

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 329

BY SENATORS TRUMP, KESSLER, WOELFEL, PALUMBO,

ROMANO, PLYMALE, STOLLINGS AND UNGER

[Introduced January 20, 2016;

Referred to the Committee on Health and Human

Resources; and then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §49-1-207 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §49-2-125 of said code; and to amend and reenact §49-4-502,
3 §49-4-604, §49-4-605, §49-4-607, §49-4-701 and §49-4-709 of said code, all relating to
4 defining “juvenile referee”; eliminating sunset provision for the commission to study
5 residential placement of children; clarifying that prosecuting attorneys are not required to
6 represent any party other than Department of Health and Human Resources in child abuse
7 and neglect cases; clarifying that Department of Health and Human Resources is required
8 to make an effort to terminate parental rights when parent has committed sexual assault
9 or sexual abuse; and making technical changes.

Be it enacted by the Legislature of West Virginia:

1 That §49-1-207 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §49-2-125 of said code be amended and reenacted; and that §49-4-502, §49-4-
3 604, §49-4-605, §49-4-607, §49-4-701 and §49-4-709 of said code be amended and reenacted,
4 all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-207. Definitions related to court actions.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, court actions, except in those instances where a different
3 meaning is provided or the context in which the word is used clearly indicates that a different
4 meaning is intended.

5 “Court” means the circuit court of the county with jurisdiction of the case or the judge in
6 vacation unless otherwise specifically provided.

7 “Court appointed special advocate (CASA) program” means a community organization
8 that screens, trains and supervises CASA volunteers to advocate for the best interests of children
9 who are involved in abuse and neglect proceedings section one hundred two, article three of this
10 chapter.

11 “Extrajudicial Statement” means any utterance, written or oral, which was made outside
12 of court.

13 “Juvenile referee” means a magistrate appointed by the circuit court to perform the
14 functions expressly prescribed for a referee under the provisions of this chapter.

15 “Multidisciplinary team” means a group of professionals and paraprofessionals
16 representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose
17 and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are
18 not limited to, medical, educational, child care and law-enforcement personnel, social workers,
19 psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate
20 accurate diagnoses and to provide comprehensive coordinated treatment with continuity and
21 follow-up for both parents and children.

22 “Community team” means a multidisciplinary group which addresses the general problem
23 of child abuse and neglect in a given community and may consist of several multidisciplinary
24 teams with different functions.

25 “Res gestae” means a spontaneous declaration made by a person immediately after an
26 event and before the person has had an opportunity to conjure a falsehood.

27 “Valid court order” means an order issued by a court of competent jurisdiction relating to
28 a child brought before the court and who is the subject of that order. Prior to the entry of the order
29 the child shall have received the full due process rights guaranteed to that child or juvenile by the
30 Constitutions of the United States and the State of West Virginia.

31 “Violation of a traffic law of West Virginia” means a violation of chapter seventeen-a,
32 seventeen-b, seventeen-c or seventeen-d of this code except a violation of section one or two,
33 article four, chapter seventeen-c of this code relating to hit and run or section one, two or three,
34 article five of that chapter, relating, respectively, to negligent homicide, driving under the influence
35 of alcohol, controlled substances or drugs and reckless driving.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations. ~~termination~~

1 (a) The Legislature finds that the state's current system of serving children and families in
2 need of or at risk of needing social, emotional and behavioral health services is fragmented. The
3 existing categorical structure of government programs and their funding streams discourages
4 collaboration, resulting in duplication of efforts and a waste of limited resources. Children are
5 usually involved in multiple child-serving systems, including child welfare, juvenile justice and
6 special education. More than ten percent of children presently in care are presently in out-of-state
7 placements. Earlier efforts at reform have focused on quick fixes for individual components of the
8 system at the expense of the whole. It is the purpose of this section to establish a mechanism to
9 achieve systemic reform by which all of the state's child-serving agencies involved in the
10 residential placement of at-risk youth jointly and continually study and improve upon this system
11 and make recommendations to their respective agencies and to the Legislature regarding funding
12 and statutory, regulatory and policy changes. It is further the Legislature's intent to build upon
13 these recommendations to establish an integrated system of care for at-risk youth and families
14 that makes prudent and cost-effective use of limited state resources by drawing upon the
15 experience of successful models and best practices in this and other jurisdictions, which focuses
16 on delivering services in the least restrictive setting appropriate to the needs of the child, and
17 which produces better outcomes for children, families and the state.

18 (b) There is created within the Department of Health and Human Resources the
19 Commission to Study the Residential Placement of Children. The commission consists of the
20 Secretary of the Department of Health and Human Resources, the Commissioner of the Bureau
21 for Children and Families, the Commissioner for the Bureau for Behavioral Health and Health
22 Facilities, the Commissioner for the Bureau for Medical Services, the State Superintendent of
23 Schools, a representative of local educational agencies, the Director of the Office of Institutional
24 Educational Programs, the Director of the Office of Special Education Programs and Assurance,

25 the Director of the Division of Juvenile Services and the Executive Director of the Prosecuting
26 Attorney's Institute. At the discretion of the West Virginia Supreme Court of Appeals, circuit and
27 family court judges and other court personnel, including the Administrator of the Supreme Court
28 of Appeals and the Director of the Juvenile Probation Services Division, may serve on the
29 commission. These statutory members may further designate additional persons in their
30 respective offices who may attend the meetings of the commission if they are the administrative
31 head of the office or division whose functions necessitate their inclusion in this process. In its
32 deliberations, the commission shall also consult and solicit input from families and service
33 providers.

34 (c) The Secretary of the Department of Health and Human Resources shall serve as chair
35 of the commission, which shall meet on a quarterly basis at the call of the chair.

36 (d) At a minimum, the commission shall study:

37 (1) The current practices of placing children out-of-home and into in-residential
38 placements, with special emphasis on out-of-state placements;

39 (2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve
40 the needs of children requiring residential placements;

41 (3) Strategies and methods to reduce the number of children who must be placed in out-
42 of-state facilities and to return children from existing out-of-state placements, initially targeting
43 older youth who have been adjudicated delinquent;

44 (4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;

45 (5) The availability of and investment in community-based, less restrictive and less costly
46 alternatives to residential placements;

47 (6) Ways in which up-to-date information about in-state placement availability may be
48 made readily accessible to state agency and court personnel, including an interactive secure web
49 site;

50 (7) Strategies and methods to promote and sustain cooperation and collaboration between
51 the courts, state and local agencies, families and service providers, including the use of inter-
52 agency memoranda of understanding, pooled funding arrangements and sharing of information
53 and staff resources;

54 (8) The advisability of including no-refusal clauses in contracts with in-state providers for
55 placement of children whose treatment needs match the level of licensure held by the provider;

56 (9) Identification of in-state service gaps and the feasibility of developing services to fill
57 those gaps, including funding;

58 (10) Identification of fiscal, statutory and regulatory barriers to developing needed services
59 in-state in a timely and responsive way;

60 (11) Ways to promote and protect the rights and participation of parents, foster parents
61 and children involved in out-of-home care;

62 (12) Ways to certify out-of-state providers to ensure that children who must be placed out-
63 of-state receive high quality services consistent with this state's standards of licensure and rules
64 of operation; and

65 (13) Any other ancillary issue relative to foster care placement.

66 (e) The commission shall report annually to the Legislative Oversight Commission on
67 Health and Human Resources Accountability its conclusions and recommendations, including an
68 implementation plan whereby:

69 (1) Out-of-state placements shall be reduced by at least ten percent per year and by at
70 least fifty percent within three years;

71 (2) Child-serving agencies shall develop joint operating and funding proposals to serve
72 the needs of children and families that cross their jurisdictional boundaries in a more seamless
73 way;

74 (3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in
75 order for agencies to work collaboratively while maximizing the availability of federal funds;

76 (4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;

77 (5) System of care components and cooperative relationships shall be incrementally
78 established at the local, state and regional levels, with links to existing resources, such as family
79 resource networks and regional summits, wherever possible; and

80 (6) Recommendations for changes in fiscal, statutory and regulatory provisions are
81 included for legislative action.

82 ~~(f) The commission shall terminate on December 31, 2015, unless continued by act of the~~
83 ~~Legislature.~~

ARTICLE 4. COURT ACTIONS.

§49-4-502. Prosecuting attorney to represent and cooperate with persons other than the department in child abuse and neglect matters; duties.

1 It is the duty of every prosecuting attorney to ~~fully and promptly~~ cooperate fully and
2 promptly with persons seeking to apply for relief, including copetitioners with the department,
3 under this article in all cases of suspected child abuse and neglect; to promptly prepare
4 applications and petitions for relief requested by those persons, to investigate reported cases of
5 suspected child abuse and neglect for possible criminal activity; and to report at least annually to
6 the grand jury regarding the discharge of his or her duties with respect thereto.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

1 (a) *Child and family case plans.* — Following a determination pursuant to section six
2 hundred two of this article wherein the court finds a child to be abused or neglected, the
3 department shall file with the court a copy of the child's case plan, including the permanency plan
4 for the child. The term "case plan" means a written document that includes, where applicable, the
5 requirements of the family case plan as provided in section four hundred eight of this article and
6 that also includes, at a minimum, the following:

7 (1) A description of the type of home or institution in which the child is to be placed,
8 including a discussion of the appropriateness of the placement and how the agency which is
9 responsible for the child plans to assure that the child receives proper care and that services are
10 provided to the parents, child, and foster parents in order to improve the conditions that made the
11 child unsafe in the care of his or her parent(s), including any reasonable accommodations in
12 accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. §12101, *et seq.*, to
13 parents with disabilities in order to allow them meaningful access to reunification and family
14 preservation services;

15 (2) A plan to facilitate the return of the child to his or her own home or the concurrent
16 permanent placement of the child; and address the needs of the child while in relative or foster
17 care, including a discussion of the appropriateness of the services that have been provided to the
18 child.

19 The term “permanency plan” refers to that part of the case plan which is designed to
20 achieve a permanent home for the child in the least restrictive setting available. The plan must
21 document efforts to ensure that the child is returned home within approximate time lines for
22 reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal
23 guardian should be made at the same time, or concurrent with, reasonable efforts to prevent
24 removal or to make it possible for a child to return to the care of his or her parent(s) safely. If
25 reunification is not the permanency plan for the child, the plan must state why reunification is not
26 appropriate and detail the alternative, concurrent permanent placement plans for the child to
27 include approximate time lines for when the placement is expected to become a permanent
28 placement. This case plan shall serve as the family case plan for parents of abused or neglected
29 children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian
30 or custodian or their counsel at least five days prior to the dispositional hearing. The court shall
31 forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be
32 heard.

33 (b) *Disposition decisions.* — The court shall give precedence to dispositions in the
34 following sequence:

35 (1) Dismiss the petition;

36 (2) Refer the child, the abusing parent, the battered parent or other family members to a
37 community agency for needed assistance and dismiss the petition;

38 (3) Return the child to his or her own home under supervision of the department;

39 (4) Order terms of supervision calculated to assist the child and any abusing parent or
40 battered parent or parents or custodian which prescribe the manner of supervision and care of
41 the child and which are within the ability of any parent or parents or custodian to perform;

42 (5) Upon a finding that the abusing parent or battered parent or parents are presently
43 unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the
44 care, custody, and control of the state department, a licensed private child welfare agency, or a
45 suitable person who may be appointed guardian by the court. The court order shall state:

46 (A) That continuation in the home is contrary to the best interests of the child and why;

47 (B) Whether or not the department has made reasonable efforts, with the child's health
48 and safety being the paramount concern, to preserve the family, or some portion thereof, and to
49 prevent or eliminate the need for removing the child from the child's home and to make it possible
50 for the child to safely return home;

51 (C) Whether the department has made reasonable accommodations in accordance with
52 the Americans with Disabilities Act of 1990, 42 U. S. C. §12101, *et seq.*, to parents with disabilities
53 in order to allow them meaningful access to reunification and family preservation services;

54 (D) What efforts were made or that the emergency situation made those efforts
55 unreasonable or impossible; and

56 (E) The specific circumstances of the situation which made those efforts unreasonable if
57 services were not offered by the department. The court order shall also determine under what
58 circumstances the child's commitment to the department are to continue. Considerations pertinent
59 to the determination include whether the child should:

60 (i) Be considered for legal guardianship;
61 (ii) Be considered for permanent placement with a fit and willing relative; or
62 (iii) Be placed in another planned permanent living arrangement, but only in cases where
63 the child has attained 16 years of age and the department has documented to the circuit court a
64 compelling reason for determining that it would not be in the best interests of the child to follow
65 one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order
66 services to meet the special needs of the child. Whenever the court transfers custody of a youth
67 to the department, an appropriate order of financial support by the parents or guardians shall be
68 entered in accordance with part eight of this article;

69 (6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or
70 abuse can be substantially corrected in the near future and, when necessary for the welfare of
71 the child, terminate the parental, custodial and guardianship rights and responsibilities of the
72 abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if
73 there be one, or, if not, to either the permanent guardianship of the department or a licensed child
74 welfare agency. The court may award sole custody of the child to a nonabusing battered parent.
75 If the court shall so find, then in fixing its dispositional order the court shall consider the following
76 factors:

77 (A) The child's need for continuity of care and caretakers;

78 (B) The amount of time required for the child to be integrated into a stable and permanent
79 home environment; and

80 (C) Other factors as the court considers necessary and proper. Notwithstanding any other
81 provision of this article, the court shall give consideration to the wishes of a child fourteen years
82 of age or older or otherwise of an age of discretion as determined by the court regarding the
83 permanent termination of parental rights. No adoption of a child shall take place until all
84 proceedings for termination of parental rights under this article and appeals thereof are final. In
85 determining whether or not parental rights should be terminated, the court shall consider the

86 efforts made by the department to provide remedial and reunification services to the parent. The
87 court order shall state:

88 (i) That continuation in the home is not in the best interest of the child and why;

89 (ii) Why reunification is not in the best interests of the child;

90 (iii) Whether or not the department made reasonable efforts, with the child's health and
91 safety being the paramount concern, to preserve the family, or some portion thereof, and to
92 prevent the placement or to eliminate the need for removing the child from the child's home and
93 to make it possible for the child to safely return home, or that the emergency situation made those
94 efforts unreasonable or impossible; and

95 (iv) Whether or not the department made reasonable efforts to preserve and reunify the
96 family, or some portion thereof, including a description of what efforts were made or that those
97 efforts were unreasonable due to specific circumstances;

98 (7) For purposes of the court's consideration of the disposition custody of a child pursuant
99 to this subsection, the department is not required to make reasonable efforts to preserve the
100 family if the court determines:

101 (A) The parent has subjected the child, another child of the parent or any other child
102 residing in the same household or under the temporary or permanent custody of the parent to
103 aggravated circumstances which include, but are not limited to, abandonment, torture, chronic
104 abuse and sexual abuse;

105 (B) The parent has:

106 (i) Committed murder of the child's other parent, guardian or custodian, another child of
107 the parent or any other child residing in the same household or under the temporary or permanent
108 custody of the parent;

109 (ii) Committed voluntary manslaughter of the child's other parent, guardian or custodian,
110 another child of the parent or any other child residing in the same household or under the
111 temporary or permanent custody of the parent;

112 (iii) Attempted or conspired to commit murder or voluntary manslaughter or been an
113 accessory before or after the fact to either crime;

114 (iv) Committed a ~~felonious~~ malicious assault that results in serious bodily injury to the child,
115 the child's other parent, guardian or custodian, to another child of the parent or any other child
116 residing in the same household or under the temporary or permanent custody of the parent; or

117 (v) Committed sexual assault or sexual abuse of the child, the child's other parent,
118 guardian or custodian, another child of the parent or any other child residing in the same
119 household or under the temporary or permanent custody of the parent;

120 (C) The parental rights of the parent to another child have been terminated involuntarily;

121 (D) A parent has been required by state or federal law to register with a sex offender
122 registry, and the court has determined in consideration of the nature and circumstances
123 surrounding the prior charges against that parent, that the child's interests would not be promoted
124 by a preservation of the family.

125 (c) As used in this section, "no reasonable likelihood that conditions of neglect or abuse
126 can be substantially corrected" means that, based upon the evidence before the court, the
127 abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse
128 or neglect on their own or with help. Those conditions exist in the following circumstances, which
129 are not exclusive:

130 (1) The abusing parent or parents have habitually abused or are addicted to alcohol,
131 controlled substances or drugs, to the extent that proper parenting skills have been seriously
132 impaired and the person or persons have not responded to or followed through the recommended
133 and appropriate treatment which could have improved the capacity for adequate parental
134 functioning;

135 (2) The abusing parent or parents have willfully refused or are presently unwilling to
136 cooperate in the development of a reasonable family case plan designed to lead to the child's
137 return to their care, custody and control;

138 (3) The abusing parent or parents have not responded to or followed through with a
139 reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other
140 rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as
141 evidenced by the continuation or insubstantial diminution of conditions which threatened the
142 health, welfare or life of the child;

143 (4) The abusing parent or parents have abandoned the child;

144 (5) The abusing parent or parents have repeatedly or seriously injured the child physically
145 or emotionally, or have sexually abused or sexually exploited the child, and the degree of family
146 stress and the potential for further abuse and neglect are so great as to preclude the use of
147 resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling
148 their responsibilities to the child;

149 (6) The battered parent's parenting skills have been seriously impaired and the person
150 has willfully refused or is presently unwilling or unable to cooperate in the development of a
151 reasonable treatment plan or has not adequately responded to or followed through with the
152 recommended and appropriate treatment plan.

153 (d) The court may, as an alternative disposition, allow the parents or custodians an
154 improvement period not to exceed six months. During this period the court shall require the parent
155 to rectify the conditions upon which the determination was based. The court may order the child
156 to be placed with the parents, or any person found to be a fit and proper person, for the temporary
157 care of the child during the period. At the end of the period, the court shall hold a hearing to
158 determine whether the conditions have been adequately improved and at the conclusion of the
159 hearing shall make a further dispositional order in accordance with this section.

§49-4-605. When department efforts to terminate parental rights are required.

1 (a) Except as provided in subsection (b) of this section, the department shall file or join in
2 a petition or otherwise seek a ruling in any pending proceeding to terminate parental rights:

3 (1) If a child has been in foster care for fifteen of the most recent twenty-two months as
4 determined by the earlier of the date of the first judicial finding that the child is subjected to abuse
5 or neglect or the date which is sixty days after the child is removed from the home;

6 (2) If a court has determined the child is abandoned, tortured, sexually abused, or
7 chronically abused; or

8 (3) If a court has determined the parent has committed murder or voluntary manslaughter
9 of another of his or her children, another child in the household, or the other parent of his or her
10 children; has attempted or conspired to commit murder or voluntary manslaughter or has been an
11 accessory before or after the fact of either crime; has committed unlawful or malicious wounding
12 resulting in serious bodily injury to the child or to another of his or her children, another child in
13 the household, has committed sexual assault or sexual abuse of the child, the child's other parent,
14 guardian or custodian, another child of the parent, or any other child residing in the same
15 household or under the temporary or permanent custody of the parent; or to the other parent of
16 his or her children; or the parental rights of the parent to another child have been terminated
17 involuntarily.

18 (b) The department may determine not to file a petition to terminate parental rights when:

19 (1) At the option of the department, the child has been placed permanently with a relative
20 by court order;

21 (2) The department has documented in the case plan made available for court review a
22 compelling reason, including, but not limited to, the child's age and preference regarding
23 termination or the child's placement in custody of the department based on any proceedings
24 initiated under part seven of this article, that filing the petition would not be in the best interests of
25 the child; or

26 (3) The department has not provided, when reasonable efforts to return a child to the
27 family are required, the services to the child's family as the department deems necessary for the
28 safe return of the child to the home.

§49-4-607. Consensual termination of parental rights.

1 An agreement of a natural parent in termination of parental rights ~~are~~ is valid if made by a
2 duly acknowledged writing, and entered into under circumstances free from duress and fraud.
3 Where during the pendency of an abuse and neglect proceeding, a parent offers voluntarily to
4 relinquish of his or her parental rights, and the relinquishment is accepted by the circuit court, the
5 relinquishment may, without further evidence, be used as the basis of an order of adjudication of
6 abuse and neglect by that parent of his or her children.

PART VII. JUVENILE PROCEEDINGS

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

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

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

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

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

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

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

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

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

42 (2) If a juvenile is adjudicated as a status offender because he or she is habitually absent
43 from school without good cause, the jurisdiction of the court which adjudged the juvenile a status
44 offender continues until either the juvenile becomes twenty-one years of age, completes high
45 school, completes a high school equivalent or other education plan approved by the court, or the
46 court otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the
47 court is extended pursuant to this subdivision, the court has the same power over that person that
48 it had before he or she became an adult. No person so adjudicated who has attained the age of
49 nineteen may be ordered to attend school in a regular, nonalternative setting.

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

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

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

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

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

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

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

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

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

§49-4-709. Right to jury trial for juveniles; inapplicability.

1 (a) In a proceeding under this article, the juvenile, the juvenile's counsel or the juvenile's
2 parent or guardian may demand, or the judge on his or her own motion may order a jury trial on
3 any question of fact, in which the juvenile is accused of any act or acts of delinquency which, if
4 committed by an adult would expose the adult to incarceration.

5 (b) A juvenile who is charged with a status offense or other offense where incarceration is
6 not a possibility due either to the statutory penalty or where the court rules pretrial that a sentence
7 of incarceration will not be imposed upon adjudication is not entitled to a trial by jury.

8 (c) This section is inapplicable to proceedings held pursuant to section ~~one hundred~~
9 ~~seventeen~~ seven hundred sixteen of this article.

10 (d) Juries consist of twelve members.

NOTE: The purpose of this bill is to define "juvenile referee." The bill eliminates the sunset provision for the commission to study residential placement of children. The bill clarifies that prosecuting attorneys are not required to represent any party other than the Department of Health and Human Resources in child abuse and neglect cases. The bill clarifies that Department of Health and Human Resources is required to make an effort to terminate parental rights when the parent has committed sexual assault or sexual abuse. The bill makes technical changes.

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