

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4092

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[Passed March 7, 2020; in effect ninety days from passage.]

1 AN ACT to repeal §49-2-102 and §49-2-104 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §49-1-206 of said code; to amend and reenact §49-2-108, §49-2-110,
3 §49-2-111, §49-2-111a, §49-2-112, §49-2-118, §49-2-121, §49-2-124, and §49-2-126 of
4 said code; to amend said code by adding thereto five new sections, designated §49-2-
5 111c, §49-2-127, §49-2-127a, §49-2-128, and §49-2-129; to amend said code by adding
6 thereto two new sections, designated §49-4-601a and §49-4-601b; and to amend and
7 reenact §49-4-604, of said code, all relating generally to the child welfare system; defining
8 terms; increasing the number children allowed in a foster family home; removing
9 authorization for the Secretary of the Department of Health and Human Resources to
10 transfer funds between certain accounts; eliminating requirement that the secretary
11 provide public education; requiring certain information to be included in child placing
12 agency data reports; setting a minimum amount that the Department of Health and Human
13 Resources must pay child placing agencies per child adopted; requiring the department
14 to review the rate of payment to foster parents at certain time intervals; authorizing and
15 directing the department to expend funds to achieve certain priorities and objectives
16 related to child placement and other services; requiring the department to expend an
17 amount of appropriated funds in fiscal year 2021 to achieve certain priorities and
18 objectives; requiring the secretary of the department to report annually, and upon request,
19 to the Joint Standing Committee on Government and Finance regarding expenditures and
20 progress toward meeting certain objectives and priorities; specifying when the department
21 shall remit payments to foster families; eliminating summary review requirements for
22 behavioral health care services and facilities for children in out of home placements;
23 establishing the Foster Child Bill of Rights; establishing the Foster and Kinship Parent Bill
24 of Rights; providing that violations of the rights provided to foster children and parents may
25 be reported to and investigated by the foster care ombudsman; setting forth certain duties
26 of foster parents; requiring a number of provisions to be included in the agreement

27 between the foster parent and the child placing agency and the department; providing that
28 neglect of a foster or kinship parent's duties and violations of agreements may be reported
29 to and investigated by the foster care ombudsman; requiring the foster care ombudsman
30 to make certain reports; setting forth the reasonable and prudent foster parent standard;
31 providing that children in out-of-home care are entitled to participate in certain activities
32 and requiring caregivers to use the reasonable and prudent foster parent standard to make
33 certain decisions regarding the child; limiting liability of a person adhering to the
34 reasonable and prudent foster parent standard; requiring the department to establish
35 minimum standards for transitional living services by legislative rule; establishing eligibility
36 criteria for children and transitioning adults to participate in transitional living services;
37 providing requirements for transitional living arrangements and the agency's duties in
38 relation thereto; establishing preference that children removed from the home be placed
39 with relatives and fictive kin; establishing a process by which the department shall, and
40 others may assist, in identifying family members and fictive kin; requiring the department
41 to provide notice to a person against whom an allegation of abuse or neglect, that does
42 not result in a finding by a court, is substantiated; providing that a person against whom
43 an allegation of abuse or neglect has been substantiated has a right to contest the
44 substantiation and the right to appeal a decision of the department to the courts;
45 establishing requirements for legislative rules of the department regarding substantiation
46 of abuse and neglect allegations; requiring guardians ad litem to adhere to certain policies
47 and meet certain requirements; requesting the supreme court to review certain rules;
48 clarifying when the department, in an abuse and neglect case, is not required to make
49 efforts to preserve the family; requiring the department to promulgate legislative rules;
50 requiring the department promulgate emergency rules; making technical corrections; and
51 eliminating obsolete language from the code.

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, the following terms have the following meanings, unless the
2 context clearly indicates otherwise:

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

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

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

15 “Child care services” means direct care and protection of children during a portion of a
16 24-hour day outside of the child’s own home which provides experiences to children that foster
17 their healthy development and education.

18 “Child placing agency” means a child welfare agency organized for the purpose of placing
19 children in private family homes for foster care or for adoption. The function of a child placing
20 agency may include the investigation and certification of foster family homes and foster family
21 group homes as provided in this chapter. The function of a child placing agency may also include
22 the supervision of children who are 16 or 17 years of age and living in unlicensed residences.

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

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

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

- 41 (A) Electronic monitoring;
- 42 (B) Drug and alcohol screening, testing, or monitoring;
- 43 (C) Youth reporting centers;
- 44 (D) Reporting and supervision requirements;
- 45 (E) Community service; and
- 46 (F) Rehabilitative interventions such as family counseling, substance abuse treatment,
47 restorative justice programs, and behavioral or mental health treatment.

48 “Community services” means nonresidential prevention or intervention services or
49 programs that are intended to reduce delinquency and future court involvement.

50 “Evidence-based practices” means policies, procedures, programs, and practices
51 demonstrated by research to reliably produce reductions in the likelihood of reoffending.

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

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

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

66 “Family resource network” means:

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

70 (i) Has agreed to a single governing entity;

71 (ii) Has agreed to engage in activities to improve service systems for children and families
72 within the community;

73 (iii) Addresses a geographic area of a county or two or more contiguous counties;

74 (iv) Has, as the majority of the members of the governing body, nonproviders, which
75 includes family representatives and other members who are not employees of publicly funded
76 agencies, with family representatives as the majority of those members who are nonproviders;

77 (v) Has members of the governing body who are representatives of local service agencies,
78 including, but not limited to, the public health department, the behavioral health center, the local
79 health and human resources agency, and the county school district; and

80 (vi) Adheres to principles consistent with the cabinet's mission as part of its philosophy.

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

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

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

89 "Fictive kin" means an adult of at least 21 years of age, who is not a relative of the child,
90 as defined herein, but who has an established, substantial relationship with the child, including
91 but not limited to, teachers, coaches, ministers, and parents, or family members of the child's
92 friends.

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

96 "Foster parent" means a person with whom the department has placed a child and who
97 has been certified by the department, a child placing agency, or another agent of the department
98 to provide foster care.

99 "Health care and treatment" means:

- 100 (A) Developmental screening;
- 101 (B) Mental health screening;
- 102 (C) Mental health treatment;
- 103 (D) Ordinary and necessary medical and dental examination and treatment;
- 104 (E) Preventive care including ordinary immunizations, tuberculin testing, and well-child
- 105 care; and
- 106 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and
- 107 treatment does not include an abortion.

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

- 113 (A) Intensive, short-term intervention of four to six weeks; and
- 114 (B) Home-based, longer-term after care following intensive intervention.

115 “Informal family child care” means a home that is used to provide nonresidential child care
116 services for compensation for three or fewer children, including children who are living in the
117 household who are under six years of age. Care is given in the provider’s own home to at least
118 one child who is not related to the caregiver.

119 “Kinship parent” means a person with whom the department has placed a child to provide
120 a kinship placement.

121 “Kinship placement” means the placement of the child with a relative of the child, as
122 defined herein, or a placement of a child with a fictive kin, as defined herein.

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

125 “Nonsecure facility” means any public or private residential facility not characterized by
126 construction fixtures designed to physically restrict the movements and activities of individuals
127 held in lawful custody in that facility and which provides its residents access to the surrounding
128 community with supervision.

129 “Nonviolent misdemeanor offense” means a misdemeanor offense that does not include
130 any of the following:

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

132 (B) The use of firearm or other deadly weapon in the commission of the offense;

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

135 (D) A criminal sexual conduct offense; or

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

137 “Out-of-home placement” means a post-adjudication placement in a foster family home,
138 kinship parent home, group home, nonsecure facility, emergency shelter, hospital, psychiatric
139 residential treatment facility, staff secure facility, hardware secure facility, detention facility, or
140 other residential placement other than placement in the home of a parent, custodian, or guardian.

141 “Out-of-school time” means a child care service which offers activities to children before
142 and after school, on school holidays, when school is closed due to emergencies, and on school
143 calendar days set aside for teacher activities.

144 “Placement” means any temporary or permanent placement of a child who is in the
145 custody of the state in any foster home, kinship parent home, group home, or other facility or
146 residence.

147 “Pre-adjudicatory community supervision” means supervision provided to a youth prior to
148 adjudication, for a period of supervision up to one year for an alleged status or delinquency
149 offense.

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

152 “Relative family child care” means a home that provides nonresidential child care services
153 only to children related to the caregiver. The caregiver is a grandparent, great-grandparent, aunt,
154 uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care. Care is given
155 in the provider’s home.

156 “Relative of the child” means an adult of at least 21 years of age who is related to the child,
157 by blood or marriage, within at least three degrees.

158 “Residential services” means child care which includes the provision of nighttime shelter
159 and the personal discipline and supervision of a child by guardians, custodians, or other persons
160 or entities on a continuing or temporary basis. It may include care or treatment, or both, for
161 transitioning adults. Residential services does not include or apply to any juvenile detention facility
162 or juvenile correctional facility operated by the Division of Corrections and Rehabilitation, created
163 pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

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

167 “Scattered-site living arrangement” means a living arrangement where youth, 17 to 26
168 years of age, live in a setting that allows staff to be available as needed, depending on the youth’s
169 level of autonomy. Sites for such living arrangements shall be in community environments to allow
170 the youth full access to services and resources in order to fully develop independent living skills.

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

174 “Staff secure facility” means any public or private residential facility characterized by staff
175 restrictions of the movements and activities of individuals held in lawful custody in such facility,

176 and which limits its residents' access to the surrounding community, but is not characterized by
177 construction fixtures designed to physically restrict the movements and activities of residents.

178 "Standardized screener" means a brief, validated nondiagnostic inventory or questionnaire
179 designed to identify juveniles in need of further assessment for medical, substance abuse,
180 emotional, psychological, behavioral, or educational issues, or other conditions.

181 "State family support council" means the council established by the Department of Health
182 and Human Resources pursuant to §49-2-601 *et seq.* of this code to carry out the responsibilities
183 specified in §49-2-101 *et seq.* of this code.

184 "Supervised group setting" means a setting where youth, 16 to 21 years of age, live with
185 staff onsite or are available 24 hours per day and seven days per week. In this setting, staff
186 provide face to face daily contact with youth.

187 "Time-limited reunification services" means individual, group, and family counseling,
188 inpatient, residential, or outpatient substance abuse treatment services, mental health services,
189 assistance to address domestic violence, services designed to provide temporary child care, and
190 therapeutic services for families, including crisis nurseries and transportation to or from those
191 services, provided during 15 of the most recent 22 months a child or juvenile has been in foster
192 or in a kinship placement, as determined by the earlier date of the first judicial finding that the
193 child is subjected to abuse or neglect, or the date which is 60 days after the child or juvenile is
194 removed from home.

195 "Technical violation" means an act that violates the terms or conditions of probation or a
196 court order that does not constitute a new delinquent offense.

197 "Truancy diversion specialist" means a school-based probation officer or truancy social
198 worker within a school or schools who, among other responsibilities, identifies truants and the
199 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior
200 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 in a type,
4 form, and manner as 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 children
3 who have been neglected, have been adjudicated delinquent, or have special needs such as
4 physical, mental, or intellectual disabilities, and shall supervise those agencies. The department,
5 in cooperation with child welfare agencies, shall formulate and make available standards of child
6 care and services for children, to which all child welfare 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 personnel of those agencies through advice
3 on progressive methods and procedures of child care and improvement of the service rendered,
4 and assist in the development of community plans of child care. The department, or its duly
5 authorized agent, may visit any child welfare agency to advise the agency on matters affecting
6 the health of children.

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.

§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 of less than 18 years of age; or

4 (B) A person 18 to 21 years of age 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;

39 (E) Placement of older children;

40 (F) Placement of children with special needs; and

41 (G) Recruitment and retention of foster parents; and

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

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

46 (g) Performance-based payment methodologies must be used in child placing agency
47 contracting. Performance measures should relate to successful engagement by a child or parent

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

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

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

65 (j) The department shall pay child placing agencies contracted to provide adoption
66 services to foster families a minimum of \$1,000 per child for each adoption finalized.

67 (k) The rate of payment to foster parents and child placing agencies shall be reviewed by
68 the department, at a minimum of every two years, to determine whether the level of foster care
69 payments facilitates or hinders the efficient placement of foster children with West Virginia
70 families. The department shall remit payments to foster parents on the same week each month
71 to facilitate foster parents' ability to budget and appropriately expend payments for the benefit of
72 the children in their custody.

73 (l) The department shall report the performance of the child placing agency to the
74 Legislative Oversight Commission on Health and Human Resources Accountability by December
75 31, annually.

§49-2-111c. Priorities for use of funds.

1 (a) Subject to appropriations by the Legislature, the department is authorized and directed
2 to:

3 (1) Enhance and increase efforts to provide services to prevent the removal of children
4 from their homes;

5 (2) Identify relatives and fictive kin of children in need of placement outside of the home;

6 (3) Train kinship parents to become certified foster parents;

7 (4) Expand a tiered foster care system that provides higher payments for foster parents
8 providing care to, and child placing agencies providing services to, foster children who have
9 severe emotional, behavioral, or intellectual problems or disabilities, with particular emphasis
10 upon removing children in congregate care and placing them with suitable foster parents. This
11 program shall be operational no later than December 1, 2020; and

12 (5) Develop a pilot program to increase payment to uncertified kinship parents for the
13 purpose of further helping families who have accepted kinship placements.

14 (b) During fiscal year 2021, the department shall expend at least \$16,900,000 for the
15 purposes of implementing the priorities and objectives listed in this section.

16 (c) On or before July 1, 2022 and on or before July 1 of every year thereafter, the secretary
17 of the department shall present a report to the Joint Standing Committee on Government and
18 Finance regarding the expenditures made pursuant to subsection (b) of this section and the
19 department's progress in meeting the priorities and objectives listed in subsection (a) of this
20 section: *Provided*, That the secretary shall provide the information described in this subsection
21 and updates to previous reports at any time, upon request of the Joint Standing Committee on
22 Government and Finance.

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

1 Before issuing a charter for the incorporation of any organization having as its purpose the
2 receipt of children for care or for placement in family homes, the Secretary of State shall provide
3 a copy of the petition, together with any other information in his or her possession pertaining to
4 the proposed corporation, to the secretary.

§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 §29A-3-1 *et seq.*
2 of this code regarding the licensure, approval, certification, and registration of child care facilities
3 and the implementation of this article.

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

6 (c) The rules shall incorporate, by reference, the requirements of the Integrated Pest
7 Management Program established by legislative rule by the Department of Agriculture under
8 §19-16A-4 of this code.

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

1 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.

§49-2-126. The Foster Child Bill of Rights.

1 (a) Foster children and children in a kinship placement are active and participating
2 members of the child welfare system and have the following rights:

3 (1) The right to live in a safe and healthy environment, and the least restrictive environment
4 possible;

5 (2) The right to be free from physical, sexual, or psychological abuse or exploitation
6 including being free from unwarranted physical restraint and isolation.

7 (3) The right to receive adequate and healthy food, appropriate and seasonally necessary
8 clothing, and an appropriate travel bag;

9 (4) The right to receive medical, dental, and vision care, mental health services, and
10 substance use treatment services, as needed;

11 (5) The right to be placed in a kinship placement, when such placement meets the
12 objectives set forth in this article;

13 (6) The right, when placed with a foster or kinship family, to be matched as closely as
14 possible with a family meeting the child's needs, including, when possible, the ability to remain
15 with siblings;

16 (7) The right, as appropriate to the child's age and development, to be informed on any
17 medication or chemical substance to be administered to the child;

18 (8) The right to communicate privately, with caseworkers, guardians ad litem, attorneys,
19 Court Appointed Special Advocates (CASA), the prosecuting attorney, and probation officers;

20 (9) The right to have and maintain contact with siblings as may be reasonably
21 accommodated, unless prohibited by court order, the case plan, or other extenuating
22 circumstances;

23 (10) The right to contact the department or the foster care ombudsman, regarding
24 violations of rights, to speak to representatives of these offices confidentially, and to be free from
25 threats, retaliation, or punishment for making complaints;

26 (11) The right to maintain contact with all previous caregivers and other important adults
27 in his or her life, if desired, unless prohibited by court order or determined by the parent, according
28 to the reasonable and prudent parent standard, not to be in the best interests of the child;

29 (12) The right to participate in religious services and religious activities of his or her choice
30 to the extent possible;

31 (13) The right to attend school, and, consistent with the finances and schedule of the foster
32 or kinship family, to participate in extracurricular, cultural, and personal enrichment activities, as
33 appropriate to the child's age and developmental level;

34 (14) The right to work and develop job skills in a way that is consistent with the child's age
35 and developmental level;

36 (15) The right to attend Independent Living Program classes and activities if the child
37 meets the age requirements;

38 (16) The right to attend court hearings and speak directly to the judge, in the court's
39 discretion;

40 (17) The right not to be subjected to discrimination or harassment;

41 (18) The right to have access to information regarding available educational options;

42 (19) The right to receive a copy of, and receive an explanation of, the rights set forth in
43 this section from the child's guardian ad litem, caseworker, and attorney;

44 (20) The right to receive care consistent with the reasonable and prudent foster parent
45 standard; and

46 (21) The right to meet with the child's department case worker no less frequently than
47 every 30 days.

48 (b) The rights provided in this section do not create an independent cause of action.
49 Violations of these rights may be reported to and investigated by the foster care ombudsman. On
50 or before December 15, 2021 and on or before December 15 of every year thereafter, the foster
51 care ombudsman shall submit a written summary of the number and nature of reports received,

52 and investigations conducted in response to said reports, to the Joint Standing Committee on
53 Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor:
54 *Provided*, That the summary required by this section may not include any personally identifying
55 information of a person named in a report, or a person submitting a report to, the ombudsman.

§49-2-127. The Foster and Kinship Parent Bill of Rights.

1 (a) Foster parents and kinship parents play an integral, indispensable, and vital role in the
2 state's effort to care for children displaced from their homes, and such parents and persons have
3 the following rights:

4 (1) The right to be treated professionally and ethically as the primary provider of foster or
5 kinship care in accordance with the terms of the agreement between the foster or kinship parent
6 and the child placing agency and the department;

7 (2) The right to maintain the parent's or parents' own family values and beliefs, so long as
8 the values and beliefs of the child are not infringed upon;

9 (3) The right to receive training, as provided in the agreement with the child placing agency
10 and the department at appropriate intervals;

11 (4) The right to have an emergency contact 24 hours per day, seven days per week, as
12 set forth in the agreement between the foster or kinship parent and the child placing agency and
13 the department;

14 (5) The right, prior to the placement of a child, to be notified by the department and the
15 child placing agency of any known issues relative to the child that may jeopardize the health and
16 safety of the foster or kinship family or the child, or alter the manner in which foster or kinship care
17 should be administered;

18 (6) The right to receive from the department and the child placing agency, prior to
19 placement of a child, all known information relating to the child's behavior, family background,
20 health, history, or special needs and to receive updates relevant to the care of the child as
21 information becomes available;

22 (7) The right to be provided with a written copy of the individual treatment and service plan
23 concerning the child in the foster or kinship parent's home and to discuss such plan with the case
24 manager, and to receive reasonable notice of any changes to that plan, including timely notice of
25 the need to remove a child from the foster or kinship home and the reasons for the removal;

26 (8) The right to timely and reasonable notice of the department's case planning and
27 decision-making process regarding the child, as provided in §49-4-101 *et seq.* of this code, and
28 the right to participate in such process, in the discretion of the court;

29 (9) The right to communicate with professionals who work with the child, including, but not
30 limited to, therapists, physicians, and teachers, as permitted by the case plan or the court;

31 (10) The right to be notified, in advance, by the department or the court, of any hearing or
32 review where the case plan or permanency of the child is an issue, including initial and periodic
33 reviews held by the court and permanency plan hearings: *Provided*, That the right of a foster or
34 kinship parent to attend any hearing is in the discretion of the court;

35 (11) The right to be provided information regarding the final outcome of an investigation
36 of complaints concerning the operation of a foster or kinship home and to receive an explanation
37 of a corrective action plan or policy violation relating to foster or kinship parents;

38 (12) The right to be provided with information on how to contact the foster care
39 ombudsman, and to contact the foster care ombudsman's office, regarding alleged violations of
40 rights, to speak to representatives of these offices confidentially, and to be free from threats,
41 retaliation, or punishment for making complaints;

42 (13) The right to write a letter or submit a report to the court regarding a violation of the
43 rights provided in this section or §49-2-126 of this code, or any concerns over the conduct or
44 performance of the guardian ad litem, a representative of the department, or a representative of
45 the child placing agency, which the court may act upon as it deems in its discretion to be
46 appropriate: *Provided*, That the court may require the clerk to send copies of a letter or report,

47 submitted to the court pursuant to this subdivision, to the parties in the case prior to the court's
48 review or consideration of such communications;

49 (14) The right to be considered, where appropriate and consistent with the best interests
50 of the child, as a permanent parent or parents for a child who is available for adoption or legal
51 guardianship;

52 (15) The right to move to intervene in the pending case, without fear of retaliation, once
53 parental rights have been terminated; and

54 (16) The right to receive, from the department and the child placing agency, a written copy
55 of the rights set forth in this section and a copy of the contract between the department and the
56 child placing agency.

57 (b) The rights provided in this section do not create an independent cause of action.
58 Violations of these rights may be reported to and investigated by the foster care ombudsman. On
59 or before December 15, 2021 and on or before December 15 of every year thereafter, the foster
60 care ombudsman shall submit a written summary of the number and nature of reports received,
61 and investigations conducted in response to said reports, to the Joint Standing Committee on
62 Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor:
63 *Provided*, That the summary required by this section may not include any personally identifying
64 information of a person named in a report or a person submitting a report to the ombudsman.

§49-2-127a. Foster and kinship parent duties; foster parent and kinship parent agreements.

1 (a) The West Virginia Legislature finds that foster and kinship parents providing care for
2 children who are in the legal custody of the department have duties and contractual rights. The
3 duties and contractual rights shall be set forth in an agreement between the department and the
4 child placing agency and the foster or kinship parent. The duties of the foster or kinship parent
5 shall include, but are not limited to:

6 (1) The duty not to violate the rights of the child, provided in §49-2-126 of this code;

7 (2) The duty to provide all children in the parent's or parents' care with appropriate food,
8 clothing, shelter, supervision, medical attention, and educational opportunities using the
9 reasonable and prudent foster parent standard as defined in §49-2-128 of this code;

10 (3) The duty to complete the training required by the department and the child placing
11 agency and the foster or kinship parent;

12 (4) The duty to support reunification with the biological family unless it has been
13 determined not to be appropriate by the court;

14 (5) The duty not to divulge any information concerning the child's case or the child's family
15 to anyone except for the child's caseworker, the child's guardian ad litem, the child's attorney, the
16 child's Court Appointed Special Advocate (CASA) worker, the prosecuting attorney, the probation
17 officer, the multidisciplinary team, the foster care ombudsman, or the child's school or health care
18 provider;

19 (6) The duty to provide information to the caseworker and the guardian ad litem regarding
20 the child's progress, and to attend multi-disciplinary team meetings, case planning sessions, court
21 hearings, and to advise the court of any issues or concerns, in the court's discretion; and

22 (7) The duty to teach all children placed in their home age appropriate life skills.

23 (b) The duties of the department and the child placing agency shall include, but are not
24 limited to:

25 (1) The duty not to infringe upon the rights of the child, provided in §49-2-126;

26 (2) The duty not to infringe upon the rights of the kinship or foster parent, provided in in
27 §49-2-127; and

28 (3) The duty to abide by the provisions of the agreement required by this section.

29 (c) The terms of the agreement shall include the rights of the foster or kinship parent
30 provided in §49-2-127 of this code. The terms of the agreement shall also include, but not be
31 limited to:

32 (1) Provisions addressing what child care will be provided while the foster or kinship parent
33 attends required training;

34 (2) Provisions informing the foster or kinship parent of applicable laws and guidelines
35 regarding the responsibilities of the foster or kinship parent and provisions requiring that the foster
36 or kinship parent receive regular updates on changes to such laws and guidelines in a timely
37 manner;

38 (3) Provisions regarding required and available training for the foster or kinship parent;

39 (4) Provisions addressing payment to the foster or kinship parent;

40 (5) Provisions naming and addressing the emergency 24-hour contact provided by the
41 child placing agency and the department;

42 (6) Provisions addressing travel, including out-of-state and overnight travel;

43 (7) Provisions addressing child care for the child;

44 (8) Provisions addressing when a placement may be terminated by the foster or kinship
45 parent, the child placing agency, or the department;

46 (9) Provisions addressing medical care for the child, including how to obtain medical
47 consent for procedures; and

48 (10) Provisions addressing how complaints against the foster or kinship parent will be
49 handled and adjudicated, including provisions for appeal and review of the adjudication.

50 (d) The agreement may contain such other terms and provisions, not inconsistent with this
51 article, as may be negotiated by the parties and as may be in the best interests of the child.

52 (e) The requirements of this section apply to agreements, entered into on or after the
53 effective date of this section. Agreements entered into pursuant to this section shall expire on July
54 1 of each year and shall be renewed by the parties as necessary.

55 (f) The duties and requirements provided in this section do not create an independent
56 cause of action, including a cause of action for breach of contract. Violations of these rights may
57 be reported to and investigated by the foster care ombudsman. On or before December 15, 2021

58 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit
59 a written summary of the number and nature of reports received, and investigations conducted in
60 response to said reports, to the Joint Standing Committee on Government and Finance, the West
61 Virginia Supreme Court of Appeals, and the Governor: *Provided*, That the summary required by
62 this section may not include any personally identifying information of a person named in a report
63 or a person submitting a report to the ombudsman.

§49-2-128. Reasonable and prudent foster parent standard.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§49-2-129. Transitional living services, scattered-site living arrangements, and supervised
group settings; eligibility criteria.**

1 (a) The department shall establish minimum standards, by legislative rule, for transitional
2 living services, such as scattered-site living arrangements and supervised group settings, to which
3 all child placing agencies or child welfare agencies who provide this service must conform.

4 (b) Agencies shall establish eligibility criteria for serving transitioning children and adults
5 and shall require, at a minimum, the following:

6 (1) That a transitioning child or adult receiving a transitional living placement is between
7 16 and 26 years of age;

8 (2) Written permission from the child's parents or guardian for a child less than 18 years
9 of age to enter a scattered-site living arrangement;

10 (3) A written service agreement with a transitioning adult entering a transitional living
11 arrangement;

12 (4) A determination by an agency that a transitioning child or adult has shown that he or
13 she is stable, mature, and responsible enough for entry into the determined level of transitional
14 living arrangement;

15 (5) A life skills assessment by an agency of the transitioning child or adult, prior to placing
16 him or her in a transitional living arrangement, and an annual reassessment; and

17 (6) A written transition plan, developed with the transitioning child or adult, that provides
18 an educational, training, or employment program or a plan for the child or adult to pursue
19 employment while in transitional living.

20 (c) The agency and transitioning child or adult shall determine if a roommate is appropriate
21 for the child or adult prior to placement in a transitional living setting. The roommate must be able
22 to support himself or herself and contribute at least a pro rata share of the living expenses for the
23 setting.

24 (d) An agency shall document face-to-face contact and hours spent with a transitioning
25 child or adult in a transitional living setting in the service plan that meet the child's or adult's needs
26 and program level.

27 (e) After a child or adult is in a transitional living placement, an agency shall assess the
28 child's or adult's progress in acquiring basic living skills at a minimum of once every six months.

29 (f) An agency shall develop and implement policies and procedures to ensure that any
30 child or adult in a transitional living setting receives training and guidance on appropriate health
31 screening and services, including medical and dental screening and services.

32 (g) An agency shall develop policies and procedures for assisting a transitioning child or
33 adult in searching for an appropriate dwelling that will be used as a scattered-site living setting,
34 that meets the following criteria:

35 (1) The dwelling is safe and affordable;

36 (2) The dwelling has a working telephone or other means of communication in an
37 emergency;

38 (3) The dwelling has appropriate equipment for indoor cooking; and

39 (4) The dwelling has an appropriate water source for cooking, cleaning, and bathing.

40 (h) The department shall promulgate legislative rules, including emergency rules if
41 necessary, to implement the provisions of this section.

ARTICLE 4. COURT ACTIONS.

§49-4-601a. Preference of child placement.

1 When a child is removed from his or her home, placement preference is to be given to
2 relatives or fictive kin of the child. If a child requires out-of-home care, placement of a child with a
3 relative is the least restrictive alternative living arrangement. The department must diligently
4 search for relatives of the child and fictive kin within the first days of a child's removal and must
5 identify and provide notice of the child's need for a placement to relatives and fictive kin who are
6 willing to act as a foster or kinship parent.

7 (1) After a petition alleging abuse and neglect of a child is filed, the department shall
8 commence a search for every relative and fictive kin of the child.

9 (2) No later than seven calendar days after the petition for removal has been filed, the
10 department shall file, with the court, a list of all of the relatives and fictive kin of the child known

11 to the department at the time of the filing, whether or not those persons have expressed a
12 willingness to take custody of the child.

13 (3) Within seven days after the department files the list described in subdivision (2) of this
14 subsection, any party to the case may file, with the court, his or her own list containing names
15 and addresses of relatives and fictive kin of the child.

16 (4) The department shall investigate and determine whether any of the persons identified
17 in the lists filed pursuant to this section are willing and able to act as foster or kinship parents to
18 the child. The department shall file its determinations with the court within 45 days from the filing
19 of the petition alleging abuse or neglect of a child.

§49-4-601b. Substantiation by the department of abuse and neglect.

1 (a) Notwithstanding any provision of this code to the contrary, when the department
2 substantiates an allegation of abuse or neglect against a person, but there is no judicial finding of
3 abuse or neglect as a result of the allegation, the department shall provide written notice of the
4 substantiation to the person by certified mail, return receipt requested.

5 (b) The individual against whom an abuse or neglect allegation has been substantiated,
6 as described in subsection (a) of this section, has the right to contest the substantiation by filing
7 a grievance with the board of review of the department and has the right to appeal the decision
8 of the board of review to the court, in accordance with the provisions of §29A-5-1 *et seq.* of this
9 code regarding administrative appeals.

10 (c) The secretary of the department shall promulgate legislative rules in accordance with
11 §29A-3-1 *et seq.* of this code, within the applicable time limit to be considered by the Legislature
12 during its regular session in the year 2021, which rules shall include, at a minimum:

13 (1) Provisions for ensuring that an individual against whom the department has
14 substantiated an allegation of abuse and neglect, but against whom there is no judicial finding of
15 abuse or neglect, receives written notice of the substantiation in a timely manner. The written
16 notice must, at a minimum, state the following:

17 (A) The name of the child the person is alleged to have abused or neglected, the place or
18 places where the abuse or neglect allegedly occurred, and the date or dates on which the abuse
19 or neglect is alleged to have occurred;

20 (B) That the person has a right to file a grievance protesting the substantiation of abuse
21 and neglect with the board of review of the department and clear instructions regarding how to
22 file a grievance with the board of review, including a description of any applicable time limits;

23 (C) That the person has a right to appeal an adverse decision of the board of review of
24 the department to the courts and notice of any applicable time limits; and

25 (D) A description of any public or nonpublic registry on which the person's name will be
26 included as a result of a substantiated allegation of abuse and neglect and a statement that the
27 inclusion of the person's name on the registry may prevent the person from holding jobs from
28 which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

29 (2) Provisions for ensuring that a person against whom an allegation of abuse and neglect
30 has been substantiated, but against whom there is no judicial finding of abuse or neglect, may file
31 a grievance with the department and provisions guaranteeing that any such person will have a
32 full and fair opportunity to be heard; and

33 (3) Provisions requiring the department to remove a person's name from an abuse and
34 neglect registry maintained by the department if a substantiation is successfully challenged in the
35 board of review or in a court.

**§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 or kinship parents in order to improve the conditions that
11 made the child unsafe in the care of his or her parent(s), including any reasonable
12 accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C.
13 §12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to
14 reunification and family 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 kinship 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) *Requirements for a Guardian ad litem.* —

34 A guardian ad litem appointed pursuant to §49-4-601(f)(1) of this code, shall, in the
35 performance of his or her duties, adhere to the requirements of the Rules of Procedure for Child
36 Abuse and Neglect Proceedings and the Rules of Professional Conduct and such other rules as
37 the West Virginia Supreme Court of Appeals may promulgate, and any appendices thereto, and
38 must meet all educational requirements for the guardian ad litem. A guardian ad litem may not be
39 paid for his or her services without meeting the certification and educational requirements of the
40 court. The West Virginia Supreme Court of Appeals is requested to provide guidance to the judges
41 of the circuit courts regarding supervision of said guardians ad litem. The West Virginia Supreme
42 Court of Appeals is requested to review the Rules of Procedure for Child Abuse and Neglect
43 Proceedings and the Rules of Professional Conduct specific to guardians ad litem.

44 (c) *Disposition decisions.* — The court shall give precedence to dispositions in the
45 following sequence:

46 (1) Dismiss the petition;

47 (2) Refer the child, the abusing parent, the battered parent or other family members to a
48 community agency for needed assistance and dismiss the petition;

49 (3) Return the child to his or her own home under supervision of the department;

50 (4) Order terms of supervision calculated to assist the child and any abusing parent or
51 battered parent or parents or custodian which prescribe the manner of supervision and care of
52 the child and which are within the ability of any parent or parents or custodian to perform;

53 (5) Upon a finding that the abusing parent or battered parent or parents are presently
54 unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the
55 care, custody, and control of the department, a licensed private child welfare agency, or a suitable
56 person who may be appointed guardian by the court. The court order shall state:

57 (A) That continuation in the home is contrary to the best interests of the child and why;

58 (B) Whether or not the department has made reasonable efforts, with the child's health
59 and safety being the paramount concern, to preserve the family, or some portion thereof, and to
60 prevent or eliminate the need for removing the child from the child's home and to make it possible
61 for the child to safely return home;

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

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

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

71 (i) Be considered for legal guardianship;

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

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

80 (6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or
81 abuse can be substantially corrected in the near future and, when necessary for the welfare of
82 the child, terminate the parental, custodial and guardianship rights and responsibilities of the

83 abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if
84 there be one, or, if not, to either the permanent guardianship of the department or a licensed child
85 welfare agency. The court may award sole custody of the child to a nonabusing battered parent.
86 If the court shall so find, then in fixing its dispositional order the court shall consider the following
87 factors:

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

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

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

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

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

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

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

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

112 (A) The parent has subjected the child, another child of the parent or any other child
113 residing in the same household or under the temporary or permanent custody of the parent to
114 aggravated circumstances which include, but are not limited to, abandonment, torture, chronic
115 abuse, and sexual abuse;

116 (B) The parent has:

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

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

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

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

128 (v) Attempted or conspired to commit malicious assault, as outlined in subparagraph (iv),
129 or been an accessory before or after the fact to the same;

130 (vi) Committed sexual assault or sexual abuse of the child, the child's other parent,
131 guardian, or custodian, another child of the parent, or any other child residing in the same
132 household or under the temporary or permanent custody of the parent; or

133 (vii) Attempted or conspired to commit sexual assault or sexual abuse, as outlined in
134 subparagraph (vi), or been an accessory before or after the fact to the same.

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

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

140 (d) As used in this section, "No reasonable likelihood that conditions of neglect or abuse
141 can be substantially corrected" means that, based upon the evidence before the court, the
142 abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse
143 or neglect on their own or with help. Those conditions exist in the following circumstances, which
144 are not exclusive:

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

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

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

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

159 (5) The abusing parent or parents have repeatedly or seriously injured the child physically
160 or emotionally, or have sexually abused or sexually exploited the child, and the degree of family

161 stress and the potential for further abuse and neglect are so great as to preclude the use of
162 resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling
163 their responsibilities to the child; and

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

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

175 (f) The court may not terminate the parental rights of a parent on the sole basis that the
176 parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 *et*
177 *seq.*, for substance use disorder, as long as the parent is successfully fulfilling his or her treatment
178 obligations in the medication-assisted treatment program.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor