

# **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]





7 the juvenile and his or her family. Services shall include programs that require the participation of a  
8 parent, guardian, or custodian unless there is a finding by the court that participation by a parent,  
9 guardian or custodian is not in the best interest of the juvenile.

10 (b) If the juvenile, or his or her parent, guardian or custodian, fails to comply with the  
11 services provided in subsection (a) of this section, the department may petition the circuit court:

12 (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance with  
13 a service plan or to restrain actions that interfere with or defeat a service plan, including a mandate  
14 that a parent, guardian, or custodian participate in programs for juveniles in an out-of-home  
15 placement; or

16 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure  
17 setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile  
18 adjudicated as a status offender may not be placed in an out-of-home placement, excluding  
19 placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status  
20 or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or  
21 probation for the current matter: *Provided, however*, That if the court finds by clear and convincing  
22 evidence the existence of a significant and likely risk of harm to the juvenile, a family member or  
23 the public and continued placement in the home is contrary to the best interests of the juvenile,  
24 such juvenile may be ordered to an out-of-home placement: *Provided further*, That the court finds  
25 the department has made all reasonable efforts to prevent removal of the juvenile from his or her  
26 home, or that such reasonable efforts are not required due to an emergent situation.

27 (c) In ordering any further disposition under this section, the court, is not limited to, the  
28 relief sought in the department's petition and shall make reasonable efforts to prevent removal of  
29 the juvenile from his or her home or, as an alternative, to place the juvenile in a community-based  
30 facility which is the least restrictive alternative appropriate to the needs of the juvenile and the  
31 community. The disposition may include reasonable and relevant orders to the parents, guardians  
32 or custodians of the juvenile as is necessary and proper to effectuate the disposition.

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.

41 (e) The disposition of the juvenile may not be affected by the fact that the juvenile  
42 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  
44 Appeals.

45 (f) Following any further disposition by the court, the court shall inquire of the juvenile  
46 whether or not appeal is desired and the response shall be transcribed; a negative response may  
47 not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made  
48 available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings.  
49 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  
3 unless there is a finding by the court that participation by any parent, guardian, or custodian is not  
4 in the best interest of the juvenile.

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.