

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4092

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HANNA, WORRELL, ESTEP-BURTON, LAVENDER-BOWE,
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[Originating in the Committee on Finance; February
12, 2020.]

1 A BILL 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 two new sections designated, §49-2-
5 127, §49-2-128, and §49-2-129; and to amend and reenact §49-4-604, of said code; all
6 relating to foster care; defining terms; increasing the number children allowed in a foster
7 care family; setting forth the requirements of performance based contracting; requiring
8 certain moneys to be used in setting the rate for performance based contracting; requiring
9 the department to create a tiered reimbursement model; setting payment minimums;
10 providing rulemaking authority; establishing the rights of foster children; establishing the
11 rights of foster parents; establishing the rights of certified kinship placements; setting forth
12 the reasonable and prudent parent standard; establishing criteria for scattered-site living
13 arrangements; establishing the criteria for supervised group settings; requiring the
14 department promulgate emergency rules; setting forth reporting requirements of a
15 guardian ad litem; and removing non applicable 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, 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 “Kinship placement” means a certified kinship placement.

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

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

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

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

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

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

127 (D) A criminal sexual conduct offense; or

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

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

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

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

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

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

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

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

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

156 “Scattered-Site Living Arrangement” means a living arrangement where youth, age 17 to
157 26, live in a setting that allows staff to be available as needed depending on the youth’s level of
158 autonomy. Sites shall be in community environments to allow the youth full access to services
159 and resources in order to fully develop independent living skills.

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

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

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

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

173 “Supervised Group Setting” means a setting where youth 17 to 21 live with staff onsite or
174 are available 24 hours per day and 7 days per week. In this setting, staff provide face to face
175 daily contact with youth.

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

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

185 “Truancy diversion specialist” means a school-based probation officer or truancy social
186 worker within a school or schools who, among other responsibilities, identifies truants and the
187 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior
188 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 children
3 who have been neglected or delinquent, or mentally or physically handicapped children have
4 special needs such as physical, mental or intellectual disabilities, and shall supervise those
5 agencies. The department, in cooperation with child welfare agencies, shall formulate and make
6 available standards of child care and services for children, to which all child welfare agencies
7 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.

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

1 (a) For purposes of this section:

2 (1) "Child" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (A) Safety outcomes;

36 (B) Permanency outcomes;

37 (C) Well-being outcomes;

38 (D) Incentives earned; and

39 (E) 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 department shall pay a child placing agency contracted to provide foster family
68 home care a minimum daily rate of at least \$75 for services provided to each child in placement.
69 In addition, the child placing agency will reimburse foster parents at least 40% of the minimum
70 daily rate for services provided to each child placed in the foster family home. Families fostering
71 directly through the department, including certified kinship providers, shall be provided at least
72 \$900 per month for each child placed in their home. The rate shall be reviewed by the Department
73 of Health and Human Resources at minimum of every three years to determine whether the level
74 of foster care payments facilitate or hinder the efficient placement of foster children with West
75 Virginia families.

76 (l) The department shall report the performance of the child placing agency to the
77 Legislative Oversight Commission on Health and Human Resources Accountability by December
78 31, annually.

§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.~~

§49-2-126. 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 fo 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) When placed with a foster family, to be matched as closely as possible with a family
53 with consideration for the child's needs, ability to remain with siblings, religious preferences, and
54 other factors which may be important to the child and family.

55 (3) To be free from physical, sexual, psychological, or other abuse, exploitation or corporal
56 punishment.

57 (4) To receive adequate and healthy food, adequate fitting clothing, and a travel bag.

58 (5) To receive medical, dental, vision, mental health services, and substance use
59 treatment services, as needed;

60 (6) To be informed and consulted on any medication or chemical substance to be
61 administered as appropriate with the child's age and development level,

62 (7) To contact and communicate privately, including confidential telephones calls and
63 unopened mail, with caseworkers, guardians ad litem, attorneys, Court Appointed Special
64 Advocates (CASA), and probation officers.

65 (8) To visit and contact siblings as may be reasonably accommodated, unless prohibited
66 by court order, the case plan, or other extenuating circumstances.

67 (9) To contact the department or the foster care ombudsperson regarding violations of
68 rights, to speak to representatives of these offices confidentially, and to be free from threats,
69 retaliation, or punishment for making complaints.

70 (10) To make and receive confidential telephone calls and send and receive unopened
71 mail, to family members, including biological parents, unless prohibited by court order or the case
72 plan.

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

75 (12) To attend religious services and activities of his or her choice to the extent possible.

76 (13) To manage personal income, consistent with the child's age and developmental level,
77 unless prohibited by the case plan.

78 (14) To be free from unwarranted physical restraint and isolation.

79 (15) To attend school, the foster child's school of origin if feasible, and participate in
80 extracurricular, cultural, and personal enrichment activities, consistent with the child's age and
81 developmental level, and with foster family's ability to provide specific activities with consideration
82 for finances and scheduling.

83 (16) To work and develop job skills at an age-appropriate level that is consistent with the
84 child's age and developmental level.

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

87 (18) To attend Independent Living Program classes and activities if he or she meets age
88 requirements.

89 (19) To attend court hearings and speak directly to the judge.

90 (20) To have storage space for private use.

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

94 (22) To be free from unreasonable searches of personal belongings consistent with the
95 reasonable and prudent parent standard and the child's age and developmental level.

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

98 (24) As soon as developmentally appropriate, to have access to existing information
99 regarding the educational options available, including, but not limited to, the coursework
100 necessary for vocational and postsecondary educational programs, and information regarding
101 financial aid for postsecondary education.

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

104 (26) To receive a copy of and have explained the rights set forth in this section by the
105 child's guardian ad litem or attorney.

106 (27) To receive care to a reasonable and prudent parent standard, appropriate to the age
107 and development level of the child.

108 (b) The rights provided for in this section do not create grounds for a civil action against
109 the state. Violation of these rights shall be investigated by the foster care ombudsman.

110 (c) The rights provided for in this section supersede the rights provided for in §49-2-127
111 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 department at
13 appropriate intervals to meet mutually assessed needs of the child and to improve foster parents'
14 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 by the Bureau of Children and Families of information, laws,
21 and guidelines on the obligations, responsibilities, and opportunities of foster parenting and to be
22 kept updated of any changes in laws, policies, and procedures regarding foster parenting in a
23 timely manner and at least annually;

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

28 (8) The right to have an emergency contact 24 hours per day, seven days per week. For
29 the department, the Centralized Intake Hotline satisfies this right.

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

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

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

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

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

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 department regarding the child as provided in §49-4-101 et seq.
55 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 the 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, by the department or the court of any hearing or
61 review where the case plan or permanency of the child is an issue, including initial and periodic
62 reviews held by the court, and permanency plan hearings;

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

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

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

72 (23) The right to be provided with information on how to contact the Foster Care
73 Ombudsman, and to contact the Foster Care Ombudsman's office regarding violations of rights,
74 to speak to representatives of these offices confidentially, and to be free from threats, retaliation,
75 or punishment for making complaints.

76 (24) The right to intervene when the time limitations contained in §49-4-605(a) or §49-4-
77 610(9) of this code are implicated without fear of retaliation.

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

83 (26) The right to receive a written copy of the rights set forth in this section upon
84 certification and upon request.

85 (b) The West Virginia Legislature finds that foster parents and kinship placements
86 providing care for children who are in the custody of the department have responsibilities and
87 duties including, but not limited to:

88 (1) To not violate the rights of the foster child listed in §49-2-126 of this code;

89 (2) To provide all children placed in their care with appropriate food, clothing, shelter,
90 supervision, medical attention and educational needs using the reasonable and prudent parent
91 standard as defined in §49-2-128 of this code;

92 (3) To treat all biological families with respect, to speak respectfully about the biological
93 family to the child, and to support reunification with the biological family when determined to be
94 appropriate by the court or case plan;

95 (4) To not divulge any information concerning the child's case or the child's family to
96 anyone outside of the child's caseworker, guardian ad litem, attorney, Court Appointed Special
97 Advocate (CASA) worker, probation officer, multidisciplinary team, foster care ombudsman,
98 school or health care provider;

99 (5) To provide information to the caseworker regarding the child's progress and attend
100 multi-disciplinary team meetings, case planning sessions, court hearings, and to advise the court
101 of any issues or concerns, when reasonably requested and the foster parent's availability is taken
102 into account;

103 (6) To teach all children placed in their home age appropriate life skills; and

104 (7) To treat all children in their home equally.

105 (c) At times, the rights provided in subsection (a) may be in conflict with the rights of the
106 foster child provided in §49-2-126 of this code. The rights of the foster child preempt the rights of
107 the foster parent.

108 (d) The rights provided for in this section do not create grounds for a civil action against
109 the state. Violation of these rights shall be investigated 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 or a kinship placement to
12 participate in 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 must notify the child's caseworker for any
33 overnight stays longer than 24 hours. If the foster parent or kinship placement requests approval
34 from the caseworker at least ten days before travel and caseworker does not respond to the
35 request within three days of the request, the request is deemed approved: *Provided*, That
36 overnight travel has not previously been prohibited by a court order in the child's case.
37 Notifications and requests may be made to the caseworker by telephone or electronically.

38 (f) There is created a rebuttable presumption that a care giver has acted as a reasonable
39 and prudent parent.

40 (g) A caregiver is not liable for harm caused to a child in care who participates in an activity
41 approved by the caregiver, provided that the caregiver has acted as a reasonable and prudent
42 parent, unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly
43 negligent, reckless or criminal conduct.

§49-2-129. Transitional Living Services, Scattered-Site Living Arrangements and Supervised Group Settings; eligibility criteria.

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

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

6 (1) Age requirements for child receiving transitional living placement is 17 years of age,
7 but not more than 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 child has shown that he or she is stable, mature
13 and responsible enough for entry into the determined level of transitional living arrangement;

14 (5) A life skills assessment by an agency of a child's prior to placing him or her in a
15 transitional living arrangement and renewed annually; and

16 (6) A written transition plan developed with the child that identifies educational or training
17 program or employment or pursuance of employment by the child in transitional living.

18 (c) The agency and child shall determine if a roommate is appropriate for a child prior to
19 placement in transitional living settings. The roommate must be able to support himself or herself
20 and contribute at least one-half of the living expenses for the scattered-site setting.

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

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

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

28 (g) An agency shall develop policies and procedures for assisting child in searching for an
29 appropriate dwelling that will be used as a scattered-site living setting that includes the following
30 provisions:

31 (1) A safe and affordable dwelling; and

32 (2) A dwelling has a working telephone or other means of communication in an emergency,
33 indoor cooking and an appropriate water source for cooking, cleaning and bathing.

34 (h) The Legislature finds that an emergency exists and the Department shall promulgate
35 emergency rules pursuant to the provisions of §29A-3-1 et seq. of this code, and shall promulgate
36 a legislative rule to implement the provisions of this section.

ARTICLE 4. COURT ACTIONS.

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

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

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

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

19 The term “permanency plan” refers to that part of the case plan which is designed to
20 achieve a permanent home for the child in the least restrictive setting available. The plan must

21 document efforts to ensure that the child is returned home within approximate time lines for
22 reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal
23 guardian should be made at the same time, or concurrent with, reasonable efforts to prevent
24 removal or to make it possible for a child to return to the care of his or her parent(s) safely. If
25 reunification is not the permanency plan for the child, the plan must state why reunification is not
26 appropriate and detail the alternative, concurrent permanent placement plans for the child to
27 include approximate time lines for when the placement is expected to become a permanent
28 placement. This case plan shall serve as the family case plan for parents of abused or neglected
29 children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian
30 or custodian or their counsel at least five days prior to the dispositional hearing. The court shall
31 forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be
32 heard.

33 (b) Report of Guardian ad Litem. A guardian ad litem, appointed pursuant to §49-4-
34 601(f)(1) of this code, shall conduct an independent investigation of the facts of the case; meet
35 with the child face-to-face, unless the court specifically determines that such a meeting would be
36 inappropriate given the age, medical or psychological condition of the child; actively participate in
37 all aspects of litigation; and provide a thoroughly analyzed and meaningful recommendation to
38 the court. The guardian ad litem shall submit a written report to the court prior to the dispositional
39 hearing. Copies of the guardian ad litem's report shall be sent to the parties or their counsel and,
40 upon discretion of the court, to persons entitled to notice and the right to be heard at least five
41 days prior to the dispositional hearing. A dispositional hearing may proceed without a written
42 guardian ad litem report if the parties have waived the requirement that the guardian ad litem's
43 report be submitted prior to disposition, and upon a finding of good cause by the presiding judge.
44 Upon petition of the guardian ad litem, the court, in its discretion, may seal the report or redact
45 information contained in the report. Guardians ad litem are precluded from testifying, but may

46 proffer, as to any aspect of the report. The report shall include, at a minimum, the following
47 information:

48 (1) A brief summary of the procedural posture of the case;

49 (2) The dates the guardian ad litem had contact with the child and the nature of the contact;

50 (3) The names of each person interviewed, the date of the interview, and the person's
51 relationship to the child;

52 (4) A summary of the information obtained from the interviews and observations obtained
53 from the investigation;

54 (5) The documents reviewed during the course of the investigation and a brief summary
55 of the contents;

56 (6) The child's placement history, visitation schedule, and current status of the child's
57 education, health, services, and contact with siblings and relatives;

58 (7) The parents' current status and ability to care for the child;

59 (8) When appropriate, the child's expressed wishes and any issue that the child requests
60 that the court consider;

61 (9) The recommendation of the guardian ad litem that addresses the best interest of child
62 regarding custody, visitation, and permanent placement;

63 (10) Obtain the signature of a foster parent or kinship placement indicating that the visit
64 took place at the home of the foster parent or kinship placement; and

65 (11) A statement indicating the reason any witnesses including the foster parents were not
66 interviewed by the guardian ad litem if those witnesses were requested to be interviewed.

67 ~~(b)~~ (c) Disposition decisions. — The court shall give precedence to dispositions in the
68 following sequence:

69 (1) Dismiss the petition;

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

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

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

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

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

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

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

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

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

94 (i) Be considered for legal guardianship;

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

96 (iii) Be placed in another planned permanent living arrangement, but only in cases where
97 the child has attained 16 years of age and the department has documented to the circuit court a

98 compelling reason for determining that it would not be in the best interests of the child to follow
99 one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order
100 services to meet the special needs of the child. Whenever the court transfers custody of a youth
101 to the department, an appropriate order of financial support by the parents or guardians shall be
102 entered in accordance with §49-4-801 through §49-4-803 of this code;

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

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

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

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

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

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

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

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

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

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

139 (B) The parent has:

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

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

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

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

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

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

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

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

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

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

172 (3) The abusing parent or parents have not responded to or followed through with a
173 reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or

174 other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as
175 evidenced by the continuation or insubstantial diminution of conditions which threatened the
176 health, welfare, or life of the child;

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

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

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

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

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