

ENROLLED**Senate Bill No. 626**

(By Senators Caruth, Prezioso, Foster and Plymale)

[Passed March 5, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §49-1-3 and §49-1-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5D-2 and §49-5D-3 of said code, all relating to child advocacy centers; defining terms; providing for role of child advocacy center in multidisciplinary teams; and providing for the role of a child advocacy center in multidisciplinary treatment teams.

Be it enacted by the Legislature of West Virginia:

That §49-1-3 and §49-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5D-2 and §49-5D-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PURPOSES AND DEFINITIONS.**§49-1-3. Definitions relating to abuse and neglect.**

- (a) "Abused child" means a child whose health or welfare is harmed or threatened by:
- (1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or
 - (2) Sexual abuse or sexual exploitation; or
 - (3) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code; or
 - (4) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(c) "Battered parent" means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children.

(d) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or

maltreatment of a child by a parent, guardian or custodian who is responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

(e) "Child abuse and neglect services" means social services which are directed toward:

- (1) Protecting and promoting the welfare of children who are abused or neglected;
- (2) Identifying, preventing and remedying conditions which cause child abuse and neglect;
- (3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;
- (4) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families or some portion thereof;
- (5) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and
- (6) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

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

- (1) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients.
 - (2) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center.
 - (3) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices.
 - (4) Cultural competency and diversity: The CAC promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.
 - (5) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact finding nature and coordinated to avoid duplicative interviewing.
 - (6) Medical evaluation: Specialized medical evaluation and treatment are to be made available to CAC clients as part of the team response, either at the CAC or through coordination and referral with other specialized medical providers.
 - (7) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the CAC or through coordination and referral with other appropriate treatment providers.
 - (8) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the CAC or through coordination with other providers, throughout the investigation and subsequent legal proceedings.
 - (9) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis.
 - (10) Case tracking: CACs must develop and implement a system for monitoring case progress and tracking case outcomes for team components: *Provided*, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location.
- (g) "Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

- (1) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;
- (2) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;
- (3) Nutritional deprivation;
- (4) Abandonment by the parent, guardian or custodian;
- (5) Inadequate treatment of serious illness or disease;
- (6) Substantial emotional injury inflicted by a parent, guardian or custodian; or
- (7) Sale or attempted sale of the child by the parent, guardian or custodian.
- (h) "Legal guardianship" means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of this chapter and chapter forty-eight of this code.
- (i) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. "Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.
- (j) (1) "Neglected child" means a child:
 - (A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or
 - (B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;
- (2) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.
- (k) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.
- (l) "Sexual abuse" means:
 - (A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:
 - (i) Sexual intercourse;
 - (ii) Sexual intrusion; or
 - (iii) Sexual contact;
 - (B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:
 - (i) Sexual intercourse;
 - (ii) Sexual intrusion; or
 - (iii) Sexual contact;
 - (C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or

procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(m) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(n) "Sexual exploitation" means an act whereby:

(1) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(2) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.

(o) "Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(p) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(q) "Parental rights" means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(r) "Placement" means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

(s) "Serious physical abuse" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(t) "Siblings" means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

(u) "Time-limited reunification services" means individual, group and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child is removed from home.

§49-1-4. Other definitions.

As used in this chapter:

(1) "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities or any facility that provides care for unmarried mothers and their children;

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

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

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

(C) Organizational capacity: A designated legal entity responsible for program and fiscal operations

has been established and implements basic sound administrative practices.

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

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

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

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

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

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

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

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

(4) "Court" means the circuit court of the county with jurisdiction of the case or the judge thereof in vacation unless otherwise specifically provided;

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

(6) "Department" or "state department" means the state Department of Health and Human Resources;

(7) "Division of Juvenile Services" means the division within the Department of Military Affairs and Public Safety pursuant to article five-e of this chapter;

(8) "Guardian" means a person who has care and custody of a child as a result of any contract, agreement or legal proceeding;

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

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

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

(12) "Secretary" means the Secretary of Health and Human Resources;

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

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

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

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

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

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

or

(D) Who violates any West Virginia municipal, county or state law regarding use of alcoholic beverages by minors;

(16) "Valid court order" means a court order given to a juvenile who was brought before the court and made subject to such order and who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the constitutions of the United States and the State of West Virginia.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

(a) The prosecuting attorney shall establish a multidisciplinary investigative team in each county. The multidisciplinary team shall be headed and directed by the prosecuting attorney or his or her designee and shall include as permanent members the prosecuting attorney or his or her designee, a local child protective services caseworker from the Department of Health and Human Resources, a local law-enforcement officer employed by a law-enforcement agency in the county, a child advocacy center representative where available and, where appropriate to the particular case under consideration and available, a representative from the licensed domestic violence program serving the county. The Department of Health and Human Resources and any local law-enforcement agency or agencies selected by the prosecuting attorney shall appoint their representatives to the team by submitting a written designation of the team to the prosecuting attorney of each county within thirty days of the prosecutor's request that the appointment be made. Within fifteen days of the appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the county is situated of the names of the representatives so appointed. Any other person or any other appointee of an agency who may contribute to the team's efforts to assist a minor child as may be determined by the permanent members of the team may also be appointed as a member of the team by the prosecutor with notification to the chief judge.

(b) Any permanent member of the multidisciplinary investigative team shall refer all cases of accidental death of any child reported to their agency and all cases when a child dies while in the custody of the state for investigation and review by the team. The multidisciplinary investigative team shall meet at regular intervals at least once every calendar month.

(c) The investigative team shall be responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect and shall make a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution.

(d) State, county and local agencies shall provide the multidisciplinary investigative team with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing said agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article remains confidential. For purposes of this section, the term "confidential" shall be construed in accordance with the provisions of section one, article seven of this chapter.

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

(a) (1) A multidisciplinary treatment planning process shall be established within each county of the state, either separately or in conjunction with a contiguous county, by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code. The Division of Juvenile Services shall establish a similar treatment planning process for delinquency cases in which the juvenile has been committed to the custody of the director of the division.

(2) Treatment teams shall assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families when a judicial proceeding has been initiated involving the child or children for juveniles and their families involved in status offense or delinquency proceedings when, in a status offense proceeding, the court refers the juvenile for services pursuant to sections eleven and eleven-a, article five of this chapter and when, in a delinquency proceeding, the court is considering placing the juvenile in the department's custody or placing the juvenile out of home at the department's expense pursuant to the provisions of section thirteen of said article. In any such status offense or delinquency case, the juvenile probation officer shall notify the local office of the Department of Health and Human Resources and the Division of Juvenile Services at least five working days before the court proceeding in order to allow the multidisciplinary treatment team to convene and develop a comprehensive individualized service plan for the child: *Provided*, That such notice is not required in cases where the child is already in state custody or there exist exigent circumstances which justify taking the child immediately into custody without a judicial proceeding. In developing an individualized service plan for a child, the team shall utilize a uniform comprehensive assessment of the child. The department shall adopt a standard uniform comprehensive assessment instrument or protocol to be used by treatment teams.

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

(b) Each treatment team shall be convened by the child's or family's case manager in the Department of Health and Human Resources or the Division of Juvenile Services if the juvenile has been ordered into its custody for examination and diagnosis pursuant to section thirteen, article five of this chapter. The treatment team shall consist of the child's custodial parent or parents, guardian or guardians, other immediate family members, the attorney or attorneys representing the child, the parent or parents of the child, the child's attorney, the guardian ad litem, if any, the prosecuting attorney or his or her designee, a member of a child advocacy center when the child has been processed through the child advocacy center program(s) and, where appropriate to the particular case under consideration and available, a court-appointed special advocate, a member of a child advocacy center, an appropriate school official and any other person or an agency representative who may assist in providing recommendations for the particular needs of the child and family. The child may participate in multidisciplinary treatment team meetings if such is deemed appropriate by the multidisciplinary treatment team. For purposes of delinquency proceedings, the juvenile

probation officer shall be a member of the treatment team. Any person authorized by the provisions of this chapter to convene a multidisciplinary team meeting may seek and receive an order of the circuit court setting such meeting and directing attendance. Members of the multidisciplinary team may participate in team meetings by telephone or video conferencing: *Provided*, That a member of a child advocacy center should participate in any case when appropriate to the particular case under consideration.

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

(d) State, county and local agencies shall provide the multidisciplinary treatment teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing said agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article remain confidential. For purposes of this section, the term "confidential" shall be construed in accordance with the provisions of section one, article seven of this chapter.

(e) Nothing in this section may be construed to require a multidisciplinary team meeting to be held prior to temporarily placing a child out-of-home under exigent circumstances or upon a court order placing the juvenile in a juvenile facility operated by the Division of Juvenile Services.