

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]

14 (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance with
15 a service plan or to restrain actions that interfere with or defeat a service plan; including a
16 mandate that a parent, guardian, or custodian participate in programs for juveniles in an out-of-
17 home placement; or

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

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

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

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

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

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

43 (e) The disposition of the juvenile may not be affected by the fact that the juvenile
44 demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than
45 mandatory referral to the department for services is subject to appeal to the Supreme Court of
46 Appeals.

47 (f) Following any further disposition by the court, the court shall inquire of the juvenile
48 whether or not appeal is desired and the response shall be transcribed; a negative response may
49 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
53 to proceed may not be placed in a Bureau Division of Juvenile Services facility.

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.

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