

# **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 18<sup>th</sup> 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

any pending truancy charges shall be dismissed, provided that if the juvenile's best interests are served by the continued participation in a diversion program, that program may be continued; providing that chronically absent students may be referred to a prepetition diversion program; clarifying the court's role in monitoring prepetition diversion programs; providing that chronically absent students may be referred noncustodial counseling or community services; removing truancy as a status offense; clarifying the court's role in providing intervention on behalf of a child in need of supervision; providing that a child in need of supervision may not be placed in out-of-home placement or a Bureau 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.**

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

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

(2) The compulsory school attendance provision of this article ~~shall be enforced against a 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

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

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

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

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

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

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

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

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

(a) For the purposes of this article, the following definitions apply:

(1) "Chronically absent" or "chronic absenteeism" means:

(A) The attendance director, his or her assistant or the principal were unable to establish meaningful contact with the student's parent, guardian or custodian;

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

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

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

(4) (2) "Excused absence" means:

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

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

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

(D) Death in the family;

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

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

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

(H) Up to five college visits; and

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13           (b) A county board that enters into an agreement with the circuit court of the county that (1)  
 14 provides for the referral of chronically absent students for supervision by the student support  
 15 specialist, as defined by §18-8-4 of this code and (2) requires the county board to pay for the costs  
 16 of the student support specialist assigned therefore, shall be reimbursed for one half of the costs of  
 17 the student support specialist, subject to appropriation of the Legislature for this purpose to the  
 18 West Virginia Department of Education. For any year in which the funds appropriated are  
 19 insufficient to cover the reimbursement costs, the county's costs shall be reimbursed pro rata.

## **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.**

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.

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

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

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

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

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

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

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

(B) Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in the custody of the Department of Human Services upon reaching eighteen years of age and enters into a contract with the Department of Human Services to continue in an 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.**

When used in this chapter, the following terms have the following meanings, unless the 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

with the Division of Corrections and Rehabilitation, pursuant to §49-2-901 *et seq.* of this code, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

"Community based" means a facility, program, or service located near the child's home or family and involving community participation in planning, operation, and evaluation and which may include, but is not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, substance abuse, and any other treatment or rehabilitation services.

"Community-based juvenile probation sanctions" means any of a continuum of nonresidential accountability measures, programs, and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

- (A) Electronic monitoring;
- (B) Drug and alcohol screening, testing, or monitoring;
- (C) Youth reporting centers;
- (D) Reporting and supervision requirements;
- (E) Community service; and
- (F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.

"Community services" means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

"Evidence-based practices" means policies, procedures, programs, and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

"Facility" means a place or residence, including personnel, structures, grounds, and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any

juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody.

"Family child care facility" means any facility which is used to provide nonresidential child care services for compensation for seven to 12 children, including children who are living in the household, who are under six years of age. A facility may be in a provider's residence or a separate building.

"Family child care home" means a facility which is used to provide nonresidential child care services for compensation in a provider's residence. The provider may care for four to six children at one time, including children who are living in the household, who are under six years of age.

"Family resource network" means:

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

(i) Has agreed to a single governing entity;

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

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

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

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

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

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

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

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

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

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

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

"Health care and treatment" means:

(A) Developmental screening;

(B) Mental health screening;

(C) Mental health treatment;

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

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

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

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

(A) Intensive, short-term intervention of four to six weeks; and

(B) Home-based, longer-term after care following intensive intervention.

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

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

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

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

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

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

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

(B) The use of firearm or other deadly weapon in the commission of the offense;

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

(D) A criminal sexual conduct offense; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The circuit court has original jurisdiction of proceedings brought under this article. A 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

a juvenile delinquent;

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

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

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

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

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

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall make findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that neither the 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.**

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

(b)(1) If the matter is for a ~~truancy offense~~ chronic absenteeism, the prosecutor may refer the matter to a state department worker, probation officer, or ~~truancy diversion~~ student support 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The prepetition review team may consist of:

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

(B) A service provider;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Before a petition is formally filed with the court, the probation officer or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties with a 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 and the juvenile; and

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

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

(1) If the respondent juvenile admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds: (A) The respondent fully understands all of his or her rights under this article; (B) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication; and (C) the respondent in his or her admission has not set forth facts which constitute a defense to the allegations.

(2) If the respondent juvenile denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

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

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

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

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

(6) Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court. The record shall include the treatment and rehabilitation plan the court has adopted 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.**

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