

Senate Bill No. 393

(By Senators Cole (Mr. President) and Kessler,

By Request of the Executive)

[Introduced February 3, 2015; referred to the Committee on the Judiciary.]

9 A BILL to amend and reenact §49-1-4 of the Code of West Virginia, 1931, as amended; to amend
10 and reenact §49-5-2a, §49-5-3, §49-5-11, §49-5-11a, §49-5-13, §49-5-13a, §49-5-14,
11 §49-5-15, §49-5-17 and §49-5-20 of said code; to amend said code by adding thereto four
12 new sections, designated §49-5-13h, §49-5-13i, §49-5-22 and §49-5-23; to amend and
13 reenact §49-5B-4 and §49-5B-5 of said code; to amend and reenact §49-5D-3 and §49-5D-3c
14 of said code; to amend and reenact §49-5E-2 of said code; and to amend said code by adding
15 thereto two new sections, designated §49-5E-9 and §49-5E-10, all relating generally to
16 juvenile justice reform; defining terms; providing mandatory prepetition diversion process
17 for juveniles who commit status offenses and misdemeanor offenses effective July 1, 2016;
18 establishing prepetition review team; providing that a juvenile may be referred to a truancy
19 diversion specialist prior to filing of petition; permitting court to order completion of
20 community services; requiring court to consider results of risk and needs assessment of the
21 juvenile prior to dispositional proceedings; requiring inclusion of accepted treatment and

1 rehabilitation goals for juveniles in certain findings of fact; providing that a juvenile
2 adjudicated as a status offender may not be placed in out-of-home placement in certain
3 circumstances; providing that a juvenile adjudicated delinquent for a misdemeanor offense
4 may not be placed in out-of-home placement in certain circumstances; requiring court to
5 issue certain findings of fact if a juvenile is to be placed in a residential facility; providing
6 for standardized screener to conduct a psychological evaluation of the juvenile in certain
7 circumstances; providing that a court shall make all reasonable efforts to keep the juvenile
8 in his or her home; permitting court to include reasonable and relevant orders to parents in
9 its disposition order for a juvenile; providing that juveniles may only be transferred to
10 juvenile diagnostic centers under certain circumstances; authorizing creation of restorative
11 justice programs; establishing individualized case planning; establishing review and
12 modification procedures for probation dispositional orders; authorizing the Supreme Court
13 of Appeals to develop community-based juvenile probation sanctions and incentives;
14 requiring aftercare plan for all juvenile out-of-home placements; providing for disclosure of
15 juvenile records to Department of Health and Human Resources social workers for case
16 planning and to the juvenile's family; providing for adoption of risk and needs assessment
17 and validation thereof; providing for aggregate data collection related to outcomes and
18 disproportional minority contact; requiring dedication of a percentage of funding for
19 community services to evidence-based practices; establishing criteria for transition to
20 juvenile's home setting following out-of-home placement; providing for cooperative
21 agreements solely between the Department of Health and Human Resources and private

1 agencies to house status offenders; providing for multidisciplinary team meetings;
2 establishing members of multidisciplinary team; providing that multidisciplinary team shall
3 advise court on treatment and rehabilitation goals for the juvenile; providing that
4 multidisciplinary team shall monitor the juvenile's progress; providing that the Director of
5 the Division of Juvenile Services may transfer custody of a juvenile to the Department of
6 Health and Human Resources; establishing community-based youth reporting centers;
7 establishing the Juvenile Justice Reform Oversight Committee; and making technical
8 revisions.

9 *Be it enacted by the Legislature of West Virginia:*

10 That §49-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
11 that §49-5-2a, §49-5-3, §49-5-11, §49-5-11a, §49-5-13, §49-5-13a, §49-5-14, §49-5-15, §49-5-17
12 and §49-5-20 of said code be amended and reenacted; that said code be amended by adding thereto
13 four new sections, designated §49-5-13h, §49-5-13i, §49-5-22 and §49-5-23; that §49-5B-4 and
14 §49-5B-5 of said code be amended and reenacted; that §49-5D-3 and §49-5D-3c of said code be
15 amended and reenacted; that §49-5E-2 of said code be amended and reenacted; and that said code
16 be amended by adding thereto two new sections, designated §49-5E-9 and §49-5E-10, all to read as
17 follows:

18 **ARTICLE 1. PURPOSES; DEFINITIONS.**

19 **§49-1-4. Other definitions.**

20 As used in this chapter:

21 (1) "Child welfare agency" means any agency or facility maintained by the state or any

1 county or municipality thereof or any agency or facility maintained by an individual, firm,
2 corporation, association or organization, public or private, to receive children for care and
3 maintenance or for placement in residential care facilities or any facility that provides care for
4 unmarried mothers and their children;

5 (2) “Child advocacy center” means a community-based organization that is a member in good
6 standing with the West Virginia Child Abuse Network, Inc., and is working to implement the
7 following program components:

8 (A) Child-appropriate/child-friendly facility: A child advocacy center provides a
9 comfortable, private, child-friendly setting that is both physically and psychologically safe for
10 clients;

11 (B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse
12 allegations includes representation from the following: Law enforcement; child protective services;
13 prosecution; mental health; medical; victim advocacy; child advocacy center;

14 (C) Organizational capacity: A designated legal entity responsible for program and fiscal
15 operations has been established and implements basic sound administrative practices;

16 (D) Cultural competency and diversity: The child advocacy center promotes policies,
17 practices and procedures that are culturally competent. Cultural competency is defined as the
18 capacity to function in more than one culture, requiring the ability to appreciate, understand and
19 interact with members of diverse populations within the local community;

20 (E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral,
21 fact-finding nature and coordinated to avoid duplicative interviewing;

1 (F) Medical evaluation: Specialized medical evaluation and treatment are to be made
2 available to child advocacy center clients as part of the team response, either at the child advocacy
3 center or through coordination and referral with other specialized medical providers;

4 (G) Therapeutic intervention: Specialized mental health services are to be made available
5 as part of the team response, either at the child advocacy center or through coordination and referral
6 with other appropriate treatment providers;

7 (H) Victim support/advocacy: Victim support and advocacy are to be made available as part
8 of the team response, either at the child advocacy center or through coordination with other
9 providers, throughout the investigation and subsequent legal proceedings;

10 (I) Case review: Team discussion and information sharing regarding the investigation, case
11 status and services needed by the child and family are to occur on a routine basis;

12 (J) Case tracking: Child advocacy centers must develop and implement a system for
13 monitoring case progress and tracking case outcomes for team components: *Provided*, That a child
14 advocacy center may establish a safe exchange location for children and families who have a
15 parenting agreement or an order providing for visitation or custody of the children that require a safe
16 exchange location;

17 (3) “Community based”, when referring to a facility, program, or service, means located near
18 the juvenile's home or family and involving community participation in planning, operation and
19 evaluation and which may include, but is not limited to, medical, educational, vocational, social and
20 psychological guidance, training, special education, counseling, alcoholism and any treatment and
21 other rehabilitation services;

1 (4) “Community-based juvenile probation sanctions” means any of a continuum of
2 nonresidential accountability measures, programs, and sanctions in response to a technical violation
3 of probation, as part of a system of community-based juvenile probation sanctions and incentives,
4 that may include, but are not limited to:

5 (A) Electronic monitoring;

6 (B) Drug and alcohol screening, testing, or monitoring;

7 (C) Youth reporting centers;

8 (D) Reporting and supervision requirements;

9 (E) Community service; and

10 (F) Rehabilitative interventions such as family counseling, substance abuse treatment,
11 restorative justice programs, and behavioral or mental health treatment;

12 (5) “Community services” means nonresidential prevention or intervention services or
13 programs that are intended to reduce delinquency and future court involvement;

14 (4) (6) “Court” means the circuit court of the county with jurisdiction of the case or the judge
15 thereof in vacation unless otherwise specifically provided;

16 (5) (7) “Custodian” means a person who has or shares actual physical possession or care and
17 custody of a child, regardless of whether such person has been granted custody of the child by any
18 contract, agreement or legal proceedings;

19 (6) (8) “Department” or “state department” means the state Department of Health and Human
20 Resources;

21 (7) (9) “Division of Juvenile Services” means the division within the Department of Military

1 Affairs and Public Safety pursuant to article five-e of this chapter;

2 (10) “Evidence-based practices” means any policies, procedures, programs, and practices
3 proven by research to reliably produce reductions in the likelihood of reoffending;

4 ~~(8)~~ (11) “Guardian” means a person who has care and custody of a child as a result of any
5 contract, agreement or legal proceeding;

6 ~~(9)~~ (12) “Juvenile delinquent” means a juvenile who has been adjudicated as one who
7 commits an act which would be a crime under state law or a municipal ordinance if committed by
8 an adult;

9 ~~(10)~~ (13) “Nonsecure facility” means any public or private residential facility not
10 characterized by construction fixtures designed to physically restrict the movements and activities
11 of individuals held in lawful custody in such facility and which provides its residents access to the
12 surrounding community with supervision;

13 (14) “Out-of-home placement” means a post-adjudication placement in a foster family home,
14 group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility,
15 staff-secure facility, hardware secure facility, detention facility, or other residential placement other
16 than placement in the home of a parent, relative, or guardian;

17 ~~(11)~~ (15) “Referee” means a juvenile referee appointed pursuant to section one, article five-a
18 of this chapter, except that in any county which does not have a juvenile referee, the judge or judges
19 of the circuit court may designate one or more magistrates of the county to perform the functions and
20 duties which may be performed by a referee under this chapter;

21 (16) “Risk and needs assessment” means a standardized actuarial tool validated on West

1 Virginia's juvenile justice system-involved population capable of identifying specific risk factors
2 that increase the likelihood of reoffending and the factors that, when properly addressed, can reduce
3 the likelihood of reoffending;

4 ~~(12)~~ (17) "Secretary" means the Secretary of the Department of Health and Human
5 Resources;

6 ~~(13)~~ (18) "Secure facility" means any public or private residential facility which includes
7 construction fixtures designed to physically restrict the movements and activities of juveniles or
8 other individuals held in lawful custody in such facility;

9 ~~(14)~~ (19) "Staff-secure facility" means any public or private residential facility characterized
10 by staff restrictions of the movements and activities of individuals held in lawful custody in such
11 facility and which limits its residents' access to the surrounding community, but is not characterized
12 by construction fixtures designed to physically restrict the movements and activities of residents;

13 (20) "Standardized screener" means a brief, validated non-diagnostic inventory or
14 questionnaire designed to identify youth in need of further assessment for medical, emotional,
15 psychological, behavioral, or educational problems, substance abuse issues, or other conditions;

16 ~~(15)~~ (21) "Status offender" means a juvenile who has been adjudicated as one:

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

20 (B) Who has left the care of his or her parents, guardian or custodian without the consent of
21 such person or without good cause; or

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

2 (22) “Technical violation” means an act that violates the terms or conditions of probation or
3 a court order that does not constitute a new delinquent offense;

4 (23) “Truancy diversion specialist” means a school-based probation officer or truancy social
5 worker within a school or schools who, among other responsibilities, identifies truant youth and the
6 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to
7 court involvement;

8 ~~(16)~~ (24) “Valid court order” means a court order given to a juvenile who was brought before
9 the court and made subject to such order and who received, before the issuance of such order, the
10 full due process rights guaranteed to such juvenile by the Constitutions of the United States and the
11 State of West Virginia.

12 **ARTICLE 5. JUVENILE PROCEEDINGS.**

13 **§49-5-2a. Prepetition diversion to informal resolution; mandatory prepetition diversion**
14 **program for status offenses and misdemeanor offenses; prepetition review**
15 **team.**

16 (a) Before a juvenile petition is formally filed with the court, the ~~court~~ prosecutor may refer
17 the matter to a state department worker, ~~or~~ probation officer, or truancy diversion specialist for
18 preliminary inquiry to determine whether the matter can be resolved informally without the formal
19 filing of a petition with the court.

20 (b) (1) If the matter is for a status offense or misdemeanor offense, the prosecutor shall refer
21 the matter to a state department worker or probation officer to determine whether the case can be

1 resolved informally through a diversion program without the filing of a petition. Upon determining
2 that a diversion program is appropriate, the state department worker or probation officer shall:

3 (A) Conduct an assessment of the juvenile to inform creation of a diversion agreement;

4 (B) Create a diversion agreement lasting no longer than six months; and

5 (C) Refer the juvenile to services in the community under the diversion agreement.

6 (2) A diversion agreement may include:

7 (A) Referral to community services as defined in subsection (5), section four, article one of
8 this chapter for the juvenile to address the assessed need;

9 (B) Referral to services for the family or guardian of the juvenile;

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

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

12 (E) Community-based sanctions to address non-compliance; or

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

15 (3) When a referral to a service provider occurs, the state department worker or probation
16 officer shall contact the service provider within twenty-four hours of the referral, and the service
17 provider shall attempt to contact the juvenile and his or her family or guardian within seventy-two
18 hours of the referral.

19 (c) The state department worker or probation officer shall monitor the juvenile's compliance
20 with any diversion agreement.

21 (1) If the juvenile successfully completes the terms of the diversion agreement, the petition

1 shall not be filed with the court and no further action shall be taken.

2 (2) If the juvenile is unsuccessful or noncompliant with the diversion agreement, the
3 diversion agreement shall be referred to a prepetition review team convened by the state department
4 worker or probation officer.

5 (A) The prepetition review team may be a subset of a multidisciplinary team established
6 pursuant to section three-c, article five-d of this chapter, and may include:

7 (I) A state department worker knowledgeable about community services available and
8 authorized to facilitate access to services;

9 (ii) A service provider;

10 (iii) A school superintendent or his or her designee; or

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

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

17 (C) The prepetition review shall occur within fourteen days of referral from the state
18 department worker or probation officer.

19 (D) After the prepetition review, the prepetition review team shall:

20 (I) Refer a modified diversion agreement back to the state department worker or probation
21 officer;

1 (ii) Advise the state department worker or probation officer to refer the petition to the
2 prosecutor for formal filing with the court; or

3 (iii) Advise the state department worker to open an investigation for child abuse or neglect.

4 (c) The requirements of subsection (b) of this section are not mandatory until July 1, 2016.

5 **§49-5-3. Noncustodial counseling or community services provided to a juvenile.**

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

21 **§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial**

1 **disposition of status offenders.**

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

5 (a) If the respondent juvenile admits the allegations of the petition, the court shall consider
6 the admission to be proof of the allegations if the court finds: (1) The respondent fully understands
7 all of his or her rights under this article; (2) the respondent voluntarily, intelligently and knowingly
8 admits all facts requisite for an adjudication; and (3) the respondent in his or her admission has not
9 set forth facts which constitute a defense to the allegations.

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

12 (c) If the allegations in a petition alleging that the juvenile is delinquent are admitted or are
13 sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition
14 pursuant to section thirteen of this article. The court shall receive and consider the results of the risk
15 and needs assessment prior to or at the dispositional proceeding pursuant to section twenty-three,
16 article five of this chapter.

17 (d) If the allegations in a petition alleging that the juvenile is a status offender are admitted
18 or sustained by clear and convincing proof, the court shall consider the results of the risk and needs
19 assessment prior to or at the dispositional proceeding pursuant to section twenty-three, article five
20 of this chapter, and refer the juvenile to the Department of Health and Human Resources for services,
21 pursuant to section eleven-a of this article and order the department to report back to the court with

1 regard to the juvenile's progress at least every ninety days or until the court, upon motion or sua
 2 sponte, orders further disposition under section eleven-a of this article or dismisses the case from its
 3 docket: *Provided*, That in a judicial circuit operating its own truancy program, a circuit judge may
 4 in lieu of referring truant juveniles to the department, order that the juveniles be supervised by his
 5 or her probation office: *Provided, however, That a circuit judge may refer a truant juvenile to a*
 6 *truancy diversion specialist.*

7 (e) If the allegations in a petition are not sustained by proof as provided in subsections (c)
 8 and (d) of this section, the petition shall be dismissed and the juvenile shall be discharged if he or
 9 she is in custody.

10 (f) Findings of fact and conclusions of law addressed to all allegations in the petition shall
 11 be stated on the record or reduced to writing and filed with the record or incorporated into the order
 12 of the court. The record shall include the treatment and rehabilitation goals the court has accepted
 13 after recommendation by the multidisciplinary team as discussed in section three-c, article five-d of
 14 this chapter.

15 **§49-5-11a. ~~Status offenders: Intervention and services by state department pursuant to initial~~**
 16 **~~disposition for status offenders; enforcement; further disposition; detention;~~**
 17 **~~out-of-home placement; state department custody; least restrictive alternative;~~**
 18 **~~appeal.~~**

19 (a) ~~Services~~ The services provided by the department for juveniles adjudicated as status
 20 offenders shall be consistent with the provisions of article five-b of this chapter and shall be designed
 21 to develop skills and supports within families and to resolve problems related to the juveniles or

1 conflicts within their families. Services may include, but are not limited to, referral of juveniles and
2 parents, guardians or custodians and other family members to services for psychiatric or other
3 medical care, or psychological, welfare, legal, educational or other social services, as appropriate to
4 the needs of the juvenile and his or her family.

5 (b) If ~~necessary~~ the juvenile fails to comply with the services provided in subsection (a) of
6 this section, the department may petition the circuit court:

7 (1) For a valid court order, as defined in section four, article one of this chapter, to enforce
8 compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

9 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure
10 setting, and/or to place a juvenile in custody of the department: Provided, That a juvenile
11 adjudicated as a status offender may not be placed in an out-of-home placement, excluding
12 placements made for abuse and neglect or child welfare purposes, if that juvenile has had no prior
13 adjudications for a status offense or delinquent offense, or no prior dispositions to a pre-adjudicatory
14 improvement period or probation disposition: *Provided, however,* That the first-out-of-home
15 placement for a status offender with no prior adjudications for a status offense or delinquent offense
16 may not exceed thirty days.

17 (c) In ordering any further disposition under this section, the court is not limited to the relief
18 sought in the department's petition and shall make ~~every effort~~ all reasonable efforts to prevent
19 removal of the juvenile from his or her home or, as an alternative, to place juveniles the juvenile in
20 community-based facilities which are the least restrictive alternatives appropriate to the needs of the
21 juvenile and the community.

1 (d) (1) If the court finds that placement in a residential facility is necessary to provide the
2 services under subsection (a) of this section, except as prohibited by subdivision (2), subsection (b)
3 of this section, the court shall issue findings of fact as to the necessity of this placement, stated on
4 the record or reduced to writing and filed with the record or incorporated into the order of the court.

5 (2) The findings of fact shall include the factors that indicate:

6 (A) The likely effectiveness of placement in a residential facility for the juvenile; and

7 (B) The community services which were previously attempted to attain the goals for the
8 juvenile.

9 ~~(d)~~ (e) The disposition of the juvenile may not be affected by the fact that the juvenile
10 demanded a trial by jury or made a plea of denial. Any order providing disposition other than
11 mandatory referral to the department for services is subject to appeal to the Supreme Court of
12 Appeals.

13 ~~(e)~~ (f) Following any further disposition by the court, the court shall inquire of the juvenile
14 whether or not appeal is desired and the response shall be transcribed; a negative response may not
15 be construed as a waiver. The evidence shall be transcribed as soon as practicable and made
16 available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings.
17 A judge may grant a stay of execution pending further proceedings.

18 **§49-5-13. Disposition of juvenile delinquents; appeal.**

19 (a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the
20 court shall, upon request of the court, make an investigation of the environment of the juvenile and
21 the alternative dispositions possible. The court, upon its own motion, or upon request of counsel,

1 may order a standardized screener, as defined in subdivision (20), section four, article one of this
2 chapter or, if additional information is necessary, a psychological examination of the juvenile. The
3 report of such examination and other investigative and social reports shall not be made available to
4 the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided
5 to counsel for the petitioner and counsel for the juvenile no later than seventy-two hours prior to the
6 dispositional hearing.

7 (b) Following the adjudication, the court shall receive and consider the results of a risk and
8 needs assessment conducted pursuant to section twenty-three, article five of this chapter, and shall
9 conduct the dispositional proceeding, giving all parties an opportunity to be heard. The disposition
10 may include reasonable and relevant orders to the parents or guardians of the juvenile who is the
11 subject of proceedings under this section as is necessary and proper to carry out the disposition. In
12 the disposition the court shall not be limited to the relief sought in the petition and shall, in electing
13 from the following alternatives, consider the best interests of the juvenile and the welfare of the
14 public and shall make every effort to place the juvenile in the least restrictive alternative appropriate
15 to the needs of the juvenile and the community: *Provided, That a juvenile adjudicated delinquent*
16 for a misdemeanor offense may not be placed in an out-of-home placement within the Division of
17 Juvenile Services or the department if that juvenile has had no prior adjudications as a status
18 offender or as a delinquent, or no prior dispositions to a pre-adjudicatory improvement period or
19 probation disposition, excluding placements made for an abuse and neglect or child welfare purpose,
20 and excluding juveniles who present a significant and likely risk of physical harm to a family
21 member or household member;

- 1 (1) Dismiss the petition;
- 2 (2) Refer the juvenile and the juvenile's parent or custodian to a community agency for
3 needed assistance and dismiss the petition;
- 4 (3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the
5 juvenile under the supervision of a probation officer of the court or of the court of the county where
6 the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody
7 of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the
8 juvenile's activities under terms which are reasonable and within the child's ability to perform,
9 including participation in the litter control program established pursuant to section three, article
10 fifteen-a, chapter twenty-two of this code or other appropriate programs of community service;
- 11 (4) Upon a finding that a parent or custodian is not willing or able to take custody of the
12 juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that
13 a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court
14 may place the juvenile in temporary foster care or temporarily commit the juvenile to the department
15 or a child welfare agency. The court order shall state that continuation in the home is contrary to the
16 best interest of the juvenile and why; and whether or not the department made a reasonable effort
17 to prevent the placement or that the emergency situation made such efforts unreasonable or
18 impossible. Whenever the court transfers custody of a youth to the department, an appropriate order
19 of financial support by the parents or guardians shall be entered in accordance with section five,
20 article seven of this chapter and guidelines promulgated by the Supreme Court of Appeals;
- 21 (5) (A) Upon a finding that the best interests of the juvenile or the welfare of the public

1 require it, and upon an adjudication of delinquency pursuant to subdivision (1), section four, article
2 one of this chapter, the court may commit the juvenile to the custody of the Director of the Division
3 of Juvenile Services for placement in a juvenile services facility for the treatment, instruction and
4 rehabilitation of juveniles: *Provided*, That the court maintains discretion to consider alternative
5 sentencing arrangements.

6 (B) Notwithstanding any provision of this code to the contrary, in the event that the court
7 determines that it is in the juvenile's best interests or required by the public welfare to place the
8 juvenile in the custody of the Division of Juvenile Services, the court shall provide the Division of
9 Juvenile Services with access to all relevant court orders and records involving the underlying
10 offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and
11 presentencing reports and evaluations, and provide the division with access to school records,
12 psychological reports and evaluations, risk and needs assessment results, medical reports and
13 evaluations or any other such records as may be in the court's possession as would enable the
14 Division of Juvenile Services to better assess and determine the appropriate counseling, education
15 and placement needs for the juvenile offender. Commitments shall not exceed the maximum term
16 for which an adult could have been sentenced for the same offense and any such maximum allowable
17 sentence to be served in a juvenile correctional facility may take into account any time served by the
18 juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that
19 continuation in the home is contrary to the best interests of the juvenile and why; and whether or not
20 the state department made a reasonable effort to prevent the placement or that the emergency
21 situation made such efforts unreasonable or impossible; or

1 (6) After a hearing conducted under the procedures set out in subsections (c) and (d), section
2 four, article five, chapter twenty-seven of this code, commit the juvenile to a mental health facility
3 in accordance with the juvenile's treatment plan; the director of the mental health facility may release
4 a juvenile and return him or her to the court for further disposition. The order shall state that
5 continuation in the home is contrary to the best interests of the juvenile and why; and whether or not
6 the state department made a reasonable effort to prevent the placement or that the emergency
7 situation made such efforts unreasonable or impossible.

8 (c) In any case in which the court decides to order the juvenile placed in an out-of-state
9 facility or program, it shall set forth in the order directing the placement the reasons the juvenile was
10 not placed in an in-state facility or program.

11 (d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded
12 a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the Supreme
13 Court of Appeals.

14 (e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and
15 the response shall be transcribed; a negative response shall not be construed as a waiver. The
16 evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her
17 counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of
18 execution pending further proceedings.

19 (f) Following a disposition under subdivisions (4), (5), or (6) of subsection (b) of this section,
20 the court shall include the treatment and rehabilitation goals the court has accepted after
21 recommendation by the multidisciplinary team under paragraph (c) subdivision (4), section three-c,

1 article five-d of this chapter in the findings of fact set forth under subsection (m), section two, article
2 five, of this chapter.

3 (f) (g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged
4 with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted,
5 the court may make its disposition in accordance with this section in lieu of sentencing such person
6 as an adult.

7 **§49-5-13a. Examination, diagnosis and classification; period of custody.**

8 (a) As a part of the dispositional proceeding for a juvenile who has been adjudicated
9 delinquent, the court may, upon its own motion or upon request of counsel, order the juvenile to be
10 delivered into the custody of the Director of the Division of Juvenile Services, who shall cause the
11 juvenile to be transferred to a juvenile diagnostic center for a period not to exceed ~~sixty~~ thirty days:
12 Provided, That the juvenile has either been assessed as high risk by a risk and needs assessment, or
13 has committed an act or acts of violence. During this period, the juvenile shall undergo examination,
14 diagnosis, classification and a complete medical examination and shall at all times be kept apart from
15 the general juvenile inmate population in the director's custody.

16 (b) During the examination period established by subsection (a) of this section, the director,
17 or his or her designee, shall convene and direct a multidisciplinary treatment team for the juvenile
18 which team shall include the juvenile, if appropriate, the juvenile's probation officer, the juvenile's
19 social worker, if any, the juvenile's custodial parent or parents, the juvenile's guardian, attorneys
20 representing the juvenile or the parents, the guardian ad litem, if any, the prosecuting attorney and an
21 appropriate school official or representative. The team may also include, where appropriate, a

1 court-appointed special advocate, a member of a child advocacy center and any other person who may
2 assist in providing recommendations for the particular needs of the juvenile and the family.

3 (c) Not later than ~~sixty~~ thirty days after commitment pursuant to this section the juvenile shall
4 be remanded and delivered to the custody of the director, an appropriate agency or any other person
5 that the court by its order directs. Within ten days after the end of the examination, diagnosis and
6 classification, the Director of the Division of Juvenile Services shall make or cause to be made a report
7 to the court containing the results, findings, conclusions and recommendations of the multidisciplinary
8 team with respect to that juvenile.

9 **§49-5-13h. Restorative justice programs.**

10 (a) The court or prosecuting attorney may divert a juvenile referred to the court for a status
11 offense or nonviolent misdemeanor offense to a restorative justice program, where available, prior to
12 adjudication.

13 (b) A restorative justice program shall:

14 (1) Emphasize repairing the harm against the victim and the community caused by the juvenile;

15 (2) Include victim-offender dialogues or family group conferencing attended voluntarily by the
16 victim, the juvenile offender, a facilitator, a victim advocate, community members, or supporters of
17 the victim or the juvenile offender that provide an opportunity for the offender to accept responsibility
18 for the harm caused to those affected by the crime and to participate in setting consequences to repair
19 the harm; and

20 (3) Implement sanctions for the juvenile, including, but not limited to, restitution to the victim,
21 restitution to the community, services for the victim or the community, or any other sanction intended

1 to provide restitution to the victim or the community.

2 (c) If a juvenile is referred to, and successfully completes, a restorative justice program, the
3 petition against the juvenile shall be dismissed.

4 (d) No information obtained as the result of a restorative justice program is admissible in a
5 subsequent proceeding under this article.

6 **§49-5-13i. Individualized case planning.**

7 (a) For any juvenile ordered to probation supervision pursuant to section thirteen of this article,
8 the probation officer assigned to the court shall develop and implement an individualized case plan
9 in consultation with the juvenile's parents, guardian, or custodian, and other appropriate parties, and
10 informed by the results of a risk and needs assessment conducted within the last six months prior to
11 the disposition to probation. The probation officer shall work with the juvenile and his or her family
12 or guardian to implement the case plan following disposition. At a minimum, the case plan shall:

13 (1) Identify the actions to be taken by the juvenile and, if appropriate, the juvenile's parents,
14 guardian, or custodian to ensure future lawful conduct and compliance with the court's disposition
15 order; and

16 (2) Identify the services to be offered and provided to the juvenile and, if appropriate, the
17 juvenile's parents, guardian, or custodian and may include services to address the following: mental
18 health and substance abuse issues; education; individual, group, and family counseling services;
19 community restoration; or other relevant concerns identified by the probation officer.

20 (b) For any juvenile disposed to an out-of-home placement with the department, the department
21 shall ensure that the residential service provider develops and implements an individualized case plan

1 informed by the recommendations made to the court by the multidisciplinary team pursuant to section
2 three, article five-d of this chapter and informed by the results of a risk and needs assessment. At a
3 minimum, the case plan shall include:

4 (1) Specific treatment goals and the actions to be taken by the juvenile in order to demonstrate
5 satisfactory attainment of each goal;

6 (2) The services to be offered and provided by the residential service providers; and

7 (3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her
8 family, guardian, school, and community following the satisfactory completion of the case plan
9 treatment goals, including a protocol and timeline for engaging the parents, guardians, or custodians
10 prior to the release of the juvenile.

11 (c) For any juvenile committed to the Division of Juvenile Services, the Division of Juvenile
12 Services shall develop and implement an individualized case plan informed by the recommendations
13 made to the court by the multidisciplinary team pursuant to section three, article five-d of this chapter
14 and informed by the results of a risk and needs assessment. At a minimum, the case plan shall include:

15 (1) Specific correctional goals and the actions to be taken by the juvenile in order to
16 demonstrate satisfactory attainment of each goal;

17 (2) The services to be offered and provided by the Division of Juvenile Services and any
18 contracted service providers; and

19 (3) A detailed plan designed to assure appropriate reintegration of the juvenile to his or her
20 family, guardian, school, and community following the satisfactory completion of the case plan
21 treatment goals, including a protocol and timeline for engaging the parents, guardians, or custodians

1 prior to the release of the juvenile.

2 **§49-5-14. Modification of dispositional orders; review and modification of dispositional**
3 **orders.**

4 (a) A dispositional order of the court may be modified:

5 (1) Upon the motion of the probation officer, a department official, the director of the Division
6 of Juvenile Services or prosecuting attorney; or

7 (2) Upon the request of the child or a child's parent or custodian who alleges a change of
8 circumstances relating to disposition of the child.

9 (b) Upon such a motion or request, the court shall conduct a review proceeding, except that if
10 the last dispositional order was within the previous six months the court may deny a request for review.
11 Notice in writing of a review proceeding shall be given to the child, the child's parent or custodian and
12 all counsel not less than seventy-two hours prior to the proceeding. The court shall review the
13 performance of the child, the child's parent or custodian, the child's social worker and other persons
14 providing assistance to the child or child's family. If the motion or request for review of disposition
15 is based upon an alleged violation of a court order, the court may modify the dispositional order to a
16 more restrictive alternative if it finds clear and convincing proof of substantial violation. In the
17 absence of such proof, the court may decline to modify the dispositional order or may modify the order
18 to one of the less restrictive alternatives set forth in section thirteen of this article. No juvenile may
19 be required to seek a modification order as provided in this section in order to exercise his or her right
20 to seek release by habeas corpus.

21 (c) In a hearing for modification of a dispositional order, or in any other dispositional hearing,

1 the court shall consider the best interests of the child and the welfare of the public.

2 (d)(1) For dispositional orders that include probation, the child's probation officer shall submit
3 an overview to the court of the child's compliance with the conditions of probation and goals of his
4 or her case plan every ninety days.

5 (2) If the child is compliant, and no longer in need of probation supervision, the probation
6 officer shall submit a recommendation for discharge from probation supervision. If the court
7 determines that early termination of the probation term is warranted, it may issue an order discharging
8 the child from probation without a review proceeding.

9 (3) If the child is not compliant with the conditions or has not met his or her goals, the
10 probation officer shall include an accompanying recommendation to the court with additional or
11 changed conditions or goals necessary to achieve compliance. If the court determines that changes to
12 the conditions of probation are warranted, the court shall conduct a review proceeding in accordance
13 with subsection (b) of this section.

14 **§49-5-15. Juvenile probation officers; appointment; salary; facilities; expenses; duties;**
15 **powers.**

16 (a) (1) Each circuit court, subject to the approval of the Supreme Court of Appeals and in
17 accordance with the rules of the Supreme Court of Appeals, shall appoint one or more juvenile
18 probation officers and clerical assistants for the circuit. A probation officer or clerical assistant may
19 not be related by blood or marriage to the appointing judge.

20 (2) The salary for juvenile probation officers and clerical assistants shall be determined and
21 fixed by the Supreme Court of Appeals. All expenses and costs incurred by the juvenile probation

1 officers and their staff shall be paid by the Supreme Court of Appeals in accordance with its rules. The
2 county commission of each county shall provide adequate office facilities for juvenile probation
3 officers and their staff. All equipment and supplies required by juvenile probation officers and their
4 staff shall be provided by the Supreme Court of Appeals.

5 (3) A juvenile probation officer may not be considered a law-enforcement official under any
6 provision of this chapter.

7 (b) The clerk of a court shall notify, if practicable, the chief probation officer of the county, or
8 his or her designee, when a juvenile is brought before the court or judge for proceedings under this
9 article. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or she
10 or one of his or her assistants shall:

11 (1) Make investigation of the case; and

12 (2) Furnish information and assistance that the court or judge may require.

13 (c) (1) The Supreme Court of Appeals may develop a system of community-based juvenile
14 probation sanctions and incentives to be utilized by probation officers in response to violations of
15 terms and conditions of probation and to award incentives for positive behavior.

16 (2) The community-based juvenile probation sanctions and incentives may consist of a
17 continuum of responses from the least restrictive to the most restrictive, developed to respond swiftly,
18 proportionally, and consistently to violations of the terms and conditions of probation.

19 (3) The purpose of community-based juvenile probation sanctions and incentives is to reduce
20 the amount of resources and time spent by the court addressing probation violations, to reduce the
21 likelihood of a new status or delinquent act, and to encourage positive behavior by the juvenile on

1 probation prior to any attempt to place a juvenile in an out-of-home placement.

2 **§49-5-17. Confidentiality of juvenile records.**

3 (a) Records of a juvenile proceeding conducted under this chapter are not public records and
4 shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

5 (b) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile's
6 records shall automatically be disclosed to certain school officials, subject to the following terms and
7 conditions:

8 (1) Only the records of certain juveniles shall be disclosed. These include, and are limited to,
9 cases in which:

10 (A) The juvenile has been charged with an offense which:

11 (i) Involves violence against another person;

12 (ii) Involves possession of a dangerous or deadly weapon; or

13 (iii) Involves possession or delivery of a controlled substance as that term is defined in section
14 one hundred one, article one, chapter sixty-a of this code; and

15 (B) The juvenile's case has proceeded to a point where one or more of the following has
16 occurred:

17 (i) A judge, magistrate or referee has determined that there is probable cause to believe that the
18 juvenile committed the offense as charged;

19 (ii) A judge, magistrate or referee has placed the juvenile on probation for the offense;

20 (iii) A judge, magistrate or referee has placed the juvenile into an improvement period in
21 accordance with section nine of this article; or

1 (iv) Some other type of disposition has been made of the case other than dismissal.

2 (2) The circuit court for each judicial circuit in West Virginia shall designate one person to
3 supervise the disclosure of juvenile records to certain school officials.

4 (3) If the juvenile attends a West Virginia public school, the person designated by the circuit
5 court shall automatically disclose all records of the juvenile's case to the county superintendent of
6 schools in the county in which the juvenile attends school and to the principal of the school which the
7 juvenile attends, subject to the following:

8 (A) At a minimum, the records shall disclose the following information:

9 (i) Copies of the arrest report;

10 (ii) Copies of all investigations;

11 (iii) Copies of any psychological test results and any mental health records;

12 (iv) Copies of any evaluation reports for probation or facility placement; and

13 (v) Any other material that would alert the school to potential danger that the juvenile may pose
14 to himself, herself or others;

15 (B) The disclosure of the juvenile's psychological test results and any mental health records
16 shall only be made in accordance with subdivision (14) of this subsection;

17 (C) If the disclosure of any record to be automatically disclosed under this section is restricted
18 in its disclosure by the Health Insurance Portability and Accountability Act of 1996 and any
19 amendments and regulations under the Act, the person designated by the circuit court shall provide the
20 superintendent and principal any notice of the existence of the record that is permissible under the Act
21 and, if applicable, any action that is required to obtain the record; and

1 (D) When multiple disclosures are required by this subsection, the person designated by the
2 circuit court is required to disclose only material in the juvenile record that had not previously been
3 disclosed to the county superintendent and the principal of the school which the juvenile attends.

4 (4) If the juvenile attends a private school in West Virginia, the person designated by the circuit
5 court shall determine the identity of the highest ranking person at that school and shall automatically
6 disclose all records of a juvenile's case to that person.

7 (5) If the juvenile does not attend school at the time the juvenile's case is pending, the person
8 designated by the circuit court shall not transmit the juvenile's records to any school. However, the
9 person designated by the circuit court shall transmit the juvenile's records to any school in West
10 Virginia which the juvenile subsequently attends.

11 (6) The person designated by the circuit court shall not automatically transmit juvenile records
12 to a school which is not located in West Virginia. Instead, the person designated by the circuit court
13 shall contact the out-of-state school, inform it that juvenile records exist and make an inquiry regarding
14 whether the laws of that state permit the disclosure of juvenile records. If so, the person designated
15 by the circuit court shall consult with the circuit judge who presided over the case to determine
16 whether the juvenile records should be disclosed to the out-of-state school. The circuit judge shall
17 have discretion in determining whether to disclose the juvenile records and shall consider whether the
18 other state's law regarding disclosure provides for sufficient confidentiality of juvenile records, using
19 this section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be
20 disclosed in accordance with the provisions of subdivision (7) of this subsection.

21 (7) The person designated by the circuit court shall transmit the juvenile's records to the

1 appropriate school official under cover of a letter emphasizing the confidentiality of such records and
2 directing the official to consult this section of the code. A copy of this section of the code shall be
3 transmitted with the juvenile's records and cover letter.

4 (8) Juvenile records must be treated as absolutely confidential by the school official to whom
5 they are transmitted, and nothing contained within the juvenile's records shall be noted on the
6 juvenile's permanent educational record. The juvenile records are to be maintained in a secure location
7 and are not to be copied under any circumstances. However, the principal of a school to whom the
8 records are transmitted shall have the duty to disclose the contents of those records to any teacher who
9 teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in
10 which the subject juvenile is regularly transported to or from school, except that the disclosure of the
11 juvenile's psychological test results and any mental health records shall only be made in accordance
12 with subdivision (14) of this subsection. Furthermore, any school official to whom the juvenile's
13 records are transmitted may disclose the contents of such records to any adult within the school system
14 who, in the discretion of the school official, has the need to be aware of the contents of those records.

15 (9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's records,
16 the appropriate official at that school shall seal the records and return them to the circuit court which
17 sent them to that school. If the juvenile has changed schools for any reason, the former school shall
18 inform the circuit court of the name and location of the new school which the juvenile attends or will
19 be attending. If the new school is located within West Virginia, the person designated by the circuit
20 court shall forward the juvenile's records to the juvenile's new school in the same manner as provided
21 in subdivision (7) of this subsection. If the new school is not located within West Virginia, the person

1 designated by the circuit court shall handle the juvenile records in accordance with subdivision (6) of
2 this subsection.

3 If the juvenile has been found not guilty of an offense for which records were previously
4 forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit court shall
5 not forward those records to the juvenile's new school. However, this shall not affect records related
6 to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be
7 attending another school, the circuit court shall retain the juvenile's records and handle them as
8 otherwise provided in this article.

9 (10) Under no circumstances shall one school transmit a juvenile's records to another school.

10 (11) Under no circumstances shall juvenile records be automatically transmitted to a college,
11 university or other post-secondary school.

12 (12) No one shall suffer any penalty, civil or criminal, for accidentally or negligently attributing
13 certain juvenile records to the wrong person. However, such person shall have the affirmative duty
14 to promptly correct any mistake that he or she has made in disclosing juvenile records when the
15 mistake is brought to his or her attention. A person who intentionally attributes false information to
16 a certain person shall be subjected to both criminal and civil penalties in accordance with subsection
17 (e) of this section.

18 (13) If a judge, magistrate or referee has determined that there is probable cause to believe that
19 a juvenile has committed an offense but there has been no final adjudication of the charge, the records
20 which are transmitted by the circuit court shall be accompanied by a notice which clearly states in bold
21 print that there has been no determination of delinquency and that our legal system requires a

1 presumption of innocence.

2 (14) The county superintendent shall designate the school psychologist or psychologists to
3 receive the juvenile's psychological test results and any mental health records. The psychologist
4 designated shall review the juvenile's psychological test results and any mental health records and, in
5 the psychologist's professional judgment, may disclose to the principal of the school that the juvenile
6 attends and other school employees who would have a need to know the psychological test results,
7 mental health records and any behavior that may trigger violence or other disruptive behavior by the
8 juvenile. Other school employees include, but are not limited to, any teacher who teaches a class in
9 which the subject juvenile is enrolled and the regular driver of a school bus in which the subject
10 juvenile is regularly transported to or from school.

11 (c) Notwithstanding the provisions of subsection (a) of this section, juvenile records may be
12 disclosed, subject to the following terms and conditions:

13 (1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to
14 the provisions of subsection (c) or (d), section ten of this article, the juvenile records shall be open to
15 public inspection.

16 (2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to
17 the provisions of subsection (e), (f) or (g), section ten of this article, the juvenile records shall be open
18 to public inspection only if the juvenile fails to file a timely appeal of the transfer order, or the
19 Supreme Court of Appeals refuses to hear or denies an appeal which has been timely filed.

20 (3) If a juvenile is fourteen years of age or older and a court has determined there is a probable
21 cause to believe the juvenile committed an offense set forth in subsection (g), section ten of this article,

1 but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public
2 inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated
3 delinquent of the offense.

4 (4) If a juvenile is younger than fourteen years of age and a court has determined there is
5 probable cause to believe that the juvenile committed the crime of murder under section one, two or
6 three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree under
7 section three, article eight-b of said chapter, but the case is not transferred to criminal jurisdiction, the
8 juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond
9 and no longer detained or adjudicated delinquent of the offense.

10 (5) Upon a written petition and pursuant to a written order, the circuit court may permit
11 disclosure of juvenile records to:

12 (A) A court, in this state or another state, which has juvenile jurisdiction and has the juvenile
13 before it in a juvenile proceeding;

14 (B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile
15 which requests such records for the purpose of a presentence report or disposition proceeding;

16 (C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

17 (D) The officials of a public institution to which the juvenile is committed if they require such
18 records for transfer, parole or discharge; or

19 (E) A person who is conducting research. However, juvenile records may be disclosed for
20 research purposes only upon the condition that information which would identify the subject juvenile
21 or the juvenile's family shall not be disclosed.

1 (6) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or
2 copies made available, to a probation officer upon his or her written request and approved by his or
3 her supervising circuit court judge: *Provided*, That the clerk of the court shall file the written request
4 and the judge's approval in the juvenile's record and note therein the date and scope of the actual
5 disclosure: *Provided, however*, That any probation officer may, without a court order, access relevant
6 juvenile case information contained in any electronic database maintained by or for the Supreme Court
7 of Appeals and share it with any other probation officer in the same or a different circuit.

8 (7) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or
9 copies made available, in response to any lawfully issued subpoena from a federal court or federal
10 agency.

11 (8) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or
12 copies made available, to the department's social workers for purposes of case planning for the
13 juvenile and his or her family or guardian.

14 (d) Any records open to public inspection pursuant to the provisions of this section are subject
15 to the same requirements governing the disclosure of adult criminal records.

16 (e) Any person who willfully violates this section is guilty of a misdemeanor and, upon
17 conviction thereof, shall be fined not more than \$1,000, or confined in the county or regional jail for
18 not more than six months, or both fined and confined and shall be liable for damages in the amount
19 of \$300 or actual damages, whichever is greater.

20 **§49-5-20. After-care plans.**

21 (a) Prior to the discharge of a juvenile from any ~~institution or facility~~ out-of-home placement

1 to which the juvenile was committed pursuant to ~~subdivision (5) or (6), subsection (b), section thirteen~~
2 ~~of this article~~ this chapter, the superintendent of the institution, ~~or facility~~ or the administrator of the
3 facility shall call a meeting of the multidisciplinary treatment team to which the child has been referred
4 or, if no referral has been made, convene a multidisciplinary treatment team for any child for which
5 a multidisciplinary treatment plan is required by ~~the provisions of section three, article five-d~~ of this
6 chapter and forward a copy of the juvenile's proposed after-care plan to the circuit court which
7 committed the juvenile. A copy of the plan shall also be sent to: (1) The juvenile's parents or legal
8 guardian; (2) the juvenile's lawyer; (3) the juvenile's probation officer or community mental health
9 center professional; (4) the prosecuting attorney of the county in which the original commitment
10 proceedings were held; and (5) the principal of the school which the juvenile will attend. The plan
11 shall have a list of the names and addresses of these persons attached to it.

12 (b) The after-care plan shall contain a detailed description of the education, counseling and
13 treatment which the juvenile received while at ~~the institution or facility~~ the out-of-home placement and
14 it shall also propose a plan for education, counseling and treatment for the juvenile upon the juvenile's
15 discharge. The plan shall also contain a description of any problems the juvenile has, including the
16 source of those problems, and it shall propose a manner for addressing those problems upon discharge.

17 (c) Within twenty-one days of receiving the plan, the juvenile's probation officer or community
18 mental health center professional shall submit written comments upon the plan to the circuit court
19 which committed the juvenile. Any other person who received a copy of the plan pursuant to
20 subsection (a) of this section may submit written comments upon the plan to the circuit court which
21 committed the juvenile. Any person who submits comments upon the plan shall send a copy of those

1 comments to every other person who received a copy of the plan.

2 (d) Within twenty-one days of receiving the plan, the juvenile's probation officer or community
3 mental health center professional shall contact all persons, organizations and agencies which are to be
4 involved in executing the plan to determine whether they are capable of executing their responsibilities
5 under the plan and to further determine whether they are willing to execute their responsibilities under
6 the plan.

7 (e) If adverse comments or objections regarding the plan are submitted to the circuit court, it
8 shall, within forty-five days of receiving the plan, hold a hearing to consider the plan and the adverse
9 comments or objections. Any person, organization or agency which has responsibilities in executing
10 the plan, or their representatives, may be required to appear at the hearing unless they are excused by
11 the circuit court. Within five days of the hearing, the circuit court shall issue an order which adopts
12 the plan as submitted or as modified in response to any comments or objections.

13 (f) If no adverse comments or objections are submitted, a hearing need not be held. In that
14 case, the circuit court shall consider the plan as submitted and shall, within forty-five days of receiving
15 the plan, issue an order which adopts the plan as submitted.

16 (g) Notwithstanding the provisions of subsections (e) and (f) of this section, the plan which is
17 adopted by the circuit court shall be in the best interests of the juvenile and shall also be in conformity
18 with West Virginia's interest in youth as embodied in ~~subsection (b), section thirteen of this article~~ this
19 chapter.

20 (h) The circuit court which committed the juvenile shall appoint the juvenile's probation officer
21 or community mental health center professional to act as supervisor of the plan. The supervisor shall

1 report the juvenile's progress under the plan to the circuit court every sixty days or until the circuit
2 court determines that no report or no further care is necessary.

3 **§49-5-22. Standardized risk and needs assessment.**

4 (a) The Supreme Court of Appeals shall adopt a risk and needs assessment for use in informing
5 juvenile dispositions. A validation study of the risk and needs assessment may be conducted at least
6 every three years to ensure that the risk and needs assessment is predictive of the risk of reoffending.

7 (b) Each juvenile adjudicated for a status or delinquency offense in accordance with section
8 eleven, article five of this chapter shall undergo a risk and needs assessment prior to disposition to
9 identify specific factors that predict a juvenile's likelihood of reoffending and, when appropriately
10 addressed, can reduce the likelihood of reoffending. The risk and needs assessment may be conducted
11 by a probation officer, other court official, or the state department worker trained to conduct the risk
12 and needs assessment.

13 (c) Each multidisciplinary team convened pursuant to section three, article five-d of this chapter
14 shall receive and consider the results of the risk and needs assessment of the juvenile.

15 (d) The results of the risk and needs assessment shall be provided to the court prior to
16 disposition or at the time of the dispositional hearing.

17 **§49-5-23. Data collection.**

18 (a) The Division of Juvenile Services, the department, and the Supreme Court of Appeals shall
19 establish procedures to jointly collect and compile aggregate data necessary to calculate juvenile
20 recidivism and the outcome of programs.

21 (b) For each juvenile who enters into a diversion agreement, is placed on an improvement

1 period, is placed on probation, or is placed in an out-of-home placement as defined by subsection (14),
2 section four, article one of this chapter, the data and procedures developed in subsection (a) shall
3 include:

4 (1) New offense referrals to juvenile court or criminal court within three years of completion
5 of the diversion agreement, release from court jurisdiction, or release from agency custody;

6 (2) Adjudications for a delinquent or status offense by a juvenile or a conviction by a criminal
7 court within three years of completion of the diversion agreement, release from court jurisdiction, or
8 release from agency custody; and

9 (3) Commitments to the Division of Juvenile Services, the department (excluding out-of-home
10 placements made for child welfare or abuse and neglect purposes), or incarceration with the Division
11 of Corrections within three years of completion of the diversion agreement, release from court
12 jurisdiction, or release from agency custody.

13 (c) For youth placed in programs operated or funded by the Division of Juvenile Services, the
14 department, or the Supreme Court of Appeals, including youth reporting centers, juvenile drug courts,
15 restorative justice programs, and teen courts, the division, department, and Supreme Court shall
16 develop procedures using, at a minimum, the measures in subsection (b) of this section to track and
17 record aggregate outcomes of each program, and to demonstrate that the program reduces the
18 likelihood of reoffending for the youth referred to the program.

19 (d) For youth referred to truancy diversion specialists or other truancy diversion programs
20 operated or funded by the Supreme Court of Appeals, the Division of Juvenile Services, or the
21 department, that branch of government or agency shall develop procedures to track and record

1 aggregate outcomes of each program, and to evaluate the effectiveness in reducing unexcused absences
2 for the youth referred to the program. At a minimum, this outcome data shall include:

3 (1) The number of youth successfully completing the truancy diversion program;

4 (2) The number of youth who are referred to the court system after failing to complete a truancy
5 diversion program; and

6 (3) The number of youth who, after successfully completing a truancy diversion program,
7 accumulate five or more unexcused absences in the current or subsequent school year.

8 (e) The Supreme Court of Appeals, the Division of Juvenile Services, and the department shall
9 also establish procedures to jointly collect and compile aggregate data relating to disproportionate
10 minority contact, which is defined as the proportion of minority youth who come into contact with the
11 juvenile justice system in relation to the proportion of minority youth in the general population, and
12 the compilation shall include data indicating the prevalence of such disproportionality in each county.
13 Aggregate data shall include, at a minimum, the race and gender of youth arrested or referred to court,
14 entered into a diversion program, adjudicated, and disposed.

15 **ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.**

16 **§49-5B-4. Responsibilities of the Department of Health and Human Resources and Division of**
17 **Juvenile Services of the Department of Military Affairs and Public Safety.**

18 (a) The Department of Health and Human Resources and the Division of Juvenile Services of
19 the Department of Military Affairs and Public Safety ~~are empowered to jointly establish, and shall~~
20 ~~establish subject to the limits of funds available or otherwise appropriated therefor,~~ programs and
21 services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system,

1 to provide community-based alternatives to juvenile detention and correctional facilities and to
2 encourage a diversity of alternatives within the child welfare and juvenile justice system. The
3 development, maintenance and expansion of programs and services may include, but not be limited
4 to, the following:

5 (1) Community-based programs and services for the prevention and treatment of juvenile
6 delinquency through the development of foster-care and shelter-care homes, group homes, halfway
7 houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis
8 home programs, day treatment and any other designated community-based diagnostic, treatment or
9 rehabilitative service;

10 (2) Community-based programs and services to work with parents and other family members
11 to maintain and strengthen the family unit so that the juvenile may be retained in his or her home;

12 (3) Youth service bureaus and other community-based programs to divert youth from the
13 juvenile court or to support, counsel, or provide work and recreational opportunities for status
14 offenders, juvenile delinquents and other youth to help prevent delinquency;

15 (4) Projects designed to develop and implement programs stressing advocacy activities aimed
16 at improving services for and protecting rights of youth affected by the juvenile justice system;

17 (5) Educational programs or supportive services designed to encourage status offenders,
18 juvenile delinquents, and other youth to remain in elementary and secondary schools or in alternative
19 learning situations;

20 (6) Expanded use of professional and paraprofessional personnel and volunteers to work
21 effectively with youth;

1 (7) Youth initiated programs and outreach programs designed to assist youth who otherwise
2 would not be reached by traditional youth assistance programs; ~~and~~

3 (8) A statewide program designed to reduce the number of commitments of juveniles to any
4 form of juvenile facility as a percentage of the state juvenile population; to increase the use of
5 nonsecure community-based facilities as a percentage of total commitments to juvenile facilities; and
6 to discourage the use of secure incarceration and detention; and

7 (9) Transitional programs designed to assist youth who are in the custody of the state upon
8 reaching the age of eighteen years.

9 (b) By January 1, 2017, the department and the Division of Juvenile Services shall devote at
10 least fifty percent of all funding for community services, as defined in subsection (5), section four,
11 article one of this chapter, either provided directly or by contracted service providers, to
12 evidence-based practices, as defined by subsection (10), section four, article one of this chapter.

13 ~~(b)~~ (c) (1) The Department of Health and Human Resources shall establish ~~within the funds~~
14 ~~available~~, an individualized program of rehabilitation for each status offender referred to the
15 department and to each alleged juvenile delinquent referred to the department after being allowed ~~an~~
16 ~~improvement~~ a pre-adjudicatory community supervision period by the juvenile court, and for each
17 adjudicated juvenile delinquent who, after adjudication, is referred to the department for investigation
18 or treatment or whose custody is vested in the department.

19 (2) Such An individualized program of rehabilitation shall take into account the programs and
20 services to be provided by other public or private agencies or personnel which are available in the
21 community to deal with the circumstances of the particular juvenile.

1 (3) For alleged juvenile delinquents and status offenders, such individualized program of
2 rehabilitation shall be furnished to the juvenile court and shall be available to counsel for the juvenile;
3 it may be modified from time to time at the direction of the department or by order of the juvenile
4 court.

5 (4) The department may develop an individualized program of rehabilitation for any juvenile
6 referred for noncustodial counseling under section five, article three of this chapter, for any juvenile
7 receiving counsel and advice under section three-a, article five of this chapter, or for any other juvenile
8 upon the request of a public or private agency.

9 (d) (1) The individualized program of rehabilitation created under subdivision (c) of this
10 section shall, for any youth in out-of-home placement, set out a plan to return that youth to his or her
11 home setting and transition that youth into community services to continue his or her rehabilitation.

12 (2) Planning for the transition shall begin upon entry into the residential facility. The transition
13 itself shall begin thirty days after admission to the residential facility, and the transition shall conclude
14 no later than three months after admission.

15 (3) The Department of Health and Human Resources staff shall, during its monthly site visits
16 at contracted residential facilities, ensure that the individualized programs of rehabilitation include a
17 plan for transition in accordance with this subsection.

18 (4) If further time in residential placement is necessary and the most effective method of
19 attaining the rehabilitation goals identified by the rehabilitation individualized plan created under
20 subdivision (c) of this section, then the department shall provide clear and convincing evidence to the
21 multidisciplinary team that further time in a residential facility is necessary. The court, in consultation

1 with the multidisciplinary team, may accept this evidence and order an extension of the time spent in
2 residential placement prior to the youth's transition to the community, or it may order that the
3 transition to community services begins to take place.

4 ~~(c)~~ (e) The Department of Health and Human Resources and the Division of Juvenile Services
5 may enter into cooperative arrangements and agreements with each other and with private agencies
6 or with agencies of the state and its political subdivisions to fulfill their respective duties under this
7 article and chapter.

8 **§49-5B-5. Rehabilitative facilities for status offenders.**

9 (a) The Department of Health and Human Resources shall ~~within the limits of state and federal~~
10 ~~funds appropriated therefor~~, establish and maintain one or more rehabilitative facilities to be used
11 exclusively for the lawful custody of status offenders. Each such facility shall be a nonsecure facility
12 having as its purpose the rehabilitation of status offenders. Such facility shall have a bed capacity for
13 not more than twenty juveniles, and shall minimize the institutional atmosphere and prepare the
14 juvenile for reintegration into the community.

15 (b) ~~Within the funds available, rehabilitative~~ Rehabilitative programs and services shall be
16 provided by or through each such facility and may include, but not be limited to, medical, educational,
17 vocational, social and psychological guidance, training, counseling, alcoholism treatment, drug
18 treatment and other rehabilitative services. The Department of Health and Human Resources shall
19 provide to each status offender committed to the facility a program of treatment and services consistent
20 with the individualized program of rehabilitation developed for such juvenile. In the case of any other
21 juvenile residing at the facility, the department shall provide such programs and services as may be

1 proper in the circumstances including, but not limited to, any such programs or services directed to be
2 provided by the court.

3 (c) The Board of Education of the county in which the facility is located shall provide
4 instruction for juveniles residing at the facility. Residents who can be permitted to do so shall attend
5 local schools, and instruction shall otherwise take place at the facility.

6 (d) Facilities established pursuant to this section shall be structured as community-based
7 facilities.

8 (e) The Department of Health and Human Resources may enter into cooperative arrangements
9 and agreements with private agencies or with agencies of the state and its political subdivisions to
10 fulfill its duties under this section: *Provided*, That the department may not enter into an agreement
11 with the Division of Juvenile Services to house juvenile status offenders under this section after July
12 1, 2015.

13 **ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

14 **§49-5D-3. Multidisciplinary treatment planning process.**

15 (a) (1) A multidisciplinary treatment planning process for cases initiated pursuant to articles
16 five and six of this chapter shall be established within each county of the state, either separately or in
17 conjunction with a contiguous county, by the secretary of the department with advice and assistance
18 from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this
19 code. In each circuit, the department shall coordinate with the prosecutor's office, the court, and the
20 public defender's office to designate at least one day per month on which multidisciplinary team
21 meetings for that circuit shall be held: *Provided*, That multidisciplinary team meetings may be held

1 on days other than the designated day or days when necessary. The Division of Juvenile Services shall
2 establish a similar treatment planning process for delinquency cases in which the juvenile has been
3 committed to its custody, including those cases in which the juvenile has been committed for
4 examination and diagnosis.

5 (2) ~~The provisions of this~~ This section ~~do~~ does not require a multidisciplinary team meeting
6 to be held prior to temporarily placing a child or juvenile out-of-home under exigent circumstances
7 or upon a court order placing a juvenile in a facility operated by the Division of Juvenile Services.

8 (b) The case manager in the Department of Health and Human Resources for the child, family
9 or juvenile or the case manager in the Division of Juvenile Services for a juvenile shall convene a
10 treatment team in each case when it is required pursuant to this article.

11 (1) Prior to disposition, in each case in which a treatment planning team has been convened,
12 the team shall advise the court as to the types of services the team has determined are needed and the
13 type of placement, if any, which will best serve the needs of the child. If the team determines that an
14 out-of-home placement will best serve the needs of the child, the team shall first consider placement
15 with appropriate relatives then with foster care homes, facilities or programs located within the state.
16 The team may only recommend placement in an out-of-state facility if it concludes, after considering
17 the best interests and overall needs of the child, that there are no available and suitable in-state
18 facilities which can satisfactorily meet the specific needs of the child.

19 (2) Any person authorized by the provisions of this chapter to convene a multidisciplinary team
20 meeting may seek and receive an order of the circuit court setting such meeting and directing
21 attendance. Members of the multidisciplinary team may participate in team meetings by telephone or

1 video conferencing: *Provided*, That the provisions of this subsection do not prevent the respective
2 agencies from designating a person other than the case manager as a facilitator for treatment team
3 meetings: *Provided however*, That written notice shall be provided to all team members of the
4 availability to participate by videoconferencing.

5 (c) The treatment team shall coordinate its activities and membership with local family
6 resource networks and coordinate with other local and regional child and family service planning
7 committees to assure the efficient planning and delivery of child and family services on a local and
8 regional level.

9 (d) The multidisciplinary treatment team shall be afforded access to information in the
10 possession of the Department of Health and Human Resources, Division of Juvenile Services,
11 law-enforcement agencies and other state, county and local agencies; and the agencies shall cooperate
12 in the sharing of information, as may be provided in sections three(d) and six, article five-d and section
13 one, article seven, all of chapter forty-nine, and any other relevant provision of law. Any
14 multidisciplinary team member who acquires confidential information shall not disclose such
15 information except as permitted by the provisions of this code or court rules.

16 **§49-5D-3c. Multidisciplinary treatment process for status offenders or delinquents.**

17 (†) (a) When a juvenile is adjudicated as a status offender pursuant to section eleven-d, article
18 five of this chapter, the Department of Health and Human Resources shall promptly convene a
19 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform
20 comprehensive assessment instrument or protocol, including a risk and needs assessment, to determine
21 the juvenile's mental and physical condition, maturity and education level, home and family

1 environment, rehabilitative needs and recommended service plan, which shall be provided in writing
2 to the court and team members. Upon completion of the assessment, the treatment team shall prepare
3 and implement a comprehensive, individualized service plan for the juvenile.

4 ~~(2)~~ (b) When a juvenile is adjudicated as a delinquent or has been granted an improvement
5 period pursuant to section nine, article five of this chapter, the court, either upon its own motion or
6 motion of a party, may require the Department of Health and Human Resources to convene a
7 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform
8 comprehensive assessment instrument or protocol, including a risk and needs assessment, to determine
9 the juvenile's mental and physical condition, maturity and education level, home and family
10 environment, rehabilitative needs and recommended service plan, which shall be provided in writing
11 to the court and team members. A referral to the Department of Health and Human Resources to
12 convene a multidisciplinary treatment team and to conduct such an assessment shall be made when
13 the court is considering placing the juvenile in the department's custody or placing the juvenile
14 out-of-home at the department's expense pursuant to section thirteen, article five of this chapter. In
15 any delinquency proceeding in which the court requires the Department of Health and Human
16 Resources to convene a multidisciplinary treatment team, the probation officer shall notify the
17 department at least fifteen working days before the court proceeding in order to allow the department
18 sufficient time to convene and develop an individualized service plan for the juvenile.

19 ~~(3)~~ (c) When a juvenile has been adjudicated and committed to the custody of the Director of
20 the Division of Juvenile Services, including those cases in which the juvenile has been committed for
21 examination and diagnosis, the Division of Juvenile Services shall promptly convene a

1 multidisciplinary treatment team and conduct an assessment, utilizing a standard uniform
 2 comprehensive assessment instrument or protocol, including a risk and needs assessment, to determine
 3 the juvenile's mental and physical condition, maturity and education level, home and family
 4 environment, rehabilitative needs and recommended service plan. Upon completion of the assessment,
 5 the treatment team shall prepare and implement a comprehensive, individualized service plan for the
 6 juvenile, which shall be provided in writing to the court and team members. In cases where the
 7 juvenile is committed as a post-sentence disposition to the custody of the Division of Juvenile
 8 Services, the plan shall be reviewed quarterly by the multidisciplinary treatment team. Where a
 9 juvenile has been detained in a facility operated by the Division of Juvenile Services without an active
 10 service plan for more than sixty days, the director of the facility may call a multidisciplinary team
 11 meeting to review the case and discuss the status of the service plan.

12 ~~(4) (A)~~ (d)(1) The rules of juvenile procedure shall govern the procedure for obtaining an
 13 assessment of a juvenile, preparing an individualized service plan and submitting the plan and
 14 assessment to the court.

15 ~~(B)~~ (2) In juvenile proceedings conducted pursuant to article five of this chapter, the following
 16 representatives shall serve as members and attend each meeting of the multidisciplinary treatment
 17 team, so long as they receive notice at least seven days prior to the meeting; the treatment team shall
 18 consist of

19 (A) the The juvenile;

20 (B) the The juvenile's case manager in the Department of Health and Human Resources or the
 21 Division of Juvenile Services;

- 1 ~~(C) the~~ The juvenile's parent or parents, guardian or guardians, or custodial relatives;
- 2 ~~(D) the~~ The juvenile's attorney;
- 3 ~~(E) any~~ Any attorney representing a member of the multidisciplinary treatment team;
- 4 ~~(F) the~~ The prosecuting attorney or his or her designee;
- 5 ~~(G) The county school superintendent or the superintendent's designee;~~
- 6 ~~(H) A treatment or service provider with training and clinical experience coordinating~~
- 7 ~~behavioral or mental health treatment; and~~
- 8 ~~(I) an appropriate school official and any~~ Any other person or agency representative who may
- 9 assist in providing recommendations for the particular needs of the juvenile and family, including
- 10 domestic violence service providers. In delinquency proceedings, the probation officer shall be a
- 11 member of a multidisciplinary treatment team. When appropriate, the juvenile case manager in the
- 12 Department of Health and Human Resources and the Division of Juvenile Services shall cooperate in
- 13 conducting multidisciplinary treatment team meetings when it is in the juvenile's best interest.
- 14 ~~(E)~~ (3) Prior to disposition, in each case in which a treatment planning team has been
- 15 convened, the team shall advise the court as to the types of services the team has determined are
- 16 needed and type of placement, if any, which will best serve the needs of the child. If the team
- 17 determines that an out-of-home placement will best serve the needs of the child, the team shall first
- 18 consider placement at facilities or programs located within the state. The team may only recommend
- 19 placement in an out-of-state facility if it concludes, after considering the best interests and overall
- 20 needs of the child, that there are no available and suitable in-state facilities which can satisfactorily
- 21 meet the specific needs of the child. The multidisciplinary treatment team shall also determine and

1 advise the court as to the individual treatment and rehabilitation goals for the child which shall be set
2 for the term spent in out-of-home placement or for the time on community supervision. The goals may
3 focus on reducing the likelihood of reoffending, requirements for the child to take responsibility for
4 his or her actions, completion of evidence-based services or programs, or any other relevant goal for
5 the child. The goals may also include opportunities to incorporate the family or guardian into the
6 treatment and rehabilitation process.

7 ~~(D)~~ (4) The multidisciplinary treatment team shall submit written reports to the court as
8 required by applicable law or by the court, shall meet with the court at least every three months, as long
9 as the juvenile remains in the legal or physical custody of the state, and shall be available for status
10 conferences and hearings as required by the court. The multidisciplinary treatment team shall monitor
11 progress toward the goals identified in subdivision (3) of this subsection and review progress toward
12 the goals at the regular meetings held at least every three months pursuant to this section, or at shorter
13 intervals, as ordered by the court, and shall report to the court on the progress toward the goals or if
14 additional goals are necessary.

15 ~~(E)~~ (5) In any case in which a juvenile has been placed out of his or her home except for a
16 temporary placement in a shelter or detention center, the multidisciplinary treatment team shall
17 cooperate with the state agency in whose custody the juvenile is placed to develop an after-care plan.
18 The rules of juvenile procedure and section twenty, article five, chapter forty-nine of the code shall
19 govern the development of an after-care plan for a juvenile, the submission of the plan to the court and
20 any objection to the after-care plan.

21 ~~(F)~~ (6) If a juvenile respondent admits the underlying allegations of the case initiated pursuant

1 to article five, chapter forty-nine of this code in the multidisciplinary treatment planning process, his
2 or her statements shall not be used in any juvenile or criminal proceedings against the juvenile, except
3 for perjury or false swearing.

4 **ARTICLE 5E. DIVISION OF JUVENILE SERVICES.**

5 **§49-5E-2. Division created; transfer of functions; employment of comprehensive strategy.**

6 (a) There is hereby created the Division of Juvenile Services within the Department of Military
7 Affairs and Public Safety. The director shall be appointed by the Governor with the advice and
8 consent of the Senate and shall be responsible for the control and supervision of each of its offices.
9 The director may appoint deputy directors and assign them duties as may be necessary for the efficient
10 management and operation of the division.

11 (b) The Division of Juvenile Services shall consist of two subdivisions:

12 (1) The office of juvenile detention, which shall assume responsibility for operating and
13 maintaining centers for the predispositional detention of juveniles, including juveniles who have been
14 transferred to adult criminal jurisdiction under section ten, article five of this chapter and juveniles
15 who are awaiting transfer to a juvenile corrections facility; and

16 (2) The office of juvenile corrections, which shall assume responsibility for operating and
17 maintaining juvenile corrections facilities.

18 (c) Notwithstanding any provisions of this code to the contrary, whenever a juvenile is ordered
19 into the custody of the Division of Juvenile Services, the director shall have the authority to place the
20 juvenile while he or she is in the division's custody at whichever facility operated by the division is
21 deemed by the director to be most appropriate considering the juvenile's well-being and any

1 recommendations of the court placing the juvenile in the division's custody. If a status offender is
2 ordered into the custody of the Division of Juvenile Services, the director shall have the authority to
3 transfer custody of the juvenile to the department. The director shall provide notice to the court within
4 seven days of transferring custody of a status offender to the department.

5 **§49-5E-9. Youth reporting centers.**

6 (a) The Division of Juvenile Services shall operate community-based youth reporting centers
7 to provide services to youth involved in the juvenile justice system as an alternative to detention,
8 corrections, or out-of-home placement.

9 (b) The Division of Juvenile Services shall promulgate guidelines, policies, and procedures
10 regarding referrals, assessments, case management, services, education, and connection to services in
11 the community.

12 (c) The Division of Juvenile Services shall collaborate with county boards of education to
13 provide education services to certain youth referred to youth reporting centers, whenever feasible.

14 (d) The Division of Juvenile Services may convene local or regional advisory boards for youth
15 reporting centers.

16 **§49-5E-10. Juvenile Justice Reform Oversight Committee.**

17 (a) The Juvenile Justice Reform Oversight Committee (the "committee") is hereby created to
18 oversee the implementation of reform measures intended to improve the state's juvenile justice system.

19 (b) The committee shall be comprised of sixteen members, including the following individuals:

20 (1) The Governor, or his or her designee, who shall preside as chair of the committee;

21 (2) Two members from the House of Delegates, appointed by the Speaker of the House of

1 Delegates;

2 (3) Two members from the Senate, appointed by the President of the Senate;

3 (4) The Secretary of the Department of Health and Human Resources, or his or her designee;

4 (5) The Director of the Division of Juvenile Services, or his or her designee;

5 (6) The Superintendent of the State Board of Education, or his or her designee;

6 (7) The Administrative Director of the Supreme Court of Appeals, or his or her designee;

7 (8) The Director of the Division of Probation Services, or his or her designee;

8 (9) Two members to represent the judicial circuits, appointed by the Chief Justice of the

9 Supreme Court of Appeals;

10 (10) One community member juvenile justice stakeholder, appointed by the Governor;

11 (11) One juvenile crime victim advocate, appointed by the Governor;

12 (12) One member from the law- enforcement agency, appointed by the Governor; and

13 (13) One member from a county prosecuting attorney's office, appointed by the Governor.

14 (c) The committee shall perform the following duties:

15 (1) Guide and evaluate the implementation of the provisions adopted in the year 2015 relating
16 to juvenile justice reform;

17 (2) Obtain and review the aggregate juvenile recidivism and program outcome data collected
18 pursuant to section twenty-three, article five of this chapter;

19 (3) Calculate any state expenditures that have been avoided by reductions in the number of
20 youth placed in out-of-home placements by the Division of Juvenile Services or the Department of
21 Health and Human Resources as reported under section twenty-three, article five of this chapter; and

- 1 (4) Institute a uniform process for developing and reviewing performance measurement and
2 outcome measures through data analysis. The uniform process shall include:
- 3 (A) The performance and outcome measures for each agency or branch of government; and
4 (B) The deadlines and format for the submission of the performance and outcome measures;
5 and
- 6 (5) Ensure system accountability and monitor the fidelity of implementation efforts or
7 programs;
- 8 (6) Study any additional topics relating to the continued improvement of the juvenile justice
9 system; and
- 10 (7) Issue an annual report to the executive, legislative, and judicial branches on or before
11 November 30th of each year, starting in 2016, which shall include:
- 12 (A) An assessment of the progress made in implementation of juvenile justice reform efforts;
13 (B) A summary of the committee’s efforts in fulfilling its duties as set forth in this subsection;
14 and
- 15 (C) An analysis of the recidivism data obtained by the committee under this subsection;
16 (D) A summary of the averted costs calculated by the committee under this subsection and a
17 recommendation for any reinvestment of the averted costs to fund services or programs to expand
18 West Virginia’s continuum of alternatives for youth who would otherwise be placed in out-of-home
19 placement;
- 20 (E) Recommendations for continued improvements to the juvenile justice system.
- 21 (d) The Division of Justice and Community Services shall provide staff support for the

1 committee. The committee may request and receive copies of all aggregate data, reports, performance
2 measures, and other evaluative material regarding juvenile justice submitted from any agency or
3 branch of government to carry out its duties.

4 (e) The committee shall meet within ninety days after appointment and shall thereafter meet
5 at least quarterly, upon notice by the chair. Eight members shall be considered a quorum.

6 (f) After initial appointment, members appointed to the committee by the Governor, the
7 Speaker of the House of Delegates, the President of the Senate, or the Chief Justice of the Supreme
8 Court of Appeals, pursuant to subsection (b) of this section, shall serve for a term of two years from
9 his or her appointment, and shall be eligible for reappointment to that position. All members
10 appointed to the committee shall serve until his or her successor has been duly appointed.

11 (g) The committee shall sunset on December 31, 2020, unless reauthorized by the Legislature.

NOTE: The purpose of this bill is to reform the juvenile justice system in West Virginia.

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

§49-5-13h, §49-5-13i, §49-5-22, §49-5-23, §49-5E-9 and §49-5E-10 are new; therefore, strike-throughs and underscoring have been omitted.