a child to return to the care of his or her parent(s) safely. If

25 reunification is not the permanency plan for the child, the plan must state why reunification is not
26 appropriate and detail the alternative, concurrent permanent placement plans for the child to
27 include approximate time lines for when the placement is expected to become a permanent
28 placement. This case plan shall serve as the family case plan for parents of abused or neglected
29 children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian
30 or custodian or their counsel at least five days prior to the dispositional hearing. The court shall
31 forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be
32 heard.

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

- 35 (1) Dismiss the petition;
- 36 (2) Refer the child, the abusing parent, the battered parent or other family members to a
37 community agency for needed assistance and dismiss the petition;
- 38 (3) Return the child to his or her own home under supervision of the department;
- 39 (4) Order terms of supervision calculated to assist the child and any abusing parent or
40 battered parent or parents or custodian which prescribe the manner of supervision and care of
41 the child and which are within the ability of any parent or parents or custodian to perform;
- 42 (5) Upon a finding that the abusing parent or battered parent or parents are presently
43 unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the
44 care, custody, and control of the state department, a licensed private child welfare agency, or a
45 suitable person who may be appointed guardian by the court. The court order shall state:
 - 46 (A) That continuation in the home is contrary to the best interests of the child and why;
 - 47 (B) Whether or not the department has made reasonable efforts, with the child's health
48 and safety being the paramount concern, to preserve the family, or some portion thereof, and to
49 prevent or eliminate the need for removing the child from the child's home and to make it possible
50 for the child to safely return home;

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

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

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

60 (i) Be considered for legal guardianship;

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

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

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

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

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

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

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

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

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

95 (iv) Whether or not the department made reasonable efforts to preserve and reunify the
96 family, or some portion thereof, including a description of what efforts were made or that those
97 efforts were unreasonable due to specific circumstances.

98 (7) For purposes of the court's consideration of the disposition custody of a child pursuant
99 to this subsection, the department is not required to make reasonable efforts to preserve the
100 family if the court determines:

101 (A) The parent has subjected the child, another child of the parent or any other child
102 residing in the same household or under the temporary or permanent custody of the parent to

103 aggravated circumstances which include, but are not limited to, abandonment, torture, chronic
104 abuse, and sexual abuse;

105 (B) The parent has:

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

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

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

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

117 (v) Committed sexual assault or sexual abuse of the child, the child's other parent,
118 guardian or custodian, another child of the parent, or any other child residing in the same
119 household or under the temporary or permanent custody of the parent.

120 (C) The parental rights of the parent to another child have been terminated involuntarily;

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

125 (c) As used in this section, "No reasonable likelihood that conditions of neglect or abuse
126 can be substantially corrected" means that, based upon the evidence before the court, the
127 abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse

128 or neglect on their own or with help. Those conditions exist in the following circumstances, which
129 are not exclusive:

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

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

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

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

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

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

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

160 (e) The court may not terminate the parental right of a parent on the sole basis that the
161 parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 *et*
162 *seq.*, for substance use disorder, as long as the parent is successfully fulfilling his or her treatment
163 obligations in the medication-assisted treatment program.

**§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placements;
findings; notice; permanent placement review.**

1 (a) *Permanency hearing when reasonable efforts are not required.* — If the court finds,
2 pursuant to this article, that the department is not required to make reasonable efforts to preserve
3 the family, then, notwithstanding any other provision, a permanency hearing must be held within
4 30 days following the entry of the court order so finding, and a permanent placement review
5 hearing must be conducted at least once every 90 days thereafter until a permanent placement
6 is achieved.

7 (b) *Permanency hearing every 12 months until permanency is achieved.* — If, 12 months
8 after receipt by the department or its authorized agent of physical care, custody, and control of a
9 child either by a court-ordered placement or by a voluntary agreement, the department has not
10 placed a child in an adoptive home, placed the child with a natural parent, placed the child in legal
11 guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a
12 permanency hearing. The department shall file a progress report with the court detailing the efforts
13 that have been made to place the child in a permanent home and copies of the child's case plan,

14 including the permanency plan as defined in §49-1-201 and §49-4-604 of this code. Copies of the
15 report shall be sent to the parties and all persons entitled to notice and the right to be heard. The
16 court shall schedule a hearing, giving notice and the right to be present to the child's attorney; the
17 child; the child's parents; the child's guardians; the child's foster parents; any preadoptive parent,
18 or any relative providing care for the child; any person entitled to notice and the right to be heard;
19 and other persons as the court may, in its discretion, direct. The child's presence may be waived
20 by the child's attorney at the request of the child or if the child is younger than 12 years and would
21 suffer emotional harm. The purpose of the hearing is to review the child's case, to determine
22 whether and under what conditions the child's commitment to the department shall continue, to
23 determine what efforts are necessary to provide the child with a permanent home, and to
24 determine if the department has made reasonable efforts to finalize the permanency plan. The
25 court shall conduct another permanency hearing within 12 months thereafter for each child who
26 remains in the care, custody, and control of the department until the child is placed in an adoptive
27 home, returned to his or her parents, placed in legal guardianship, or permanently placed with a
28 fit and willing relative.

29 (c) *Transitional planning for older children.* — In the case of a child who has attained 16
30 years of age, the court shall determine the services needed to assist the child to make the
31 transition from foster care to independent living. The child's case plan should specify services
32 aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged
33 17 comes into a case, the department must immediately provide the child with assistance and
34 support in developing a transition plan that is personalized at the direction of the child. The plan
35 must include specific options on housing, health insurance, education, local opportunities for
36 mentors, continuing support services, work force support, and employment services, and the plan
37 should be as detailed as the child may elect. In addition to these requirements, when a child with
38 special needs turns 17, or as soon as a child aged 17 with special needs comes into a case, he
39 or she is entitled to the appointment of a department adult services worker to the multidisciplinary

40 treatment team, and coordination between the multidisciplinary treatment team and other
41 transition planning teams, such as special education individualized education planning (IEP)
42 teams.

43 (d) *Out-of-state placements.* —A court may not order a child to be placed in an out-of-
44 state facility unless the child is diagnosed with a health issue that no in-state facility or program
45 serves, unless a placement out of state is in closer proximity to the child’s family for the necessary
46 care, or the services are able to be provided more timely. If the child is to be placed with a relative
47 or other responsible person out of state, the court shall use judicial leadership to help expedite
48 the process under the Interstate Compact for the Placement of Children provided in §49-7-101
49 and §49-7-102 and the Uniform Child Custody Jurisdiction and Enforcement Act provided in §48-
50 20-101 *et seq.* of this code.

51 (e) *Findings in order.* — At the conclusion of the hearing the court shall, in accordance
52 with the best interests of the child, enter an order containing all the appropriate findings. The court
53 order shall state:

54 (1) Whether or not the department made reasonable efforts to preserve the family and to
55 prevent out-of-home placement or that the specific situation made the effort unreasonable;

56 (2) Whether or not the department made reasonable efforts to finalize the permanency
57 plan and concurrent plan for the child;

58 (3) The appropriateness of the child’s current placement, including its distance from the
59 child’s home and whether or not it is the least restrictive one (most family-like one) available;

60 (4) The appropriateness of the current educational setting and the proximity to the school
61 in which the child is enrolled at the time of placement;

62 (5) Services required to meet the child’s needs and achieve permanency; and

63 (6) In addition, in the case of any child for whom another planned permanent living
64 arrangement is the permanency plan, the court shall: (A) Inquire of the child about the desired
65 permanency outcome for the child; (B) make a judicial determination explaining why, as of the

66 date of the hearing, another planned permanent living arrangement is the best permanency plan
67 for the child; and (C) provide in the court order compelling reasons why it continues to not be in
68 the best interest of the child to (i) return home, (ii) be placed for adoption, (iii) be placed with a
69 legal guardian, or (iv) be placed with a fit and willing relative.

70 (f) The department shall annually report to the court the current status of the placements
71 of children in the care, custody and control of the state department who have not been adopted.

72 (g) The department shall file a report with the court in any case where any child in the
73 custody of the state receives more than three placements in one year no later than 30 days after
74 the third placement. This report shall be provided to all parties and persons entitled to notice and
75 the right to be heard. Upon motion by any party, the court shall review these placements and
76 determine what efforts are necessary to provide the child with a permanent home. No report may
77 be provided to any parent or parent's attorney whose parental rights have been terminated
78 pursuant to this article.

79 (h) The department shall give actual notice, in writing, to the court, the child, the child's
80 attorney, the parents and the parents' attorney at least 48 hours prior to the move if this is a
81 planned move, or within 48 hours of the next business day after the move if the child is in imminent
82 danger in the child's current placement, except where the notification would endanger the child
83 or the foster family. A multidisciplinary treatment team shall convene as soon as practicable after
84 notice to explore placement options. This requirement is not waived by placement of the child in
85 a home or other residence maintained by a private provider. No notice may be provided pursuant
86 to this provision to any parent or parent's attorney whose parental rights have been terminated
87 pursuant to this article.

88 (i) Nothing in this article precludes any party from petitioning the court for review of the
89 child's case at any time. The court shall grant the petition upon a showing that there is a change
90 in circumstance or needs of the child that warrants court review.

91 (j) Any foster parent, preadoptive parent or relative providing care for the child shall be
92 given notice of and the right to be heard at the permanency hearing provided in this section.

§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

1 At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he
2 or she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand
3 silent, in which event the court shall enter a general denial of all allegations in the petition.

4 (1) If the respondent juvenile admits the allegations of the petition, the court shall consider
5 the admission to be proof of the allegations if the court finds: (A) The respondent fully understands
6 all of his or her rights under this article; (B) the respondent voluntarily, intelligently and knowingly
7 admits all facts requisite for an adjudication; and (C) the respondent in his or her admission has
8 not set forth facts which constitute a defense to the allegations.

9 (2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial
10 motions and the court or jury shall proceed to hear evidence.

11 (3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are
12 sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition
13 pursuant to §49-4-704 of this code. The court shall receive and consider the results of the needs
14 assessment, as defined in §49-1-206 of this code, prior to or at the disposition.

15 (4) If the allegations in a petition alleging that the juvenile is a status offender are admitted
16 or sustained by clear and convincing evidence, the court shall consider the results of the needs
17 assessment, as defined in §49-1-206 of this code, prior to or at the disposition and refer the
18 juvenile to the Department of Health and Human Resources for services, pursuant to §49-4-712
19 of this code, and order the department to report back to the court with regard to the juvenile's
20 progress at least every 90 days or until the court, upon motion or sua sponte, orders further
21 disposition under §49-4-712 of this code or dismisses the case from its docket: *Provided*, That in
22 a judicial circuit operating a truancy program, a circuit judge may, in lieu of referring truant
23 juveniles to the department, order that the juveniles be supervised by his or her probation office:
24 *Provided, however*, That a circuit judge may also refer a truant juvenile to a truancy diversion
25 specialist.

26 (5) If the allegations in a petition are not sustained by evidence as provided in §49-4-
27 711(c) and §49-4-711(d) of this code, the petition shall be dismissed and the juvenile shall be
28 discharged if he or she is in custody.

29 (6) Findings of fact and conclusions of law addressed to all allegations in the petition shall
30 be stated on the record or reduced to writing and filed with the record or incorporated into the
31 order of the court. The record shall include the treatment and rehabilitation plan the court has
32 adopted after recommendation by the multidisciplinary team as provided for in §49-4-406 of this
33 code.

§49-4-714. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to
2 the juvenile shall, upon request of the court, make an investigation of the environment of the
3 juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request
4 of counsel, may order the use of a standardized screener, as defined in §49-1-206 of this code
5 or, if additional information is necessary, a psychological examination of the juvenile. The report
6 of an examination and other investigative and social reports shall not be relied upon the court in
7 making a determination of adjudication. Unless waived, copies of the report shall be provided to
8 counsel for the petitioner and counsel for the juvenile no later than 72 hours prior to the
9 dispositional hearing.

10 (b) Following the adjudication, the court shall receive and consider the results of a needs
11 assessment, as defined in §49-1-206 of this code, and shall conduct the disposition, giving all
12 parties an opportunity to be heard. The disposition may include reasonable and relevant orders
13 to the parents, custodians or guardians of the juvenile as is necessary and proper to effectuate
14 the disposition. At disposition the court shall not be limited to the relief sought in the petition and
15 shall, in electing from the following alternatives, consider the best interests of the juvenile and the
16 welfare of the public:

17 (1) Dismiss the petition;

18 (2) Refer the juvenile and the juvenile's parent or custodian to a community agency for
19 needed assistance and dismiss the petition;

20 (3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the
21 juvenile under the supervision of a probation officer of the court or of the court of the county where
22 the juvenile has his or her usual place of abode or other person while leaving the juvenile in
23 custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or
24 limit the juvenile's activities under terms which are reasonable and within the child's ability to
25 perform, including participation in the litter control program established pursuant to §22-15A-3 of
26 this code or other appropriate programs of community service;

27 (4) Upon a finding that a parent or custodian is not willing or able to take custody of the
28 juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or
29 that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the
30 court may place the juvenile in temporary foster care or temporarily commit the juvenile to the
31 department or a child welfare agency. The court order shall state that continuation in the home is
32 contrary to the best interest of the juvenile and why; and whether or not the department made a
33 reasonable effort to prevent the placement or that the emergency situation made those efforts
34 unreasonable or impossible. Whenever the court transfers custody of a youth to the department,
35 an appropriate order of financial support by the parents or guardians shall be entered in
36 accordance with §49-4-801 through §49-4-803 *et seq.* of this code and guidelines promulgated
37 by the Supreme Court of Appeals;

38 (5) (A) Upon a finding that the best interests of the juvenile or the welfare of the public
39 require it, and upon an adjudication of delinquency, the court may commit the juvenile to the
40 custody of the Director of the Division of Corrections and Rehabilitation for placement in a juvenile
41 services facility for the treatment, instruction and rehabilitation of juveniles. The court maintains
42 discretion to consider alternative sentencing arrangements.

43 (B) Notwithstanding any provision of this code to the contrary, in the event that the court
44 determines that it is in the juvenile's best interests or required by the public welfare to place the
45 juvenile in the custody of the Division of Corrections and Rehabilitation, the court shall provide
46 the Division of Corrections and Rehabilitation with access to all relevant court orders and records
47 involving the underlying offense or offenses for which the juvenile was adjudicated delinquent,
48 including sentencing and presentencing reports and evaluations, and provide the division with
49 access to school records, psychological reports and evaluations, needs assessment results,
50 medical reports and evaluations or any other such records as may be in the court's possession
51 as would enable the Division of Corrections and Rehabilitation to better assess and determine
52 the appropriate counseling, education and placement needs for the juvenile offender.

53 (C) Commitments may not exceed the maximum term for which an adult could have been
54 sentenced for the same offense and any such maximum allowable term of confinement to be
55 served in a juvenile correctional facility shall take into account any time served by the juvenile in
56 a detention center pending adjudication, disposition or transfer. The order shall state that
57 continuation in the home is contrary to the best interests of the juvenile and why; and whether or
58 not the state department made a reasonable effort to prevent the placement or that the emergency
59 situation made those efforts unreasonable or impossible; or

60 (6) After a hearing conducted under the procedures set out in §27-5-4(c) and §27-5-4(d)
61 of this code, commit the juvenile to a mental health facility in accordance with the juvenile's
62 treatment plan; the director of the mental health facility may release a juvenile and return him or
63 her to the court for further disposition. The order shall state that continuation in the home is
64 contrary to the best interests of the juvenile and why; and whether or not the state department
65 made a reasonable effort to prevent the placement or that the emergency situation made those
66 efforts unreasonable or impossible.

67 The court shall make all reasonable efforts to place the juvenile in the least restrictive
68 alternative appropriate to the needs of the juvenile and the community: *Provided*, That a juvenile

69 adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-
70 home placement within the Division of Corrections and Rehabilitation or the department if that
71 juvenile has no prior adjudications as either a status offender or as a delinquent, or no prior
72 dispositions to a pre-adjudicatory improvement period or probation for the current matter,
73 excluding placements made for abuse or neglect: *Provided, however,* That if the court finds by
74 clear and convincing evidence that there is a significant and likely risk of harm, as determined by
75 a needs assessment, to the juvenile, a family member or the public and that continued placement
76 in the home is contrary to the best interest of the juvenile, such juvenile may be ordered to an out-
77 of-home placement: *Provided further,* That the department has made all reasonable efforts to
78 prevent removal of the juvenile from his or her home, or that reasonable efforts are not required
79 due to an emergent situation.

80 (c) In any case in which the court decides to order the juvenile placed in an out-of-state
81 facility or program, it shall set forth in the order directing the placement the reasons the juvenile
82 was not placed in an in-state facility or program.

83 (d) The disposition of the juvenile shall not be affected by the fact that the juvenile
84 demanded a trial by jury or made a plea of not guilty. Any disposition is subject to appeal to the
85 Supreme Court of Appeals.

86 (e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and
87 the response shall be transcribed; a negative response shall not be construed as a waiver. The
88 evidence shall be transcribed as soon as practicable and made available to the juvenile or his or
89 her counsel, if the same is requested for purposes of further proceedings. A judge may grant a
90 stay of execution pending further proceedings.

91 (f) Following a disposition under §49-4-714(b)(4), §49-4-714(b)(5), or §49-4-714(b)(6) of
92 this code, the court shall include in the findings of fact the treatment and rehabilitation plan the
93 court has adopted upon recommendation of the multidisciplinary team under §49-4-406 of this
94 code.

95 (g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged
96 with delinquency under this chapter is transferred to adult jurisdiction and there tried and
97 convicted, the court may make its disposition in accordance with this section in lieu of sentencing
98 the person as an adult.

§49-4-724. Standardized assessments.

1 (a) The Supreme Court of Appeals is requested to adopt a risk and needs assessment to
2 be used for adjudicated delinquents, detained and delivered to, or committed to the custody of
3 the Commissioner of Corrections and Rehabilitation. A validation study of the risk and needs
4 assessment may be conducted at least every three years to ensure that the risk and needs
5 assessment is predictive of the risk of reoffending.

6 (b) Each juvenile adjudicated for a delinquency offense and committed or detained with
7 the Division of Corrections and Rehabilitation in accordance with §49-4-714(b)(5)(A) of this code
8 shall undergo a risk and needs assessment prior to disposition to identify specific factors that
9 predict a juvenile's likelihood of reoffending and, when appropriately addressed, may reduce the
10 likelihood of reoffending. The risk and needs assessment may be conducted by a division worker
11 trained to conduct the risk and needs assessment.

12 (c) Each multidisciplinary team convened pursuant to §49-4-406(c) of this code shall
13 receive and consider the results of the risk and needs assessment of the juvenile.

14 (d) The results of the risk and needs assessment shall be provided to the court prior to
15 disposition or at the time of the dispositional hearing.

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

Steve Casito
.....
Chairman, House Committee

Mark W. Hayward
.....
Chairman, Senate Committee

Originating in the House.

In effect from passage.

Steve Harris
.....
Clerk of the House of Delegates

John L. ...
.....
Clerk of the Senate

Leslie ...
.....
Speaker of the House of Delegates

Michelle R. ...
.....
President of the Senate

FILED
2019 MAR 26 A 10:43
OFFICE WEST VIRGINIA
SECRETARY OF STATE

The within *is approved* this the *26th*
March
day of 2019.

James ...
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2019

Time 12:40 pm