

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4092

BY DELEGATES HILL, PACK, SUMMERS, ESPINOSA,
HANNA, WORRELL, ESTEP-BURTON, LAVENDER-BOWE,
PUSHKIN, THOMPSON, C., AND WALKER

[Introduced January 10, 2020; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to repeal §49-2-102, §49-2-104 and §49-2-125 of the Code of West Virginia, 1931, as
 2 amended; to amend and reenact §49-1-206, §49-2-108, §49-2-110, §49-2-111, §49-2-
 3 112, §49-2-118, §49-2-121, §49-2-124, and §49-2-126; and to amend said code by adding
 4 thereto two new section §49-2-127 and §49-2-128, all relating to foster care.

Be it enacted by the Legislature of West Virginia:

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 Advocacy Network, Inc., as set forth in §49-
 7 3-101 of 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~~ six children who are unrelated by blood, marriage, or adoption to any
93 adult 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.

§49-2-102. Minimum staffing complement for child protective services.

1 [Repealed.]

§49-2-104. Education of the public.

1 [Repealed.]

§49-2-108. Visits and inspections; records.

1 The department or its authorized agent shall visit and inspect every certified foster home
2 as often as is necessary to assure proper care is given to the children. Every certified foster home
3 shall maintain a record of the children received. This record shall include information as
4 prescribed by the department in legislative rule and shall be in a type, form and manner as
5 prescribed by the department in legislative rule.

§49-2-110. Development of standards of child care.

1 The department shall develop standards for the care of children. It shall cooperate with,
2 advise and assist all child welfare agencies, including state institutions, which care for neglected,
3 delinquent, or ~~mentally or physically handicapped~~ special needs children, and shall supervise
4 those agencies. The department, in cooperation with child welfare agencies, shall formulate and
5 make available standards of child care and services for children, to which all child welfare
6 agencies must conform.

§49-2-111. Supervision of child welfare agencies by the department; records and reports.

1 (a) In order to improve standards of child care, the department shall cooperate with the

2 governing boards of child welfare agencies, assist the staffs of those agencies through advice on
3 progressive methods and procedures of child care and improvement of the service rendered, and
4 assist in the development of community plans of child care. The department, or its duly authorized
5 agent, may visit any child welfare agency to advise the agency on matters affecting the health of
6 children. ~~and to inspect the sanitation of the buildings used for their care.~~

7 (b) Each child welfare agency shall keep records of each child under its control and care
8 as the department may prescribe, and shall report to the department, whenever requested, facts
9 as may be required with reference to the children, upon forms furnished by the department. All
10 records regarding children and all facts learned about children and their parents or relatives shall
11 be regarded as confidential and shall be properly safeguarded by the agency and the department.

12 (c) The Bureau for Children and Families shall create and maintain a database. This
13 database shall contain information about each open foster family in the state including names,
14 address, county, Child Placing Agency, genders and ages of children currently in the home,
15 number of children the family is able to accept as well as genders, ages, and special needs the
16 family will accept. This database shall be housed at the Bureau for Children and Families and
17 shall be maintained by the Bureau and all Child Placing Agencies. Updated information shall be
18 submitted in a timely manner on a regular basis. This database will be used by Child Protective
19 Services workers, Home-finders, and Child Placing Agency staff to aid in matching children with
20 appropriate families, for targeted recruitment of foster families, and for such other purposes as
21 may be appropriate.

**§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of
articles of incorporation.**

1 ~~(a)~~ Before issuing a charter for the incorporation of any organization having as its purpose
2 the receipt of children for care or for placement in family homes, the Secretary of State shall
3 provide a copy of the petition, together with any other information in his or her possession
4 pertaining to the proposed corporation, to the secretary. ~~and no charter for a corporation may be~~

5 ~~issued unless the secretary shall first certify to the Secretary of State that it has investigated the~~
 6 ~~need for the services proposed and the merits of the proposed charitable corporation and~~
 7 ~~recommends the issuance thereof; applications for amendments of any existing charter shall be~~
 8 ~~similarly referred and shall be granted only upon similar approval.~~

9 ~~(b) A child welfare agency may not be incorporated in this state unless the articles of~~
 10 ~~incorporation have first been examined and approved by the secretary, or his or her designee.~~
 11 ~~Proposed amendments to articles of incorporation shall be subject to the examination and~~
 12 ~~approval of the secretary, or his or her designee~~

§49-2-118. Closing of facilities by the secretary; placement of children.

1 When the secretary finds that the operation of a residential care facility constitutes an
 2 immediate danger of serious harm to children served by the facility, the secretary shall issue an
 3 order of closure terminating operation of the facility. When necessary, the secretary shall place
 4 or direct the placement of the children in a residential facility which has been closed into
 5 appropriate facilities. A facility closed by the secretary may not operate pending administrative or
 6 judicial review without court order.

§49-2-121. Rule-making.

1 (a) The secretary shall promulgate legislative rules in accordance with ~~chapter twenty-~~
 2 ~~nine-a~~ §29A-3-1 et seq. of this code regarding the licensure, approval, certification, and
 3 registration of child care facilities and the implementation of this article. ~~The rules shall provide at~~
 4 ~~a minimum the requirement that every residential child care facility shall be subject to an annual~~
 5 ~~time study regarding the quantification of staff supervision time at each facility. Every residential~~
 6 ~~child care facility shall participate in the time study at the request of the department~~

7 (b) The secretary shall review the rules promulgated pursuant to this article at least once
 8 every five years, making revisions when necessary or convenient.

9 (c) The rules shall incorporate by reference the requirements of the Integrated Pest
 10 Management Program established by legislative rule by the Department of Agriculture under §19-

11 16A-4 of this code.

§49-2-124. Certificate of need not required; conditions; review.

1 ~~(a) A certificate of need, as provided in §16-2D-1 et seq. of this code is not required by an~~
2 ~~entity proposing behavioral health care facilities or behavioral health care services for children~~
3 ~~who are placed out of their home, or who are at imminent risk of being placed out of their home.~~
4 ~~if a summary review is performed in accordance with this section.~~

5 ~~(b) A summary review of proposed health care facilities or health care services for children~~
6 ~~who are placed out of their home, or who are at imminent risk of being placed out of their home,~~
7 ~~is initiated when the proposal is recommended to the health care cost review authority by the~~
8 ~~Secretary of the Department of Health and Human Resources and the secretary has made the~~
9 ~~following findings:~~

10 ~~(1) That the proposed facility or service is consistent with the state health plan;~~

11 ~~(2) That the proposed facility or service is consistent with the department's programmatic~~
12 ~~and fiscal plan for behavioral health services for children with mental health and addiction~~
13 ~~disorders;~~

14 ~~(3) That the proposed facility or service contributes to providing services that are child and~~
15 ~~family driven, with priority given to keeping children in their own homes;~~

16 ~~(4) That the proposed facility or service will contribute to reducing the number of child~~
17 ~~placements in out-of-state facilities by making placements available in in-state facilities;~~

18 ~~(5) That the proposed facility or service contributes to reducing the number of child~~
19 ~~placements in in-state or out-of-state facilities by returning children to their families, placing them~~
20 ~~in foster care programs or making available school-based and out-patient services; and~~

21 ~~(6) If applicable, that the proposed services will be community-based, locally accessible~~
22 ~~and provided in an appropriate setting consistent with the unique needs and potential of each~~
23 ~~child and his or her family.~~

24 ~~(c) The secretary's findings required by subsection (b) of this section shall be filed with the~~

25 ~~secretary's recommendation and appropriate documentation. If the secretary's findings are~~
26 ~~supported by the accompanying documentation, the proposal shall not require a certificate of~~
27 ~~need.~~

28 ~~(d) Any entity that does not qualify for summary review shall be subject to certificate of~~
29 ~~need review.~~

30 ~~(e) Notwithstanding any other provision of law to the contrary, the provision of regular or~~
31 ~~therapeutic foster care services does not constitute a behavioral health care facility or a behavioral~~
32 ~~health care service that would subject it to the summary review procedure established in this~~
33 ~~section or to the certificate of need requirements provided in article two-d, chapter sixteen of this~~
34 ~~code~~

§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations.

1 [Repealed.]

§49-2-126. Foster Children’s Bill of Rights.

1 ~~(a) The Legislature finds and declares that the design and delivery of child welfare services~~
2 ~~should be directed by the principle that the health and safety of children should be of paramount~~
3 ~~concern and, therefore, establishes the goals for children in foster care. A child in foster care~~
4 ~~should have:~~

5 ~~(1) Protection by a family of his or her own, and be provided readily available services and~~
6 ~~support through care of an adoptive family or by plan, a continuing foster family;~~

7 ~~(2) Nurturing by foster parents who have been selected to meet his or her individual needs,~~
8 ~~and who are provided services and support, including specialized education, so that the child can~~
9 ~~grow to reach his or her potential;~~

10 ~~(3) A safe foster home free of violence, abuse, neglect and danger;~~

11 ~~(4) The ability to communicate with the assigned social worker or case worker overseeing~~
12 ~~the child's case and have calls made to the social worker or case worker returned within a~~

13 ~~reasonable period of time;~~

14 ~~(5) Permission to remain enrolled in the school the child attended before being placed in~~
15 ~~foster care, if at all possible;~~

16 ~~(6) Participation in school extracurricular activities, community events, and religious~~
17 ~~practices;~~

18 ~~(7) Communication with the biological parents. Communication is necessary if the child~~
19 ~~placed in foster care receives any immunizations and if any additional immunizations are needed,~~
20 ~~if the child will be transitioning back into a home with his or her biological parents;~~

21 ~~(8) A bank or savings account established in accordance with state laws and federal~~
22 ~~regulations;~~

23 ~~(9) Identification and other permanent documents, including a birth certificate, social~~
24 ~~security card and health records by the age of sixteen, to the extent allowed by federal and state~~
25 ~~law;~~

26 ~~(10) The use of appropriate communication measures to maintain contact with siblings if~~
27 ~~the child placed in foster care is separated from his or her siblings; and~~

28 ~~(11) Meaningful participation in a transition plan for those phasing out of foster care.~~

29 ~~(b) A person shall not have a cause of action against the state or any of its subdivisions,~~
30 ~~agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide~~
31 ~~adequate funding for the achievement of these goals by the Legislature. Nothing in this section~~
32 ~~requires the expenditure of funds to meet the goals established in this section, except funds~~
33 ~~specifically appropriated for that purpose.~~

34 ~~(c) The West Virginia Department of Health and Human Resources shall propose rules for~~
35 ~~promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code~~
36 ~~to ensure that a child has an effective means of being heard if he or she believes the goals of this~~
37 ~~section are not being met.~~

38 ~~(d) When a child who was previously placed into foster care, but left the custody or~~

39 ~~guardianship of the department, is again placed into foster care, the department shall notify the~~
40 ~~foster parents who most recently cared for the child of the child's availability for foster care~~
41 ~~placement to determine if the foster parents are desirous of seeking a foster care arrangement~~
42 ~~for the child. The arrangement may only be made if the foster parents are otherwise qualified or~~
43 ~~can become qualified to enter into the foster care arrangement with the department and if the~~
44 ~~arrangement is in the best interests of the child: *Provided*, That the department may petition the~~
45 ~~court to waive notification to the foster parents. This waiver may be granted, ex parte, upon a~~
46 ~~showing of compelling circumstances~~

47 (a) The West Virginia Legislature further finds that it is in the best interest of West Virginia's
48 child welfare system to acknowledge foster children as active and participating members of this
49 system and to support them through the following bill of rights:

50 (1) To live in a safe, healthy, and comfortable least restrictive setting possible where he
51 or she is treated with respect.

52 (2) To be free from physical, sexual, psychological, or other abuse, exploitation or corporal
53 punishment.

54 (3) To receive adequate and healthy food, adequate fitting clothing, and, a travel bag.

55 (4) To receive medical, dental, vision, mental health services, substance use treatment
56 services;

57 (5) To be free of the administration of medication or chemical substances, unless
58 authorized by a physician.

59 (6) To contact and communicate privately with family members, unless prohibited by court
60 order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed
61 Special Advocates (CASA), and probation officers.

62 (7) To visit and contact brothers and sisters, as may be reasonably accommodated, unless
63 prohibited by court order, the case plan, or other extenuating circumstances.

64 (8) To contact the Bureau of Children and Families or the foster care ombudsperson

65 regarding violations of rights, to speak to representatives of these offices confidentially, and to be
66 free from threats, retaliation, or punishment for making complaints.

67 (9) To make and receive confidential telephone calls and send and receive unopened mail,
68 unless prohibited by court order or the case plan.

69 (10) To maintain contact with all previous caregivers and other important adults in his or
70 her life, if desired, unless prohibited by court order.

71 (11) To attend religious services and activities of his or her choice.

72 (12) To establish a bank account and manage personal income, consistent with the child's
73 age and developmental level, unless prohibited by the case plan.

74 (13) To not be locked in any room, building, or facility premises.

75 (14) To attend school, the foster child's school of origin if feasible, and participate in
76 extracurricular, cultural, and personal enrichment activities, consistent with the child's age and
77 developmental level, and with family's ability to provide specific activities with consideration for
78 finances and scheduling.

79 (15) To work and develop job skills at an age-appropriate level that is consistent with state
80 law.

81 (16) To have social contacts with people outside of the foster care system, such as
82 teachers, church members, mentors, and friends.

83 (17) To attend Independent Living Program classes and activities if he or she meets age
84 requirements.

85 (18) To attend court hearings and speak to the judge.

86 (19) To have storage space for private use.

87 (20) To review his or her own case plan if he or she is over 12 years of age and to receive
88 information about his or her out-of-home placement and case plan, including being told of
89 changes to the plan.

90 (21) To be free from unreasonable searches of personal belongings.

91 (22) To have fair and equal access to all available services, placement, care, treatment,
92 and benefits, and to not be subjected to discrimination or harassment.

93 (23) As soon as developmentally appropriate, to have access to existing information
94 regarding the educational options available, including, but not limited to, the coursework
95 necessary for vocational and postsecondary educational programs, and information regarding
96 financial aid for postsecondary education.

97 (24) To be informed of the reason for placement in foster care, and of what will happen to
98 the child's family and siblings.

99 (25) To receive a copy of and have explained the rights set forth in this section.

100 (26) To receive care to a reasonable and prudent parent standard, appropriate to the age
101 and development level of the child.

102 (b) The rights provided for in this section do not create grounds for a civil action against
103 the state. These rights shall be implemented by the foster care ombudsman, as provided in §49-
104 9-1 et seq. of this code.

105 (c) The rights provided for in this section supersede the rights provided for in §49-2-127
106 of this code.

§49-2-127. Foster Parents' and Kinship Bill of Rights.

1 (a) The West Virginia Legislature finds that foster parents and kinship placements
2 providing care for children who are in the custody of the department play an integral,
3 indispensable, and vital role in the state's effort to care for children displaced from their homes.
4 The West Virginia Legislature further finds that it is in the best interest of West Virginia's child
5 welfare system to acknowledge foster parents and kinship placements as active and participating
6 members of this system and to support them through the following bill of rights for foster parents
7 and kinship placements:

8 (1) The right to be treated with dignity, respect, and trust as a primary provider of foster
9 care and a member of the professional team caring for foster children;

10 (2) The right to continue with his or her own family values and beliefs, so long as the values
11 and beliefs of the foster child and the birth family are not infringed upon.

12 (3) The right to receive both training by the Child Placing Agency or the Bureau of Children
13 and Families at appropriate intervals to meet mutually assessed needs of the child and to improve
14 foster parents' skills and to inform foster parents of any changes in policies and procedures.

15 (4) The right to receive assistance when dealing with loss and separation when a child
16 leaves the foster home.

17 (5) The right to child care for all children in the household provided at no cost to the parent
18 while attending training, groups, or events required by the Child Placing Agency or the Bureau for
19 Children and Families, without reduction in available respite days.

20 (6) The right to be informed of information, laws, and guidelines on the obligations,
21 responsibilities, and opportunities of foster parenting and to be kept updated of any changes in
22 laws, policies, and procedures regarding foster parenting in a timely manner and at least annually;

23 (7) The right to receive financial reimbursement disbursed on or before the 15th day of
24 each calendar month according to the agreement between the foster parents and the child placing
25 agency or the department and to be notified of any costs or expenses for which the foster parent
26 may be eligible for reimbursement;

27 (8) The right to receive information from the Bureau of Children and Families and the child
28 placing agency on how to receive services and reach personnel 24 hours per day, seven days
29 per week;

30 (9) The right prior to the placement of a child to be notified of any issues relative to the
31 child that may jeopardize the health and safety of the foster family or the child, or alter the manner
32 in which foster care should be administered;

33 (10) To receive, prior to placement of a child, all known information relating to the child's
34 behavior, family background, health history, or special needs and receive updates relevant to the
35 care of the child as it becomes available, as allowable under state and federal laws;

36 (11) The right to refuse placement of a child in the foster home or to request, upon
37 reasonable notice, the removal of a child from the foster home without fear of reprisal or any
38 adverse effect on being assigned any future foster or adoptive placements;

39 (12) The right to receive any information through the Bureau of Children and Families
40 regarding the number of times a foster child has been moved and the reasons therefor; and to
41 receive the names and phone numbers of the previous foster parents if the previous foster parents
42 have authorized such release and as allowable under state and federal law;

43 (13) The right to communicate with the foster child's birth family only be restricted when
44 necessary for safety of the foster family or the child which may only be restricted when necessary
45 for safety of the foster family or the child.

46 (14) The right to be provided with a written copy of the individual treatment and service
47 plan concerning the child in the foster parent's home and to discuss such plan with the case
48 manager, as well as reasonable notification of any changes to that plan, including timely notice of
49 the need to remove a child from the foster home and the reasons for the removal.

50 (15) The right to participate in the planning of visitation between the child and the child's
51 biological family with the foster parents recognizing that visitation with his or her biological family
52 is important to the child;

53 (16) The right to participate with timely and reasonable notice, in the case planning and
54 decision-making process with the Bureau of Children and Families regarding the child as provided
55 in §49-4-101 et seq. of this code;

56 (17) The right to provide input concerning the plan of services for the child and to have
57 that input considered by the department;

58 (18) The right to communicate with other professionals who work with such child including,
59 but not limited to, therapists, physicians, and teachers, as allowable under state and federal law;

60 (19) The right to be notified in advance, in writing, by the Bureau of Children and Families
61 or the court of any hearing or review where the case plan or permanency of the child is an issue,

62 including initial and periodic reviews held by the court, hearings following revocation of the license
63 of an agency which has permanent custody of a child, and permanency plan hearings.;

64 (20) The right to be considered, where appropriate, as a permanent placement option
65 when a child who was formerly placed with the foster parents has reentered the foster care
66 system;

67 (21) The right to be considered, where appropriate, as the first choice as a permanent
68 parent or parents for a child who, after 12 months of placement in the foster home, is released for
69 adoption or legal guardianship;

70 (22) The right to be provided a fair, timely and impartial investigation of complaints
71 concerning the operation of a foster home and to an explanation of a corrective action plan or
72 policy violation relating to foster parents; and

73 (23) The right, to the extent allowed under state and federal law, to have an advocate
74 present at all portions of investigations of abuse and neglect at which an accused foster parent is
75 present.

76 (24) The right to be provided with information on how to contact the Foster Care
77 Ombudsman, and to contact the Foster Care Ombudsman regarding violations of rights, to speak
78 to representatives of these offices confidentially, and to be free from threats, retaliation, or
79 punishment for making complaints.

80 (25) The right to intervene

81 (26) The right to be included in a centralized database of foster parents.

82 (27) The right to a minimum of 14 days of respite care per year. "Respite" is defined as a
83 short period of rest or relief and shall not be used while a parent is recovering from a medical
84 event, caring for one of several children in the household experiencing a medical event, or while
85 caring for another family member experiencing a medical event. Assistance with care during those
86 times shall be provided in addition to the 14 days of respite.

87 (28) The right to receive a written copy of the rights set forth in this section upon

88 certification and upon request

89 (b) The rights provided for in this section do not create any grounds for a civil action against
90 the state. These rights shall be implemented by the foster care ombudsman.

§49-2-128. Reasonable and prudent parents.

1 (a) The following terms are defined:

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

6 “Caregiver” means a person with whom the child is placed in foster care, kinship care, or
7 a designated official for residential treatment facility.

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

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

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

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

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

- 23 (3) The best interest of the child based on information known by the caregiver.
- 24 (4) The importance of encouraging the child's emotional and developmental growth.
- 25 (5) The importance of providing the child with the most family-like living experience
- 26 possible.
- 27 (6) The behavioral history of the child and the child's ability to safely participate in the
- 28 proposed activity, as with any other child.
- 29 (d) Child placing agencies and residential treatment facilities shall have policies consistent
- 30 with this section and that those agencies and facilities shall promote and protect the ability of
- 31 children to participate in age-appropriate extracurricular, enrichment, and social activities.
- 32 (e) A foster parent or kinship placement may travel out of state with a child, unless
- 33 prohibited by a previous specific court order. The foster parent or kinship placement shall request
- 34 approval from the case worker at least 10 days before travel. If the case worker does not respond
- 35 to the request within three days of the request, the request is approved.
- 36 (f) There is created a rebuttable presumption that a care giver has acted as a reasonable
- 37 and prudent parent.
- 38 (g) A caregiver is not liable for harm caused to a child in care who participates in an activity
- 39 approved by the caregiver, provided that the caregiver has acted as a reasonable and prudent
- 40 parent, unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly
- 41 negligent, reckless or criminal conduct.

NOTE: The purpose of this bill is to update the laws on foster care. Creating a foster child and foster parent bill of rights and further defining the reasonable and prudent parent standard.

This bill was recommended for passage during the 2020 legislative session by the Joint Committee on Health.

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