WEST VIRGINIA LEGISLATURE 2024 REGULAR SESSION

Committee Substitute

for

House Bill 4683

By Delegate McGeehan
[Originating in the Committee on the Judiciary;

January 18, 2024]

A BILL to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended requiring provisions in a valid court order to enforce certain compliance mandating that parents, guardians, or custodians participate in programs for juveniles in an out-of-home placement; and requiring parents, guardians, or custodians to participate in programs designed for out-of-home placement including family therapy sessions offered by the treatment provider unless there is a finding by the court that said participation is not in the best interest of the juvenile.

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 Bureau of Juvenile Services facility.
- (a) The services provided by the department for juveniles adjudicated as status offenders shall be consistent with §49-2-1001 *et seq.* of this code. Services provided by the department for juveniles adjudicated as status offenders pursuant to §49-4-711 of this code and juveniles found to be incompetent to proceed and in need of services pursuant to §49-4-734(b)(2) of this code shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the juvenile and his or her family. Any parent, guardian, or custodian so ordered to participate in the services and or treatment proscribed by this section shall be appointed counsel consistent with the provisions of Chapter 29 of this code.
- (b) If the juvenile, or his or her parent, guardian, or custodian, fails to comply with the services provided in subsection (a) of this section, the department may petition the circuit court:

- (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; including a mandate that a parent, guardian, or custodian participate in programs for juveniles in an out-of-home placement; or
- (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile adjudicated as a status offender may not be placed in an out-of-home placement, excluding placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or probation for the current matter: *Provided*, *however*, That if the court finds by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member or the public and continued placement in the home is contrary to the best interests of the juvenile, the juvenile may be ordered to an out-of-home placement: *Provided further*, That the court finds the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that such reasonable efforts are not required due to an emergent situation.
- (c) In ordering any further disposition under this section, the court, is not limited to, the relief sought in the department's petition and shall make reasonable efforts to prevent removal of the juvenile from his or her home or, as an alternative, to place the juvenile in a community-based facility which is the least restrictive alternative appropriate to the needs of the juvenile and the community. The disposition may include reasonable and relevant orders to the parents, guardians, or custodians of the juvenile that are as is necessary and proper to effectuate the disposition.
- (d) (1) If the court finds that placement in a residential facility is necessary to provide the services under subsection (a) of this section, except as prohibited by subdivision (2), subsection(b) of this section, the court shall make findings of fact as to the necessity of this placement, stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

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40	(2) The findings of fact shall include the factors that indicate:
11	(A) The likely effectiveness of placement in a residential facility for the juvenile; and
12	(B) The community services which were previously attempted.
13	(e) The disposition of the juvenile may not be affected by the fact that the juvenile
14	demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than
4 5	mandatory referral to the department for services is subject to appeal to the Supreme Court of
16	Appeals.
17	(f) Following any further disposition by the court, the court shall inquire of the juvenile
18	whether or not appeal is desired and the response shall be transcribed; a negative response may
19	not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made
50	available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings.
51	A judge may grant a stay of execution pending further proceedings.
52	(g) A juvenile adjudicated solely as a status offender or a juvenile found to be incompetent

NOTE: The purpose of this bill is to require parents or guardians to participate in programs for juveniles in an out-of-home placement provided there is not a court finding that said participation is not in the best interest of the juvenile.

to proceed may not be placed in a Bureau Division of Juvenile Services facility.

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