WEST VIRGINIA LEGISLATURE 2023 REGULAR SESSION

Committee Substitute

for

House Bill 2150

By Delegate McGeehan

[Originating in the Committee on the Judiciary;

Reported on February 10, 2023]

A BILL to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §49-4-712a, all relating to requiring parents, guardians, or custodians to participate in programs for juveniles in an out-of-home placement unless there is a finding by the court that said participation is not in the best interest of the juvenile; requiring certain services to include programs that require the participation of parents, guardians, or custodians unless there is a finding by the court that said participation is not in the best interest of the juvenile; requiring provisions in a valid court order to enforce certain compliance mandating that parents, guardians, or custodians participate in programs for juveniles in an out-of-home placement; and requiring parents, guardians, or custodians to participate in programs designed for out-of-home placement including family therapy sessions offered by the treatment provider unless there is a finding by the court that said participation is not in the best interest of the juvenile.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders in a Division of Juvenile Services facility on or after January 1, 2016.

(a) The services provided by the department for juveniles adjudicated as status offenders shall be consistent with §49-2-1001 *et seq.* of this code and shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational or other social services, as appropriate to the needs of

- the juvenile and his or her family. Services shall include programs that require the participation of a parent, guardian, or custodian unless there is a finding by the court that participation by a parent, guardian or custodian is not in the best interest of the juvenile.
 - (b) If the juvenile, or his or her parent, guardian or custodian, fails to comply with the services provided in subsection (a) of this section, the department may petition the circuit court:
 - (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan, <u>including a mandate</u> that a parent, guardian, or custodian participate in programs for juveniles in an out-of-home placement; or
 - (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile adjudicated as a status offender may not be placed in an out-of-home placement, excluding placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or probation for the current matter: *Provided*, *however*, That if the court finds by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member or the public and continued placement in the home is contrary to the best interests of the juvenile, such juvenile may be ordered to an out-of-home placement: *Provided further*, That the court finds the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that such reasonable efforts are not required due to an emergent situation.
 - (c) In ordering any further disposition under this section, the court, is not limited to, the relief sought in the department's petition and shall make reasonable efforts to prevent removal of the juvenile from his or her home or, as an alternative, to place the juvenile in a community-based facility which is the least restrictive alternative appropriate to the needs of the juvenile and the community. The disposition may include reasonable and relevant orders to the parents, guardians or custodians of the juvenile as is necessary and proper to effectuate the disposition.

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in the best interest of the juvenile.

33	(d) (1) If the court finds that placement in a residential facility is necessary to provide the					
34	services under subsection (a) of this section, except as prohibited by subdivision (2), subsection					
35	(b) of this section, the court shall make findings of fact as to the necessity of this placement, stated					
36	on the record or reduced to writing and filed with the record or incorporated into the order of the					
37	court.					
38	(2) The findings of fact shall include the factors that indicate:					
39	(A) The likely effectiveness of placement in a residential facility for the juvenile; and					
40	(B) The community services which were previously attempted.					
11	(e) The disposition of the juvenile may not be affected by the fact that the juvenile					
12	demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than					
43	mandatory referral to the department for services is subject to appeal to the Supreme Court of					
14	Appeals.					
1 5	(f) Following any further disposition by the court, the court shall inquire of the juvenile					
16	6 whether or not appeal is desired and the response shall be transcribed; a negative response may					
17	7 not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made					
18	8 available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings.					
19	A judge may grant a stay of execution pending further proceedings.					
50	(g) A juvenile adjudicated solely as a status offender on or after January 1, 2016, may not					
51	be placed in a Division of Juvenile Services facility					
	§49-4-712a. Parents mandated to participate in outside the home treatment programs.					
1	A parent, guardian, or custodian shall be required to participate in programs designed for					
2	out-of-home placement including family therapy sessions offered by the treatment provider					

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unless there is a finding by the court that participation by any parent, guardian, or custodian is not

NOTE: The purpose of this bill is to require parents or guardians to participate in programs for juveniles in an out-of-home placement provided there is not a court finding that said participation is not in the best interest of the juvenile.

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