

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4814**

BY DELEGATE MCGEEHAN

[Introduced February 11, 2020; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended; and to  
 2 amend said code by adding thereto a new section, designated §49-4-712a, all relating to  
 3 requiring parents or guardians to participate in programs for juveniles in an out-of-home  
 4 placement.

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

**ARTICLE 4. COURT ACTIONS.**

**§49-4-712. Intervention and services by the department pursuant to initial disposition for  
 status offenders; enforcement; further disposition; detention; out-of-home  
 placement; department custody; least restrictive alternative; appeal; prohibiting  
 placement of status offenders in a Division of Juvenile Services facility on or after  
 January 1, 2016.**

1 (a) The services provided by the department for juveniles adjudicated as status offenders  
 2 shall be consistent with part 10, §49-2-101 *et seq.* of this code and shall be designed to develop  
 3 skills and supports within families and to resolve problems related to the juveniles or conflicts  
 4 within their families. Services may include, but are not limited to, referral of juveniles and parents,  
 5 guardians or custodians and other family members to services for psychiatric or other medical  
 6 care, or psychological, welfare, legal, educational or other social services, as appropriate to the  
 7 needs of the juvenile and his or her family. Services shall include programs that require the  
 8 participation of parents or guardians for the reasons set out in the legislative findings in §49-4-  
 9 712a of this code.

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

12 (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance  
 13 with a service plan or to restrain actions that interfere with or defeat a service plan, including a  
 14 mandate that parents or guardians participate in programs for juveniles in an out-of-home  
 15 placement for the reasons set out in the legislative findings in §49-4-712a of this code; or

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

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

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

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

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

40 (B) The community services which were previously attempted.

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

42 demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than  
43 mandatory referral to the department for services is subject to appeal to the Supreme Court of  
44 Appeals.

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

50 (g) A juvenile adjudicated solely as a status offender on or after January 1, 2016, may not  
51 be placed in a Division of Juvenile Services facility

**§49-4-712a. Parents mandated to participate in outside the home treatment programs.**

1 (a) Legislative findings. – The Legislature finds that according to the West Virginia  
2 Department of Health and Human Resources there are currently more than 7000 children in foster  
3 care in this state, and thousands more receiving services in long-term, outside the home  
4 residential treatment centers for the treatment of substance abuse, disruptive behavior, and  
5 mental or emotional difficulties. Compelling parents to participate in treatment with children who  
6 have been placed outside of the home for the treatment of substance abuse, disruptive behavior,  
7 and mental or emotional difficulties will aid in improving the effectiveness of services, shortening  
8 the length of stay in out-of-home environments, and providing a more effective and less expensive  
9 approach to treatment of children in care.

10 The Legislature recognizes the problems of substance abuse, emotional disturbance, and  
11 discordant behavior in children and adolescents as the by-product of mental health disorder that  
12 has long been treated by focusing on the child alone. If these problems are defined and  
13 recognized as a conflict within a child's environment considerably more options for interventions  
14 to help solve and resolve these issues present themselves. Environmental contributions to  
15 childhood difficulties are often overlooked, including the absence of effective parenting practices

16 that are frequently directly related to the presence of those difficulties. However, current  
17 procedures are to treat the child who is expressing the problem without conducting any  
18 intervention with the other people involved in the child's life.

19 The Legislature further finds that children who have been labeled as troubled in their  
20 home, community, and school system, frequently become less troubled once removed from the  
21 environment that directly contributes to their difficulties with success. When the child is returned  
22 to the home environment without any intervention occurring within that environment, the end result  
23 often remains the same; and there is a recreation of the behaviors that have previously been  
24 defined as troubled.

25 West Virginia is challenged by a lack of adequate foster placements for children, a lack of  
26 adequate in-home services, a lack of an adequate workforce to create improvements in either, in  
27 addition to a lack of parent involvement in treatment services for children. If family involvement  
28 in treatment can begin as soon as the child is placed in an out-of-home setting, the opportunity  
29 for success in treatment will increase dramatically.

30 The Legislature further finds that it is paramount to begin to include families in the  
31 treatment of children who suffer from substance addiction, emotional disturbance, and behavior  
32 difficulties. Given societal preference in defining these problems as the sole responsibility of the  
33 child, families are content to allow the child to undergo treatment independently and are opposed  
34 to participating in treatment concurrently with the child. When this occurs, the only improvement  
35 occurs solely with the child and parents remain ill prepared to manage the child or the troubling  
36 behaviors. Family involvement in the treatment process is a vital component for children receiving  
37 out-of-home care. Parental and family involvement leads to more positive outcomes, shorter  
38 lengths of stay, more rapid reunification, and less frequent needs for additional out-of-home  
39 placements. If behavioral change and reintegration into the family is the goal of treatment, family  
40 involvement and participation in treatment are necessary. Involvement by the family members  
41 can assist the child by reducing anxiety, aiding in the attachment and bonding of the child with

42 family members, and validating and understanding the child's trauma, stressors, or deficits which  
43 have resulted in involvement with system. Family involvement allows families to know and  
44 understand the treatment the child is receiving, which will increase their ability to aid in the  
45 decision-making process of their child's treatment. Family involvement in treatment also enables  
46 service providers to educate parents about the importance of continuing treatment once  
47 reunification is achieved. As families gain knowledge about their child, they will be better prepared  
48 in managing typical patterns of behavior, providing a solid support system, establishing a healthier  
49 bond with the child, and understanding and addressing the causes of addiction, emotional  
50 disturbance and discordant behavior. Treatment interventions for children with these issues  
51 require the family to serve as critical agents of change for improvement. If families are not  
52 compelled to actively engage in treatment, they have historically demonstrated the stance of  
53 accepting the child's journey through the treatment process independently.

54 (b) Subject to the provisions of §49-4-712a of this code, parents or guardians shall be  
55 required to participate in programs designed for out-of-home placement including family therapy  
56 sessions offered by the treatment provider.

NOTE: The purpose of this bill is to require parents or guardians to participate in programs for juveniles in an out-of-home placement.

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