

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2094

BY DELEGATE GRAVES, ESPINOSA, SUMMERS, HANNA, B.

WARD, PRITT, J. PACK, BURKHAMMER, L. PACK, CAPITO

AND BARNHART

[Passed April 1, 2021; in effect ninety days from passage.]

1 AN ACT to amend and reenact §49-1-206 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §49-4-725 of said code, all relating to the juvenile restorative justice
3 programs; defining the term “restorative justice program”; authorizing a court or
4 prosecuting attorney to offer a juvenile, against whom a petition has been filed alleging
5 that the juvenile has committed certain offenses, the opportunity to participate in a
6 voluntary restorative justice program, where available, at any time prior to disposition of
7 the case; listing offenses alleged to have been committed by a juvenile eligible for
8 participation in a restorative justice program; authorizing the juvenile or victim or both to
9 decline participation in a restorative justice program; providing for future participation in a
10 restorative justice program after any declination by a juvenile or victim or both; requiring
11 certain measures agreed to by the victim and juvenile to be included in a restorative justice
12 program to provide redress to the victim and community; requiring dismissal of a petition
13 against a juvenile upon successful completion of a restorative justice program including
14 all agreed-to measures; clarifying information which is inadmissible against a juvenile in a
15 subsequent proceeding.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

1 When used in this chapter, 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 “Restorative justice program” means a voluntary, community based program which utilizes
165 evidence-based practices that provide an opportunity for a juvenile to accept responsibility for and
166 participate in setting consequences to repair harm caused by the juvenile against the victim and
167 the community by means of facilitated communication including, but not limited to, mediation,
168 dialogues, or family group conferencing, attended voluntarily by the victim, the juvenile, a
169 facilitator, a victim advocate, community members, or supporters of the victim or the juvenile.

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

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

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

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

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

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

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

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

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

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

ARTICLE 4. COURT ACTIONS.

§49-4-725. Restorative justice programs.

1 (a) The court or prosecuting attorney may offer a juvenile, against whom a petition has
2 been filed alleging that the juvenile has committed any of the offenses set forth in subsection (b)

3 of this section, the opportunity to participate in a voluntary restorative justice program, where
4 available, at any time prior to disposition of the case.

5 (b) A juvenile is eligible to participate in a restorative justice program if the offense that the
6 juvenile is alleged to have committed is:

7 (1) A status offense;

8 (2) An offense that would constitute a nonviolent offense if committed by an adult;

9 (3) An offense that would constitute misdemeanor assault pursuant to §61-2-9(b) of this
10 code if committed by an adult; or

11 (4) An offense that would constitute misdemeanor battery pursuant to §61-2-9(c) of this
12 code if committed by an adult.

13 (c) The juvenile or the victim or both may decline and shall not be required to participate
14 in a restorative justice program: *Provided*, That any declination by the juvenile or the victim or
15 both shall not preclude future participation in a restorative justice program during the current
16 proceeding or any subsequent proceeding under this article.

17 (d) A restorative justice program shall implement measures agreed to by the victim and
18 the juvenile which are designed to provide redress to the victim and community, including, but not
19 limited to, restitution to the victim, restitution to the community, services for the victim, services
20 for the community, or any other reasonable measure intended to provide restitution or services to
21 the victim or the community.

22 (e) If a juvenile is referred to, and successfully completes, a restorative justice program,
23 including all agreed-to measures pursuant to subsection (d) of this section, the petition against
24 the juvenile shall be dismissed.

25 (f) No self-incriminating information obtained from the juvenile as the result of a restorative
26 justice program is admissible as evidence against him or her in a subsequent proceeding under
27 this article.

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, 2021.

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Governor