

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4656

By Delegates Ellington, Statler, Toney, Akers, Willis,

Hornby, Crouse, Pritt, Mallow, and Dittman

[Introduced January 21, 2026; referred to the

Committee on Education then the Judiciary]

1 A BILL to amend and reenact §18-8-1a, §18-8-2, §18-8-4, §18-8-5, §18-8-6a, §21-6-9, §49-1-202,
2 §49-1-206, §49-4-701, §49-4-702, §49-4-702a, §49-4-711 and §49-4-712 of the Code of
3 West Virginia, 1931, as amended, relating to chronic absenteeism; providing that the
4 compulsory school attendance requirement ends on the student's 18th birthday; providing
5 that students with exceptionalities may be required to meet different attendance measures;
6 removing criminal penalties for 18 year old students who are chronically absent; adding
7 definitions for chronically absent or chronic absenteeism and student support specialist;
8 providing that 18 year olds shall receive the same notice of unexcused absences as
9 parents, guardians, and custodians; providing that upon recommendation of the teacher,
10 social worker, or principal, the school may refer the student to the Department of Human
11 Services for Wrap Around Services; providing that a student who is 18 years old and has
12 10 unexcused absences shall be advised of the consequences of failing to comply with
13 attendance policies; adding coordination of wrap around services with the department of
14 human services to county attendance director duties; removing obsolete or conflicting
15 statutory language regarding principal, administrative head, or other chief administrator
16 duties and clarifying their duty to ensure compliance with compulsory attendance
17 requirements; providing that if a student who is under 18 years of age is found to be
18 chronically absent, the county prosecutor may petition the circuit court for protection of the
19 student as a child in need of supervision pursuant to juvenile justice provisions; amending
20 legislative appropriation language to match new definitions; removing reference to truancy
21 officers in child labor enforcement section; defining child in need of supervision; replacing
22 truancy support specialist definition with definition of student support specialist; replacing
23 references to truancy support specialist with student support specialist; establishing
24 juvenile jurisdiction of circuit courts for juveniles who are chronically absent; providing that
25 effective July 1, 2026, truancy is no longer a status offense and that jurisdiction over
26 chronically absent juveniles will continue as a child in need of supervision; providing that

27 any pending truancy charges shall be dismissed, provided that if the juvenile's best
28 interests are served by the continued participation in a diversion program, that program
29 may be continued; providing that chronically absent students may be referred to a
30 prepetition diversion program; clarifying the court's role in monitoring prepetition diversion
31 programs; providing that chronically absent students may be referred noncustodial
32 counseling or community services; removing truancy as a status offense; clarifying the
33 court's role in providing intervention on behalf of a child in need of supervision; providing
34 that a child in need of supervision may not be placed in out-of-home placement or a Bureau
35 of Juvenile Services facility; and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE

§18-8-1a. Commencement and termination of compulsory school attendance; public

school	entrance	requirements;	exceptions.
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1 (a) Notwithstanding the provisions of section one of this article, compulsory school
2 attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such
3 year or upon enrolling in a full-time publicly funded kindergarten program, and continues to the
4 17th 18th birthday: or for as long as the student continues to be enrolled in a school system after
5 ~~the 17th birthday~~ Provided, That students with exceptionalities may be required to meet different
6 attendance measures consistent with §18-20-1 of this code.

7 (1) A child may be removed from such kindergarten program when the parent or guardian
8 determines that the best interest of the child would not be served by requiring further attendance:
9 Provided, That the principal shall make the final determination with regard to compulsory school
10 attendance in a publicly supported kindergarten program.

11 (2) The compulsory school attendance provision of this article shall be enforced against a
12 ~~person 18 years of age or older for as long as the person continues to be enrolled in a school~~

13 system and may not be enforced against the parent, guardian, or custodian of the a person 18
14 years of age or older.

15 (3) Notwithstanding the provisions of section one of this article, compulsory school
16 attendance begins with the school year in which the sixth birthday is reached prior to September 1
17 of such year or upon enrolling in a publicly supported kindergarten program and continues to the
18 seventeenth birthday or for as long as the student continues to be enrolled in a school system after
19 the 17th birthday: *Provided*, That beginning in the school year 2019-2020, compulsory school
20 attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such
21 year or upon enrolling in a publicly supported kindergarten program

22 (b) A parent, as defined in §18-31-2 of this code, shall have the option, prior to enrolling in a
23 publicly supported kindergarten program, to apply for a Hope Scholarship on behalf of his or her
24 child as set forth in §18-31-1 *et seq.* of this code. Every year thereafter, a parent shall have the
25 option to renew his or her child's enrollment in the Hope Scholarship Program pursuant to §18-31-
26 8 of this code.

27 (c) Attendance at a state-approved, nonpublic kindergarten program, including a
28 Montessori kindergarten program as provided in §18-5-18 of this code, homeschool kindergarten
29 program, Hope Scholarship kindergarten program, or private, parochial, or church kindergarten
30 program recognized under §18-8-1(k) of this code is deemed school attendance for the purposes
31 of this section. Students entering the public school system after such kindergarten program shall
32 be placed in the developmentally and academically appropriate grade level.

33 (d) Notwithstanding the provisions of this section and §18-5-18 of this code, a county board
34 may provide for advanced entrance or placement under policies adopted by said board for any
35 child who has demonstrated sufficient mental and physical competency for such entrance or
36 placement.

37 (e) A student from another state, or who is eligible to enroll in a public school in this state,
38 shall be enrolled in the same grade in a public school in West Virginia as the student was enrolled

39 at the school or program from which the student transferred. A transcript or other credential
40 provided by a public school program, private school program, homeschool program, microschool
41 program, or HOPE scholarship program shall be accepted by a public school in this state as a
42 record of a student's previous academic performance for the purposes of placement and credit
43 assignment.

§18-8-2. Offenses; penalties; cost of prosecution; jurisdiction.

1 (a) Any parent, guardian, or custodian who fails to cause a child or children under 18
2 years of age in that person's legal or actual charge to attend school in violation of this article or
3 without just cause, is guilty of a misdemeanor and, shall, upon conviction of a first offense, be fined
4 not less than \$50 nor more than \$100 together with the costs of prosecution. The magistrate or
5 circuit court judge, upon conviction and pronouncing sentence, may delay the sentence for a
6 period of 60 school days provided the child is in attendance every day during said 60-day period.
7 Following the 60-day period, if the child was present at school for every school day, the delayed
8 sentence may be suspended and dismissed. Upon conviction of a second offense, a fine may be
9 imposed of not less than \$50 nor more than \$100 together with the costs of prosecution or
10 confined in jail not less than five nor more than 20 days. Every day a child is out of school contrary
11 to this article constitutes a separate offense. Magistrates shall have concurrent jurisdiction with
12 circuit courts for the trial of offenses arising under this section.

13 (b) ~~Any person 18 years of age or older who is enrolled in school who, after receiving due
14 notice, fails to attend school in violation of this article or without just cause, is guilty of a
15 misdemeanor and, shall, upon conviction of a first offense, be fined not less than \$50 nor more
16 than \$100 together with the costs of prosecution and required to attend school and remain
17 throughout the school day. The magistrate or circuit court judge, upon conviction and pronouncing
18 sentence, may delay the imposition of a fine for a period of 60 school days provided the person is
19 in attendance every day during said 60-day period. Following the 60-day period, if the student was
20 present at school every day, the delayed sentence may be suspended and dismissed. Upon~~

21 conviction of a second offense, a fine may be imposed of not less than \$50 nor more than \$100
22 together with the costs of prosecution and the person may be required to go to school and remain
23 throughout the school day until such time as the person graduates or withdraws from school or
24 confined in jail not less than five nor more than 20 days. Every day a student is out of school
25 contrary to this article constitutes a separate offense. Magistrates shall have concurrent
26 jurisdiction with circuit courts for the trial of offenses arising under this section.

27 (c) Upon conviction of a third offense, any person 18 years of age or older who is enrolled
28 in school shall be withdrawn from school during the remainder of that school year. Enrollment of
29 that person in school during the next school year or years thereafter is conditional upon all
30 absences being excused as defined in law, state board policy and county board of education
31 policy. More than one unexcused absence of such a student shall be grounds for the director of
32 attendance to authorize the school to withdraw the person for the remainder of the school year.
33 Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising
34 under this section

35 (d) (b) Jurisdiction to enforce compulsory school attendance laws lies in the county in
36 which a student resides and in the county where the school at which the student is enrolled is
37 located. When the county of residence and enrollment are different, an action to enforce
38 compulsory school attendance may be brought in either county and the magistrates and circuit
39 courts of either county have concurrent jurisdiction for the trial of offenses arising under this
40 section.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

1 (a) For the purposes of this article, the following definitions apply:
2 (1) "Chronically absent" or "chronic absenteeism" means:
3 (A) The attendance director, his or her assistant or the principal were unable to establish
4 meaningful contact with the student's parent, guardian or custodian;

5 (B) The interventions set forth in the System of Support Plan have failed to improve the
6 student's attendance;

7 (C) The student's absences are adversely affecting the student's ability to progress at
8 grade level; or

9 (D) The student's absences reach or exceed 10 percent of the student's instructional days.

10 (1) (2) "Excused absence" means:

11 (A) A medical or dental appointment with written excuse from physician or dentist;

12 (B) Personal illness or injury of the student accompanied by a timely written excuse from
13 the student's parent, guardian, or custodian: *Provided*: That the total absences under this section
14 combined with absences permitted under subdivision (C) of this subsection do not exceed more
15 than 10 per school year unless supported by a physician's note: *Provided however*: That a
16 medically documented chronic health condition or disability that adversely impacts in-person
17 attendance approved by a county school board or the principal is not subject to this limitation, and
18 that absences of students with disabilities shall be in accordance with the Individuals with
19 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in
20 compliance therewith;

21 (C) Personal illness or injury of the student's parent, guardian, custodian, or family
22 member: *Provided*, That the excuse must provide a reasonable explanation for why the student's
23 absence was necessary and caused by the illness or injury in the family, and the total absences
24 under this section in combination with section (1)(B) may not exceed more than ten excuses per
25 school year;

26 (D) Death in the family;

27 (E) School-approved or county-approved curricular or extra-curricular activities;

28 (F) A judicial obligation or court appearance involving the student; and

29 (G) A military requirement for students enlisted or enlisting in the military.

30 (H) Up to five college visits; and

31 (I) A student in any West Virginia Department of Education recognized and sanctioned
32 student organization to enhance student enrichment and success, including, but not limited to,
33 SkillsUSA, Future Business Leaders of America (FBLA), Health Occupations Students of America
34 (HOSA), the Common Ground Partnership, or 4-H or FFA-sanctioned activity or program, subject
35 to the following:

36 (i) A student who participates in an activity or program sanctioned in paragraph (l) of this
37 subdivision shall be credited as present by the school in which the student is enrolled in the same
38 manner as a student participating in an educational field trip. A school principal, or the principal's
39 designee, shall not count a student absent for participating in an activity or program sanctioned in
40 paragraph (l) of this subdivision.

41 (ii) An agent of a sanctioned organization set forth in paragraph (I) of this subdivision shall
42 provide documentation as proof of a student's participation in an activity or program sanctioned in
43 paragraph (I) of this subdivision.

44 (iii) A student shall make up any schoolwork missed while the student was participating in
45 an activity or program sanctioned by paragraph (l) of this subdivision and shall not have the
46 student's class grades adversely affected for lack of attendance or participation due to the
47 student's participation in an activity or program sanctioned in paragraph (l) of this subdivision.

48 (iv) A school principal, or the principal's designee, shall not credit a student who
49 participates in an activity or program sanctioned in paragraph (l) of this subdivision as present if
50 the student's participation in the activity or program sanctioned in paragraph (l) of this subdivision
51 occurs during any period of time for which the student has been suspended, expelled, or assigned
52 to an alternative school or alternative program under this chapter and the student's suspension,
53 expulsion, or assignment to an alternative school or alternative program would preclude the
54 student from participating in an educational field trip.

55 (J) The total amount of excused absences under paragraphs (E), (H), and (I) of this
56 subdivision may not exceed more than 10 per school year.

57 (K) Nothing in this section shall interfere with the Every Student Succeeds Act (2015),
58 which does not differentiate between excused and unexcused absences.

59 (2) (3) "Meaningful contact" means two-way communication by the school administrator or
60 other school designee and the student's parent, guardian, or custodian to discuss the student's
61 attendance record in an effort to prevent subsequent truancy or other legal proceedings relating to
62 compulsory school attendance, and to minimize additional absences. Methods of meaningful
63 contact include, but are not limited to, phone calls, video conferencing, home visits, and the use of
64 digital platforms.

65 (4) "Student Support Specialist" means a full-time professional within a county school
66 district who identifies students with chronic absenteeism and develops strategies and programs to
67 reduce absences and increase instructional time for students. This position is left to the discretion
68 of the county school district and can include a school-based probation officer, school-based social
69 worker, or any other professional worker who is qualified to work with students regarding chronic
70 absenteeism.

71 (3) (5) "System of Support Plan" ("SOS Plan") refers to a plan to be developed by the State
72 Board of Education designed to encourage students to attend school. It shall, at a minimum,
73 require county attendance directors, principals, or other school designees to make periodic
74 contact with the parent, guardian, or custodian of a student subject to compulsory school
75 attendance to ascertain the reason or reasons for the student's absence or absences and what
76 measures the school may employ to assist the student in attending school and not incurring
77 additional absences. It shall also impart upon the student's parents, guardians, and custodians the
78 importance of the student's attendance and the seriousness of failing to do so.

79 (4) (6) "Unexcused absence" means any absence not specifically included in the definition
80 of "excused absence".

81 (b) The county attendance director and his or her assistants shall diligently promote regular
82 school attendance. The director and assistants shall:

83 (1) Ascertain the reasons for unexcused absences from school of students of compulsory
84 school age; and students who remain enrolled beyond the compulsory school age;

85 (2) Ensure the implementation of the SOS Plan as developed by the State Board, including
86 encouraging the attendance of students and imparting upon the parents, guardians, and
87 custodians the important of attendance and the seriousness of failing to do so.

88 (c) All documentation relating to absences shall be provided to the school no later than
89 three instructional days after the first day the student returns to school. In the event
90 documentation is not provided to the school within three instructional days after the first day the
91 student returns to school, the absences are unexcused.

92 (d) In the case of three total unexcused absences of a student during a school year, the
93 attendance director, his or her assistant, or the principal shall make meaningful contact with the
94 parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences
95 and what measures the school may employ to assist the student in attending and not incurring any
96 additional unexcused absences: Provided, That a student who is 18 years or older shall be
97 afforded the same notice.

98 (e) In the case of five total unexcused absences, the attendance director, his or her
99 assistant or the principal shall again make meaningful contact with the parent, guardian, or
100 custodian of the student to ascertain the reasons for the unexcused absences and what measures
101 the school may employ to assist the student in attending school and not incurring any additional
102 unexcused absences: Provided, That a student who is 18 years or older shall be afforded the
103 same notice: Provided further, That upon the recommendation of the teacher, social worker, or
104 principal, the school may refer the student to the Department of Human Services to initiate Wrap
105 Around services, if deemed appropriate by the student assistance team, to provide additional
106 support for the student and family.

107 (f) In the case of 10 total unexcused absences of a student during a school year, the
108 attendance director or assistant may make a complaint against the parent, guardian, or custodian

109 before a magistrate of the county. If it appears from the complaint that there is probable cause to
110 believe that an offense has been committed and that the accused has committed it, a summons or
111 a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the
112 summons or to arrest persons charged with offenses against the state. More than one parent,
113 guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant
114 issued pursuant to the provisions of this section shall be attempted within 10 calendar days of
115 receipt of the summons or warrant and subsequent attempts at service shall continue until the
116 summons or warrant executed or until the end of the school term during which the complaint is
117 made, whichever is later: Provided, That a student who is 18 years or older shall be advised of the
118 consequences of failing to comply with attendance requirements, including withdrawal from
119 school, consistent with county attendance policies.

120 (g) The magistrate court clerk, or the clerk of the circuit court performing the duties of the
121 magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within
122 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the
123 assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the
124 accused at least 10 days' advance notice of the date, time and place of the hearing.

125 (h) When any doubt exists as to the age of a student absent from school, the attendance
126 director and his or her assistants may require a properly attested birth certificate or an affidavit
127 from the parent, guardian, or custodian of the student stating the age of the student. In the
128 performance of his or her duties, the county attendance director and his or her assistants have
129 authority to take without warrant any student absent from school in violation of the provisions of
130 this article and to place the student in the school in which he or she is or should be enrolled.

131 (i) The county attendance director and his or her assistants shall devote as much time as is
132 required to the duties of attendance director in accordance with this section during the instructional
133 term and at any other times as the duties of an attendance director are required. All attendance
134 directors and assistants hired for more than 200 days may be assigned other duties determined by

135 the superintendent during the period in excess of 200 days. The county attendance director is
136 responsible under direction of the county superintendent for efficiently administering school
137 attendance in the county.

138 (j) In addition to those duties directly relating to the administration of attendance, the
139 county attendance director and his or her assistant directors also shall perform the following
140 duties:

141 (1) Assist in directing the taking of the school census to see that it is taken at the time and in
142 the manner provided by law;

143 (2) Confer with principals and teachers on the comparison of the school census and
144 enrollment for the detection of possible non-enrollees;

145 (3) Cooperate with existing state and federal agencies charged with enforcing child labor
146 laws;

147 (4) Promote attendance in the county by compiling data for schools and by furnishing
148 suggestions and recommendations for publication through school bulletins and the press, or in
149 any manner directed by the county superintendent;

150 (5) Participate in school teachers' conferences with parents and students;

151 (6) Assist in any other ways directed by the county superintendent for improving school
152 attendance;

153 (7) Make home visits of students who have excessive unexcused absences, as provided in
154 subsection (a) of this section, or if requested by the chief administrator, principal, or assistant
155 principal; and

156 (8) Serve as the liaison for homeless children and youth; And

157 (9) Coordinate Wraparound Services with the Department of Human Services.

§18-8-5. Duties of principal, administrative head or other chief administrator.

1 ~~It shall be the duty of the (a) The~~ principal, administrative head or other chief administrator
2 of each public school, ~~whether public or private~~, to shall make prompt reports to the county

3 attendance director, or proper assistant, of all cases of unexcused absences arising within the
4 school which require the services of an attendance worker. Such reports shall be on the form
5 prescribed for such purpose, by telephone, or in person, and shall include essential information
6 about the child student and the name and residence of any parent, guardian or custodian of a child
7 student.

8 ~~It shall also be the duty of each (b) The~~ principal, administrative head or other chief
9 administrator of each public school ~~shall ensure compliance with the compulsory attendance~~
10 ~~requirements of this article~~ to ascertain and report promptly the name of any parent, guardian or
11 custodian of any child of compulsory school age as defined in this article who was or should be
12 enrolled in the school reporting and who has not enrolled in any school that year. ~~By way of~~
13 ~~ascertaining the status of school attendance, each principal, administrative head or other chief~~
14 ~~administrator shall compare the school census with the school enrollment at the opening of the~~
15 ~~school term and each month thereafter, or as directed by the county superintendent of schools,~~
16 ~~and report the same to the county attendance director: Provided, That any child student who was~~
17 ~~or should be enrolled in a particular school, but who is at the time enrolled in another school shall~~
18 ~~be considered as attending the school in which enrolled and shall be included only in the report of~~
19 ~~attendance from the school in which the child is enrolled at the time.~~

20 ~~If the principal, administrative head or other chief administrator of a school determines that~~
21 ~~an enrolled pupil has accumulated unexcused absences from attendance at such school for five~~
22 ~~instructional days during any one half of the instructional term, the principal, administrative head or~~
23 ~~other chief administrator shall contact any parent, guardian or custodian of the pupil and shall hold~~
24 ~~a meeting with any person so contacted, and the pupil, and any other person that the administrator~~
25 ~~deems a relevant participant in such meeting~~

**§18-8-6a. Incentive for county board participation in circuit court juvenile probation truancy
programs Juvenile jurisdiction of circuit courts for chronic absenteeism: legislative
appropriation.**

A county board that enters into a truancy program agreement with the circuit court of the county that (1) provides for the referral of truant juveniles for supervision by the court's probation office pursuant to §49-4-711 of this code and (2) requires the county board to pay for the costs of the probation officer or officers assigned to supervise truant juveniles, shall be reimbursed for one half of the costs of the probation officer or officers, subject to appropriation of the Legislature for this purpose to the West Virginia Department of Education. For any year in which the funds appropriated are insufficient to cover the reimbursement costs, the county's costs shall be reimbursed pro rata.

9 (a) If a student under the age of 18 is found chronically absent, as defined by §18-8-4 of
10 this code, the county prosecutor may petition the circuit court for protection of the student as a
11 child in need of supervision as defined by §49-1-202 of this code and pursuant to the juvenile
12 jurisdictions provisions set forth in §49-4-701 of this code.

CHAPTER 21. LABOR.

ARTICLE

6.

CHILD

LABOR.

§21-6-9. Enforcement of article.

1 It is the duty of the state commissioner of labor, and of his or her authorized
2 representatives within the Division of Labor, to enforce the provisions of this article. To aid in
3 enforcement, the commissioner and his or her representatives are authorized to enter and inspect

4 any place or establishment covered by this article, and to have access to all files and records of
5 employers the inspection of which is pertinent to the objects and purposes of this article. School
6 officials ~~including truancy officers~~ shall lend to the commissioner all possible assistance toward
7 effectuating such objects and purposes.

CHAPTER 49. CHILD WELFARE

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

§49-1-202. Definitions related, but not limited, to adult, child, developmental disability, and

transitioning	adult	status.
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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, adult, child, developmental disability, and transitioning
3 adult status, except in those instances where a different meaning is provided or the context in
4 which the word is used clearly indicates that a different meaning is intended.

5 "Adult" means a person who is at least eighteen years of age.

6 "Child" or "Juvenile" means any person under eighteen years of age or is a transitioning
7 adult. Once a child or juvenile is transferred to a court with criminal jurisdiction pursuant to section
8 seven hundred ten, article four of this chapter, he or she shall remain a child or juvenile for the
9 purposes of the applicability of this chapter. Unless otherwise stated, for the purpose of child care
10 services "child" means an individual who meets one of the following conditions:

11 (A) Is under thirteen years of age;

12 (B) Is thirteen to eighteen years of age and under court supervision; or

13 (C) Is thirteen to eighteen years of age and presenting a significant delay of at least twenty-
14 five percent in one or more areas of development, or a six month delay in two or more areas as
15 determined by an early intervention program, special education program or other multidisciplinary
16 team.

17 "Child in need of supervision" is a person under eighteen years of age who is chronically
18 absent from school, as defined by §18-8-4 of this code.

19 "Juvenile delinquent" means a juvenile who has been adjudicated as one who commits an
20 act which would be a crime under state law or a municipal ordinance if committed by an adult.

21 "Status offender" means a juvenile who has been adjudicated as one:

22 (A) Who habitually and continually refuses to respond to the lawful supervision by his or
23 her parents, guardian or legal custodian such that the juvenile's behavior substantially endangers
24 the health, safety or welfare of the juvenile or any other person; or

25 (B) Who has left the care of his or her parents, guardian or custodian without the consent of
26 that person or without good cause. ~~or~~

27 (C) ~~Who is habitually absent from school without good cause~~

28 "Transitioning adult" means an individual with a transfer plan to move to an adult setting
29 who meets one of the following conditions:

30 (A) Is eighteen years of age but under twenty-one years of age, was in the custody of the
31 Department of Human Services upon reaching eighteen years of age and committed an act of
32 delinquency before reaching eighteen years of age, remains under the jurisdiction of the juvenile
33 court, and requires supervision and care to complete an education and or treatment program
34 which was initiated prior to the eighteenth birthday; or

35 (B) Is eighteen years of age but under twenty-one years of age, was adjudicated abused,
36 neglected, or in the custody of the Department of Human Services upon reaching eighteen years
37 of age and enters into a contract with the Department of Human Services to continue in an
38 educational, training, or treatment program which was initiated prior to the eighteenth birthday.

**§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 may
34 include, but is not limited to, medical, educational, vocational, social, and psychological guidance,
35 training, special education, counseling, substance abuse, and any other treatment or rehabilitation
36 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 of
54 hours a day in any shelter or structure maintained for that purpose. Facility does not include any

55 juvenile detention facility or juvenile correctional facility operated by or under contract with the
56 Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed
57 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 care
63 services for compensation in a provider's residence. The provider may care for four to six children
64 at one time, including children who are living in the household, who are under six years of age.

65 "Family resource network" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

97 "Health care and treatment" means:

98 (A) Developmental screening;

99 (B) Mental health screening;

100 (C) Mental health treatment;

101 (D) Ordinary and necessary medical and dental examination and treatment;

102 (E) Preventive care including ordinary immunizations, tuberculin testing, and well-child
103 care; and

104 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and
105 treatment does not include an abortion.

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

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

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

117 "Kinship parent" means a person with whom the department has placed a child to provide a
118 kinship placement.

119 "Kinship placement" means the placement of the child with a relative of the child, as
120 defined herein, or a placement of a child with a fictive kin, as defined herein.

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

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

127 "Nonviolent misdemeanor offense" means a misdemeanor offense that does not include
128 any of the following:

129 (A) An act resulting in bodily injury or death;
130 (B) The use of firearm or other deadly weapon in the commission of the offense;

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

133 (D) A criminal sexual conduct offense; or

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

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

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

142 "Placement" means any temporary or permanent placement of a child who is in the
143 custody of the state in any foster home, kinship parent home, group home, or other facility or
144 residence.

145 "Pre-adjudicatory community supervision" means supervision provided to a youth prior to
146 adjudication, for a period of supervision up to one year for an alleged status or delinquency
147 offense.

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

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

154 "Relative of the child" means an adult of at least 21 years of age who is related to the child,
155 by blood or marriage, within at least three degrees.

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

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

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

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

172 "Staff secure facility" means any public or private residential facility characterized by staff
173 restrictions of the movements and activities of individuals held in lawful custody in such facility, and
174 which limits its residents' access to the surrounding community, but is not characterized by
175 construction fixtures designed to physically restrict the movements and activities of residents.

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

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

182 "Student Support Specialist" has the same meaning as the term is defined in §18-8-4 of
183 this code.

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

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

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

197 ~~"Truancy diversion specialist"~~ means a school-based probation officer or truancy social
198 worker within a school or schools who, among other responsibilities, identifies truants and the
199 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior
200 to court involvement

ARTICLE 4. COURT ACTIONS.

Part VII. Juvenile Proceedings

§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; Constitutional guarantees; requirements; hearings; right to counsel; opportunity to be heard; evidence and transcripts.

1 (a) The circuit court has original jurisdiction of proceedings brought under this article. A
2 person under the age of eighteen years who appears before the circuit court in proceedings under

3 this article is a ward of the court and protected accordingly.

4 (b) If during a criminal proceeding in any court it is ascertained or appears that the
5 defendant is under the age of nineteen years and was under the age of eighteen years at the time
6 of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the
7 circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases
8 which are originally instituted in the circuit court by petition.

9 (c) Notwithstanding any other provision of this article, magistrate courts have concurrent
10 juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a
11 violation of ~~section nine, article six, chapter sixty §60-6-9, section three or section four, article nine-~~
12 ~~a, chapter sixteen §16-9A-3 and 16-9A-4, or section nineteen, article sixteen, chapter eleven §11-~~
13 ~~16-19~~ of this code, or for any violation of chapter twenty of this code. Juveniles are liable for
14 punishment for violations of these laws in the same manner as adults except that magistrate
15 courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

16 (d) Notwithstanding any other provision of this article, municipal courts have concurrent
17 juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic,
18 for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating
19 or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in
20 public places, any other act prohibited by ~~section nine, article six, chapter sixty §60-6-9 or section~~
21 ~~nineteen, article sixteen, chapter eleven §11-16-19~~ of this code or underage possession or use of
22 tobacco or tobacco products, as provided in ~~article nine-a, chapter sixteen §16-9A-1, et seq.~~ of this
23 code. Municipal courts may impose the same punishment for these violations as a circuit court
24 exercising its juvenile jurisdiction could properly impose, except that municipal courts have no
25 jurisdiction to impose a sentence of incarceration for the violation of these laws.

26 (e) A juvenile may be brought before the circuit court for proceedings under this article only
27 by the following means:

28 (1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or

29 a juvenile delinquent;

30 (2) By a juvenile petition brought pursuant to §18-8-6a of this code due to a juvenile's
31 chronic absenteeism; or

32 (2) (3) By certification or transfer to the juvenile jurisdiction of the circuit court from the
33 criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or
34 municipal court in West Virginia.

35 (f)(1) If a juvenile commits an act which would be a crime if committed by an adult, and the
36 juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the
37 juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has
38 the same power over that person that it had before he or she became an adult, and has the power
39 to sentence that person to a term of incarceration: *Provided*, That any term of incarceration may
40 not exceed six months. This authority does not preclude the court from exercising criminal
41 jurisdiction over that person if he or she violates the law after becoming an adult or if the
42 proceedings have been transferred to the court's criminal jurisdiction pursuant to section seven
43 hundred four of this article.

44 (2) If a juvenile petition is brought due to a juvenile's chronic absenteeism, is adjudicated
45 as a status offender because he or she is habitually absent from school without good cause, the
46 jurisdiction of the court in which the petition was filed which adjudged the juvenile a status offender
47 continues until either the juvenile becomes twenty-one years of age, completes high school,
48 completes a high school equivalent or other education plan approved by the court, or the court
49 otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the court
50 is extended pursuant to this subdivision, the court has the same power over that person that it had
51 before he or she became an adult: ~~No person so adjudicated~~ *Provided*, That, no person who has
52 attained the age of nineteen may be ordered to attend school in a regular, nonalternative setting.
53 Effective July 1, 2026, truancy is no longer considered a status offense. Jurisdiction of chronically
54 absent juveniles shall be continued under this article as children in need of supervision as defined

55 by §49-1-202 of this code. Any pending truancy status offense charges shall be dismissed:
56 Provided, That if the juvenile's best interests are served by the continued participation in a
57 diversion program, that program may be continued.

58 (g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an
59 adult and be afforded the protection guaranteed by Article III of the West Virginia Constitution.

60 (h) A juvenile has the right to be effectively represented by counsel at all stages of
61 proceedings under this article, including participation in multidisciplinary team meetings, until the
62 child is no longer under the jurisdiction of the court. If the juvenile or the juvenile's parent or
63 custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall
64 appoint an attorney, who shall be paid in accordance with article twenty-one, chapter twenty-nine
65 of this code.

66 (i)(1) In all proceedings under this article, the juvenile will be afforded a meaningful
67 opportunity to be heard. This includes the opportunity to testify and to present and cross-examine
68 witnesses. The general public shall be excluded from all proceedings under this article except that
69 persons whose presence is requested by the parties and other persons whom the circuit court
70 determines have a legitimate interest in the proceedings may attend.

71 (2) In cases in which a juvenile is accused of committing what would be a felony if the
72 juvenile were an adult, an alleged victim or his or her representative may attend any related
73 juvenile proceedings, at the discretion of the presiding judicial officer.

74 (3) In any case in which the alleged victim is a juvenile, he or she may be accompanied by
75 his or her parents or representative, at the discretion of the presiding judicial officer.

76 (j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults
77 in criminal proceedings shall be afforded the juvenile unless specifically provided otherwise in this
78 chapter.

79 (k) At all adjudicatory hearings held under this article, the rules of evidence applicable in
80 criminal cases apply, including the rule against written reports based upon hearsay.

81 (I) Except for res gestae, extrajudicial statements made by a juvenile who has not attained
82 fourteen years of age to law-enforcement officials or while in custody are not admissible unless
83 those statements were made in the presence of the juvenile's counsel. Except for res gestae,
84 extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at
85 least fourteen years of age to law-enforcement officers or while in custody, are not admissible
86 unless made in the presence of the juvenile's counsel or made in the presence of, and with the
87 consent of, the juvenile's parent or custodian, and the parent or custodian has been fully informed
88 regarding the juvenile's right to a prompt detention hearing, the juvenile's right to counsel,
89 including appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege
90 against self-incrimination.

91 (m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional
92 hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall
93 make findings of fact and conclusions of law, both of which shall appear on the record. The court
94 reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who
95 seeks review of any proceeding under this article if an affidavit is filed stating that neither the
96 juvenile nor the juvenile's parents or custodian have the ability to pay for the transcript.

**§49-4-702. Prepetition diversion to informal resolution; mandatory prepetition diversion
program for status offenses and misdemeanor offenses; prepetition review team.**

1 (a) Before a juvenile petition is formally filed with the court, the court may refer the matter to
2 a case worker, probation officer or ~~truancy diversion specialist~~ student support specialist for
3 preliminary inquiry to determine whether the matter can be resolved informally without the formal
4 filing of a petition with the court: Provided, That the provisions of this section shall also apply to a
5 petition for protection of a child in need of supervision.

6 (b)(1) If the matter is for a ~~truancy offense~~ chronic absenteeism, the prosecutor may refer
7 the matter to a state department worker, probation officer, or ~~truancy diversion~~ student support
8 specialist who shall develop a diversion program pursuant to subsection (d) of this section. If the

9 prosecutor does not refer the matter to a state department worker, probation officer, or ~~truancy~~
10 ~~diversion~~ student support specialist pursuant to this subdivision, he or she may proceed to file a
11 petition with the court.

12 (2) If the matter is for a status offense ~~other than truancy~~, the prosecutor shall refer the
13 juvenile to a case worker or probation officer who shall develop a diversion program pursuant to
14 subsection (d) of this section.

15 (3) The prosecutor is not required to refer the juvenile for development of a diversion
16 program pursuant to subdivision (2) of this subsection and may proceed to file a petition with the
17 court if he or she determines:

18 (A) The juvenile has a prior adjudication for a status or delinquency offense; or
19 (B) There exists a significant and likely risk of harm to the juvenile, a family member, or the
20 public.

21 (c) If the matter is for a nonviolent misdemeanor offense, the prosecutor shall determine
22 whether the case can be resolved informally through a diversion program without the filing of a
23 petition. If the prosecutor determines that a diversion program is appropriate, he or she shall refer
24 the matter to a case worker or probation officer who shall develop a diversion program pursuant to
25 subsection (d) of this section.

26 (d)(1) When developing a diversion program, the case worker, probation officer or ~~truancy~~
27 ~~diversion specialist~~ student support specialist shall:

28 (A) Conduct an assessment of the juvenile to develop a diversion agreement;
29 (B) Create a diversion agreement;
30 (C) Obtain consent from the juvenile and his or her parent, guardian, or custodian to the
31 terms of the diversion agreement;

32 (D) Refer the juvenile and, if necessary, his or her parent, guardian, or custodian to
33 services in the community pursuant to the diversion agreement.

34 (2) A diversion agreement may include:

35 (A) Referral to community services as defined in §49-1-206 of this code for the juvenile to
36 address the assessed need;

37 (B) Referral to services for the parent, guardian, or custodian of the juvenile;

38 (C) Referral to one or more community work service programs for the juvenile;

39 (D) A requirement that the juvenile regularly attend school;

40 (E) Community-based sanctions to address noncompliance; or

41 (F) Any other efforts which may reasonably benefit the community, the juvenile, and his or
42 her parent, guardian, or custodian.

43 (3) When a referral to a service provider occurs, the service provider shall make
44 reasonable efforts to contact the juvenile and his or her parent, custodian, or guardian within 72
45 hours of the referral.

46 (4) Upon request by the case worker, probation officer or ~~truancy diversion specialist~~
47 student support specialist, the court may enter reasonable and relevant orders to the parent,
48 custodian, or guardian of the juvenile who have consented to the diversion agreement as is
49 necessary and proper to carry out the agreement.

50 (5) If the juvenile and his or her parent, custodian, or guardian do not consent to the terms
51 of the diversion agreement created by the case worker, probation officer or truancy diversion
52 specialist student support specialist, the petition may be filed with the court.

53 (6) Referral to a prepetition diversion program shall toll the statute of limitations for status
54 and delinquency offenses.

55 (7) Probation officers may be authorized by the court to participate in a diversion program.

56 (e) The case worker, probation officer or truancy diversion specialist student support
57 specialist shall monitor the juvenile's compliance with any diversion agreement.

58 (1) If the juvenile successfully completes the terms of the diversion agreement, a petition
59 shall not be filed with the court and no further action shall be taken.

60 (2) If the juvenile is unsuccessful in or noncompliant with the diversion agreement, the

61 diversion agreement shall be referred to a prepetition review team convened by the case worker,
62 probation officer or ~~truancy diversion specialist~~ student support specialist: *Provided*, That if a new
63 delinquency offense occurs, a petition may be filed with the court.

64 (f)(1) The prepetition review team may be a subset of a multidisciplinary team established
65 pursuant to §49-4-406 of this code.

66 (2) The prepetition review team may consist of:

67 (A) A case worker knowledgeable about community services available and authorized to
68 facilitate access to services;

69 (B) A service provider;

70 (C) A school superintendent or his or her designee; or

71 (D) Any other person, agency representative, member of the juvenile's family, or a
72 custodian or guardian who may assist in providing recommendations on community services for
73 the particular needs of the juvenile and his or her family.

74 (3) The prepetition review team shall review the diversion agreement and the service
75 referrals completed and determine whether other appropriate services are available to address
76 the needs of the juvenile and his or her family.

77 (4) The prepetition review shall occur within 14 days of referral from the ~~state department~~
78 case worker, probation officer or ~~truancy diversion specialist~~ student support specialist.

79 (5) After the prepetition review, the prepetition review team may:

80 (A) Refer a modified diversion agreement back to the case worker, probation officer or
81 ~~truancy diversion specialist~~ student support specialist;

82 (B) Advise the case worker, probation officer or ~~truancy diversion specialist~~ student
83 support specialist to file a petition with the court; or

84 (C) Advise the case worker to open an investigation for child abuse or neglect.

85 (g) The requirements of this section are not mandatory until July 1, 2024: *Provided*, That
86 nothing in this section prohibits a judicial circuit from continuing to operate a ~~truancy or other~~

87 juvenile treatment program that existed as of January 1, 2023: *Provided, however,* That any
88 judicial circuit desiring to create a diversion program after the effective date of this section, may
89 only do so pursuant to this section.

90 (h) The circuit court shall have jurisdiction to monitor a diversion program established
91 pursuant to a petition for protection of a child in need of supervision until the conclusion of the
92 diversion
92 program.

**§49-4-702a. Noncustodial counseling or community services provided to a juvenile;
prepetition counsel and advice.**

1 (a) The court at any time, or the department or other official upon a request from a parent,
2 guardian or custodian, may, before a petition is filed under this article, refer a juvenile alleged to be
3 chronically absent, a delinquent or a status offender to a counselor at the department or a
4 community mental health center, or other professional counselor in the community or to a truant
5 diversion specialist student support specialist. In the event the juvenile refuses to respond to this
6 referral, the department may serve a notice by first class mail or personal service of process upon
7 the juvenile, setting forth the facts and stating that a noncustodial order will be sought from the
8 court directing the juvenile to submit to counseling or community services. The notice shall set
9 forth the time and place for the hearing on the matter. The court or referee after a hearing may
10 direct the juvenile to participate in a noncustodial period of counseling or community services that
11 may not exceed six months. Upon recommendation of the department or request by the juvenile's
12 parent, custodian or guardian, the court or referee may allow or require the parent, custodian or
13 guardian to participate in this noncustodial counseling or community services. No information
14 obtained as the result of counseling or community services is admissible in a subsequent
15 proceeding under this article.

16 (b) Before a petition is formally filed with the court, the probation officer or other officer of
17 the court designated by it, subject to its direction, may give counsel and advice to the parties with a
18 view to an informal adjustment period if it appears:

- (1) The admitted facts bring the case within the jurisdiction of the court;
- (2) Counsel and advice without an adjudication would be in the best interest of the public
juvenile; and

(3) The juvenile and his or her parents, guardian or other custodian consent thereto with
ege that consent is not obligatory.

24 (c) The giving of counsel and advice pursuant to this section may not continue longer than
25 six months from the day it is commenced unless extended by the court for an additional period not
26 to exceed six months.

§49-4-711. Adjudication for alleged status offenders and delinquents; mandatory initial

disposition of status offenders.

At the outset of an adjudicatory hearing, the court shall inquire of the juvenile whether he or she wishes to admit or deny the allegations in the petition. The juvenile may elect to stand silent, in which event the court shall enter a general denial of all allegations in the petition.

11 (3) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are
12 sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition
13 pursuant to §49-4-704 of this code. The court shall receive and consider the results of the needs
14 assessment, as defined in §49-1-206 of this code, prior to or at the disposition.

15 (4) If the allegations in a petition alleging that the juvenile is a status offender are admitted
16 or sustained by clear and convincing evidence, the court shall consider the results of the needs

17 assessment, as defined in §49-1-206 of this code, prior to or at the disposition and refer the
18 juvenile to the Department of Human Services for services, pursuant to §49-4-712 of this code,
19 and order the department to report back to the court with regard to the juvenile's progress at least
20 every 90 days or until the court, upon motion or sua sponte, orders further disposition under §49-4-
21 712 of this code or dismisses the case from its docket. *Provided, That in a judicial circuit operating*
22 ~~a truancy program, a circuit judge may, in lieu of referring truant juveniles to the department, order~~
23 ~~that the juveniles be supervised by his or her probation office: Provided, however, That a circuit~~
24 ~~judge may also refer a truant juvenile to a truancy diversion specialist~~

25 (5) If the allegations in a petition are not sustained by evidence as provided in §49-4-711(c)
26 and §49-4-711(d) of this code, the petition shall be dismissed and the juvenile shall be discharged
27 if he or she is in custody.

28 (6) Findings of fact and conclusions of law addressed to all allegations in the petition shall
29 be stated on the record or reduced to writing and filed with the record or incorporated into the order
30 of the court. The record shall include the treatment and rehabilitation plan the court has adopted
31 after recommendation by the multidisciplinary team as provided for in §49-4-406 of this code.

**§49-4-712. Intervention and services by the department pursuant to initial disposition for
status offenders, children in need of services, or juvenile found incompetent to
stand trial; enforcement; further disposition; detention; out-of-home placement;
department custody; least restrictive alternative; appeal; prohibiting placement of
status offenders or a juvenile found incompetent to stand trial in a Bureau of
Juvenile Services facility.**

1 (a) Services provided by the department to juveniles adjudicated as status offenders shall
2 be consistent with §49-2-1001 *et seq.* of this code. Services provided by the department for
3 juveniles adjudicated as status offenders pursuant to §49-4-711 of this code and juveniles found to

4 be incompetent to proceed and in need of services pursuant to §49-4-734(b)(2) of this code shall
5 be designed to develop skills and supports within families and to resolve problems related to the
6 juveniles or conflicts within their families. Services may include, but are not limited to, referral of
7 juveniles and parents, guardians, or custodians and other family members to services for
8 psychiatric or other medical care, or psychological, welfare, legal, educational, or other social
9 services, as appropriate to the needs of the juvenile and his or her family. Services provided to a
10 child in need of supervision shall be consistent with the provisions of §49-4-702 of this code.

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

13 (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance with
14 a service plan or to restrain actions that interfere with or defeat a service plan; or

15 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure
16 setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile
17 adjudicated as a status offender or a child in need of supervision being monitored by the circuit
18 court may not be placed in an out-of-home placement, excluding placements made for abuse and
19 neglect, if that juvenile has had no prior adjudications for a status or delinquency offense, or no
20 prior disposition to a pre-adjudicatory improvement period or probation for the current matter:
21 *Provided, however*, That if the court finds by clear and convincing evidence the existence of a
22 significant and likely risk of harm to the juvenile, a family member, or the public and continued
23 placement in the home is contrary to the best interests of the juvenile, the juvenile may be ordered
24 to an out-of-home placement: *Provided further*, That the court finds the department has made all
25 reasonable efforts to prevent removal of the juvenile from his or her home, or that such reasonable
26 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 relief
28 sought in the department's petition and shall make reasonable efforts to prevent removal of the
29 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 that are 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 or a juvenile found to be incompetent
51 to proceed may not be placed in a Bureau of Juvenile Services facility.

52 (h) A child in need of supervision being monitored by the circuit court may not be placed in
53 a Bureau of Juvenile Services facility.

NOTE: The purpose of this bill is to remove truancy as a status offense, shift the absenteeism focus from punitive to preventative, and clarify the statutory provisions and procedures for chronic absenteeism.

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