

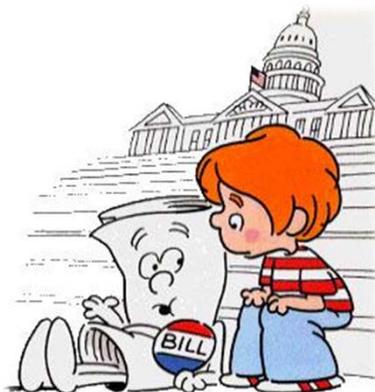
Update on Child Abuse and Neglect Law

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July 2015



Recent Legislation



House Bill 2200 (the CIP Bill)

- Effective February 16, 2015
- Reorganizes Chapter 49
- Removes outdated sections

Finding things in new Chapter 49



Where is it?

- | | |
|---|---|
| <ul style="list-style-type: none"> • Definitions– Article 1 • State responsibilities (DHHR and DJS) – Article 2 • Mandated reporting of suspected child abuse/neglect– Article 2, Part VIII • CASAs and CACs– Article 3 | <ul style="list-style-type: none"> • Court Actions– Article 4 • Records and Data– Article 5 • Missing Children Information Act– Article 6 • Interstate Compacts (ICPC, Adoption Assistance, Compact for Juveniles)– Article 7 |
|---|---|

Court Actions, Article 4

- | | |
|--|---|
| <p>Part I (§49-4-101, et seq.)</p> <ul style="list-style-type: none"> • Appealing decisions • Quarterly review hearings and annual permanency hearings • Subsidized adoption and legal guardianship • Emancipation • Voluntary placement | <p>Part II (§49-4-201, et seq.)</p> <ul style="list-style-type: none"> • Emergency Possession of Certain Children • Also known as “Safe Haven” statute • Covers certain relinquished infants • Provides immunity from certain prosecutions |
|--|---|

Court Actions, Article 4

Part III (§49-4-301, *et seq.*)

Emergency Custody prior to child abuse/neglect petition

- Custody of neglected children by law enforcement
- Family Court orders of custody to DHHR
- Emergency removal by DHHR

Part IV (§49-4-401, *et seq.*)

- Multidisciplinary Investigative Teams or MDITs
- Multidisciplinary Treatment Teams (MDTs) in child abuse/neglect and juvenile cases
- Case Plans
- Transition Plans
- Aftercare Plans

Court Actions, Article 4

Part V (§49-4-501, *et seq.*)

Duties of Prosecuting Attorneys

- Representation of DHHR in child abuse/neglect cases, including dispute resolution process
- Cooperation with others, including co-petitioners
- Representation of petitioner in juvenile cases
- Duty to establish MDITs

Part VI (§49-4-601, *et seq.*)

(from former §49-6-1, *et seq.*)
Child Abuse and Neglect Cases

- Petition
- Right to counsel
- Continuing education for attorneys/GALs
- Temporary custody of child at different stages of case
- Disposition of children
- When DHHR must seek termination of parental rights (TPR)

Court Actions, Article 4

Part VI (§49-4-601, et seq.) (from former §49-6-1, et seq.)

Child Abuse and Neglect Cases
continued

- Modification of dispositional orders
- Consensual TPR
- Permanency hearings
- Transitional planning
- Conviction for offenses against children
- Improvement periods

Part VII (§49-4-701, et seq.) (from former §49-5-1, et seq.)

Status Offense and Juvenile Delinquency Cases

- Juvenile jurisdiction
- Right to counsel
- Prepetition Interventions
- Juvenile drug courts
- Procedure (petition, preliminary hearing, taking juvenile into custody, right to jury trial, waiver and transfer of jurisdiction, adjudication, disposition, juvenile probation officers, etc.)
- Amended by Senate Bill 393

Court Actions, Article 4

Part VIII (§49-4-801, et seq.)

Child Support and Support Orders

- Modernizes the old language in §49-7-6
- Applies in all types of cases when children are in out-of-home care (voluntary placement, child abuse/neglect, status offense, juvenile delinquency)

Part IX (§49-4-901, et seq.)

Contributing to the Delinquency of a Minor

What's New? (definitions)

- Amends definition of “**abandonment**” to be “any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child”
- Clarifies the definition of a “**battered parent**” is one who has been judicially determined (in a child abuse and neglect proceeding) to not have condoned the child abuse or neglect and who has not been able to prevent it
- “Child abuse and neglect” is now covered in “abused child” and “neglected child” definitions
- Adds definitions of “**petitioner or co-petitioner**” and “**respondent**”

What's New? (CAN procedure)

- Added subheadings in articles
- Hearing should be held within 30 days of termination of improvement period (used to be within 60 days)
- ADA reasonable accommodations to parents with disabilities in order to allow them meaningful access to reunification and family preservation services
- APPLA only age 16 or older

What's New? (CAN procedure)

- Adds that DHHR must seek termination of parental rights when a child has been tortured, sexually abused, or chronically abused, or when parent has committed murder or voluntary manslaughter of another child in the household
- Amends that DHHR must give *actual* notice of a planned move at least 48 hours prior to move, or within 48 hours after the move if the child was in imminent danger, and MDT must convene as soon as practicable to explore placement options

Tips for Navigating New Chapter 49

- Most Court provisions are in Article 4
- Westlaw now has updated sections and a comparison with former chapter sections
- A comparison guide will be included in the materials posted online next week on www.wvcip.com
- Look at H.B. 2200 on <http://www.legis.state.wv.us/> (bill status) and use find/search option

Other 2015 Legislation

- Senate Bill 393 (juvenile justice reform)
- H.B. 2939, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students
- H.B. 2527 ("Erin Merryn's Law"), Creating a Task Force on Prevention of Sexual Abuse of Children
- H.B. 2598, Ensuring that teachers of students with disabilities receive complete information about the school's plan for accommodating the child's disabilities

Recent Federal Legislation

- Preventing Sex Trafficking and Strengthening Families Act of 2014
- Justice for Victims of Trafficking Act of 2015

Procedural Rule Updates



Procedural Rule Updates

- Amendments to the Rules of Practice and Procedure for Minor Guardianship Proceedings took effect in May 2015
- Amendments to the Rules of Procedure of Child Abuse and Neglect Proceedings are on public comment **until July 28, 2015**
- Public comment will be requested soon on amendments to the Rules of Juvenile Procedure

Highlights of CAN Procedural Rule Proposed Amendments

- Updates code citations, language to reflect H.B. 2200
- Adds inquiry of child's educational stability to the purpose of the preliminary hearing
- Adds requirements for the permanency plan of Another Planned Permanent Living Arrangement (APPLA), including efforts to ascertain to the child's preferences and to seek other permanency options
- Case plans and permanent placement reviews should ensure that foster parents are using a "reasonable and prudent parent standard" to allow children to participate regularly in normal childhood activities
- Transition planning begins at age 14, rather than 16



Case Law

Recent Case Law

In re J.L., Jr., 234 W. Va. 116, 763 S.E.2d 654
(September 2014)

Recent Case Law

In re C.M. and C.M., 235 W. Va. 16, 770 S.E.2d
516 (March 2015) (J. Loughry dissenting)

Recent Case Law

In re K.H., Case No. 14-0363, 2015 WL 1721049
(April 2015)

Recent Case Law

In re L.M. and L.S., Case No. 14-0050, 2015 WL
2359278 (May 2015)

Recent Case Law

In re K.P., Case No. 14-0895, 2015 WL 2364604
(May 2015)

Recent Case Law

In re D.B. v. J.R., Case No. 14-0403, 2015 WL
3385063 (May 2015)

Recent Case Law

- ***In re B.L.***, Case Nos. 14-0660, 14-0714, 2015 WL 3631681 (June 2015)(memorandum decision)

Thank you for your time!

Questions?

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Update on the Law related to Child Abuse and Neglect

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July 2015

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In re J.L., Jr., 234 W. Va. 116, 763 S.E.2d 654 (September 2014)

Factual and Procedural History

The Bureau for Child Support Enforcement (BCSE) of DHHR appealed the circuit court's order remanding enforcement of child support, modified in a child abuse and neglect case, to the family court. Child support was first established in family court as part of the respondent parents' divorce proceedings in 2005. BCSE initiated enforcement proceedings in family court against the father in 2011. During the family court contempt proceedings, the DHHR filed a child abuse and neglect petition against the parents based on the father's acts of domestic violence in front of the child and the mother's "failure to shield the child from such incidents." Due to the child abuse and neglect case, the family court dismissed the child support contempt proceedings without prejudice, pursuant to Rule 6 of the Rules of Procedure for Child Abuse and Neglect Proceedings.

The circuit court terminated the father's parental rights, reduced his child support obligation by half to \$82.83, and set his monthly arrearage payment at \$50. The mother filed a *pro se* contempt petition in circuit court when the father failed to make these payments. At hearing, the circuit court found the father in contempt for nonpayment of child support and remanded enforcement of the circuit court's modified child support order to the family court, as well as "all future contempt hearings and all future modification hearings regarding child support." BCSE appealed this order.

Key Syllabus Points

2. "A circuit court has jurisdiction to entertain an abuse and neglect petition and to conduct proceedings in accordance therewith as provided by W. Va. Code § 49-6-1, *et seq.*" Syllabus point 3, *State ex rel. Paul B. v. Hill*, 201 W. Va. 248, 496 S.E.2d 198 (1997).
3. "When a child is the subject of an abuse or neglect or other proceeding in a circuit court pursuant to Chapter 49 of the West Virginia Code, the circuit court, and not the family court, has jurisdiction to establish a child support obligation for that child." Syllabus point 3, *West Virginia Department of Health and Human Resources, Bureau for Child Support Enforcement v. Smith*, 218 W. Va. 480, 624 S.E.2d 917 (2005).
4. Pursuant to Rule 6 of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, when a circuit court enters an order awarding or modifying child support in an abuse and neglect case, the circuit court retains jurisdiction over such child support order.
5. Pursuant to Rule 16a(d) of the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings, a circuit court cannot transfer or remand a child support order that it has entered in an abuse and neglect case to the family court for enforcement or modification.

Discussion

In remanding the child support enforcement to the family court, the circuit court gave several reasons for its decision:

Family Court is the more convenient forum for action relating to child support as it addresses such issues on a daily basis.

The WVBCSE attorney appears more frequently in Family Court and the WVBCSE is a party to all actions involving the collections and enforcement of child support, so Family Court would be the more appropriate forum based upon judicial economy.

The State of West Virginia and the public defenders services should not be paying for an attorney, appointed in a circuit court proceeding unrelated to the enforcement and collection of child support, to defend an issue of contempt or modification on [sic] child support.

An executed *capias* may be heard more expeditiously in Family Court as Circuit Court may be in the middle of a jury trial or may have hearings scheduled which would take precedence over the *capias*.

The Court found that “(i)n light of the limited jurisdiction of family courts, the exclusive jurisdiction of circuit courts over child abuse and neglect proceedings, and our Rules specifically directing circuit courts to award child support in abuse and neglect cases, to retain jurisdiction over such awards, and to refrain from transferring such child support determinations to family courts, we conclude that the circuit court clearly exceeded its authority when it remanded the instant child support matter to the family court.”

In case this finding was unclear, the Court went through detailed analysis of the West Virginia Constitution, code, case law, and court rules regarding family court and circuit court jurisdiction:

- A. **West Virginia Constitution and Code.** Quoting its Syllabus point 5 in *Lindsie D.L. v. Richard W.S.*, 214 W. Va. 750, 591 S.E.2d 308 (2003), the Court found that family court jurisdiction is “limited to only those matters specifically authorized by the Legislature, while circuit courts have original and general jurisdiction and other powers set forth in Article VIII, §6 of the Constitution of West Virginia.” One of the limitations on jurisdiction is that family courts cannot hear child abuse and neglect proceedings, which are in the

exclusive jurisdiction of circuit courts, pursuant to W.Va. Code §51-2A-2.

- B. **Case Law.** The Court discussed *West Virginia Department of Health and Human Resources, Bureau for Child Support Enforcement v. Smith*, 218 W. Va. 480, 624 S.E.2d 917 (2005). This case “serves to clarify not only that the circuit court has exclusive jurisdiction over abuse and neglect matters but also that the establishment of an award of child support is a necessary and integral part of the resolution of an abuse and neglect proceeding.” Child support obligations ordinarily continue after a parent’s rights have been terminated, pursuant to the *Guidelines for Child Support Awards* in W.Va. Code §48-13-101, *et seq.* See *In re Ryan B.*, 224 W. Va. 461, 686 S.E.2d 601 (2009), Syllabus point 2.
- C. **Court Rules.** In addition to W.Va. Code §49-7-5, Rules 6 and 16a of the Rules of Procedure for Child Abuse and Neglect Proceedings require entry of child support orders in child abuse and neglect cases, pursuant to the *Guidelines for Child Support Awards*. Rule 16a(b) states that the *Guidelines* may only be disregarded or adjusted “if the court makes specific findings that use of the *Guidelines* is inappropriate.” Rule 6 expresses that the circuit court retains exclusive jurisdiction while the child abuse and neglect case is pending, as well as in subsequent modifications, except for very limited circumstances. The Court found that “Rule 16a...makes it patently clear that circuit courts, not family courts, possess and retain abuse and neglect jurisdiction and specifically prohibits circuit courts from transferring abuse and neglect matters to family court.”

The Court found that “when a circuit court enters an order awarding or modifying child support, the circuit retains jurisdiction over such child support order.” Further, “a circuit court cannot transfer or remand a child support order that it has entered in an abuse and neglect case to the family court for enforcement or modification.” Therefore, the circuit court at issue did not have authority to remand the case to family court for enforcement of child support.

The Court added that it “would be remiss if we did not address the many procedural issues that have come to our attention during review of the underlying abuse and neglect proceedings.” These issues included disregarding the *Guidelines for Child Support Awards* without giving specific reasons why use of the *Guidelines* was inappropriate; lack of an order detailing the reasons for termination of the father’s parental rights and concluding the child abuse and neglect proceeding; and no

indication that a guardian *ad litem* was appointed for the child. On remand, the circuit court will need to apply the *Guidelines for Child Support Awards*, give detailed factual findings in regard to termination of the father's parental rights, and appoint a guardian *ad litem* for the child, if one has not been appointed.

Conclusion

The Court reversed the order of the circuit court and remanded the case for further proceedings consistent with this opinion.

In Re: C.M. and C.M., 235 W. Va. 16, 770 S.E.2d 516 (March 2015) (J. Loughry dissenting)

Factual and Procedural History

In August 2012, the W.Va. Department of Health and Human Resources (DHHR or the Department) filed a child abuse and neglect petition alleging that the parents of young brothers C.M. and C.M. were engaged in severe domestic violence and substance abuse. The children were removed, and both parents stipulated to the allegations and entered a six-month post-adjudicatory improvement period. The court ordered the multidisciplinary treatment team (MDT) to draft a family case plan, as required by old W.Va. Code §49-6-5(a) and current W.Va. Code §§49-4-408 and 49-4-604, although none was in the court file or record on appeal.

Over the next year, the mother "made progress towards completing the goals set forth in her Family Case Plan," including regular visits with the boys -- at which she was "very interactive and affectionate," according to the service provider -- and completion of the Turning Point treatment program. She had a relapse of alcohol intoxication and lost her job in September 2013, but she regained employment and sobriety soon after. The MDT was directed to meet with the mother and create a service plan within ten days, although the Court found no treatment plan or report in the record. The mother then completed the Presteria Addictions Recovery Center Program in December 2013.

The major bone of contention came when the mother chose the W.Va. Oxford House residential sober living program in Huntington over Storm Haven in Beckley. The circuit court found that "the Department and *Guardian ad Litem* do not believe (Oxford House) is appropriate for her and that there is a bed at Storm Haven in Beckley, WV," and Oxford House "was clearly not an appropriate place for children," apparently because it was staffed by recovering addicts. Oxford House was also farther away from Beckley, where the children were living with their paternal aunt. Letters from the Oxford House indicated that the mother was doing well and had "become an amazing leader and...house president. She has continued to gain employment and grow in her recovery."

In April 2014, the court held a hearing on a motion to terminate the improvement periods of both parents, and for disposition of both parents. An order entered in March indicated that the April hearing would be an “improvement period review hearing or dispositional hearing.” DHHR had filed a motion to terminate the father’s parental rights, but not the mother’s rights, and “(i)f the DHHR orally moved to terminate the Mother’s parental rights, there is nothing in the record which demonstrates that.” At the hearing, the court terminated the mother’s parental rights based upon these findings:

- 1) the children had been in the custody of the DHHR for nineteen of the last twenty-two months;
- 2) the Mother had not substantially complied with the case plan she signed;
- 3) the Mother had not made sufficient progress towards reunification with her children;
- 4) the Mother was unwilling to make the reunification of her family her first priority; and
- 5) the Mother deliberately ignored reasonable directives of DHHR and recommendations contained in the treatment plan that she signed and agreed to follow.

The circuit court stated in the order that the mother “refused to enter a long term intensive rehabilitation program, refused to move to a facility in Beckley where she could spend more time with her children, and failed to make any substantial progress toward reunification with her children in a timely manner.” In May 2014, the circuit court entered an order granting the mother post-termination, supervised visitation with the boys in Raleigh County. The mother appealed the termination of her parental rights to C.M. and C.M.

Key Syllabus Points

2. “At the conclusion of the improvement period, the court shall review the performance of the parents in attempting to attain the goals of the improvement period and shall, in the court’s discretion, determine whether the conditions of the improvement period have been satisfied and whether sufficient improvement has been made in the context of all the circumstances of the case to justify the return of the child.” Syl. Pt. 6, *In re Carlita B.*, 185 W. Va. 613, 408 S.E.2d 365 (1991).

3. “As a general rule the least restrictive alternative regarding parental rights to custody of a child under W. Va. Code, 49-6-5 [1977] will be employed; however, courts are not required to exhaust every speculative possibility of parental improvement before terminating parental rights where it appears that the welfare of the child will be seriously threatened, and this is particularly applicable to children under the age of three years who are more susceptible to illness, need consistent close interaction with fully committed adults, and are likely to have their emotional and physical development retarded by numerous placements.” Syl. Pt. 1, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980).

4. “Termination of parental rights, the most drastic remedy under the statutory provision covering the disposition of neglected children, W. Va. Code, 49-6-5 [1977] may be employed without the use of intervening less restrictive alternatives when it is found that there is no reasonable likelihood under W. Va. Code, 49-6-5(b) [1977] that conditions of neglect or abuse can be substantially corrected.” Syl. Pt. 2, *In re R.J.M.*, 164 W. Va. 496, 266 S.E.2d 114 (1980).

5. “It is a traumatic experience for children to undergo sudden and dramatic changes in their permanent custodians. Lower courts in cases such as these should provide, whenever possible, for a gradual transition period, especially where young children are involved. Further, such gradual transition periods should be developed in a manner intended to foster the emotional adjustment of the children to this change and to maintain as much stability as possible in their lives.” Syl. Pt. 3, *James M. v. Maynard*, 185 W. Va. 648, 408 S.E.2d 400 (1991).

Discussion

Without written case plans or treatment plans in the record, the Court found that the mother had completed an inpatient treatment program as required and that “there is no evidence in the record, or in the circuit court’s order, that supports any finding that the Mother was directed by the circuit court to obtain treatment only where DHHR recommended.” She showed other improvements, including leaving the abusive relationship with the children’s father and having visitations with her children. The Court found no evidence in the record that the mother’s choice to stay at Oxford House made visitation more difficult or was intended “to thwart reunification with her children by obtaining treatment at one facility instead of another.” Further, the Court found no evidence supporting that Oxford House was inappropriate for children or that Storm Haven was more appropriate.

Ultimately, the Supreme Court found that the circuit court’s findings supporting termination of the mother’s parental rights were clearly erroneous. “(B)ased upon our review of both the record below and the appendix record, we find the Mother was making steady progress during the post-adjudicatory improvement period. The circuit court erred in its finding to the contrary, including its determination that there was ‘no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future.’”

Conclusion

The Court reversed the decision of the circuit court to terminate the mother’s parental rights to C.M. and C.M., now ages 4 and 2. On remand, the Court directed the circuit court to set this matter expeditiously for a hearing to establish a clear, gradual transition period plan for reunification of the children with their mother. Due to the extended time the boys were with their paternal aunt, the Court found that a transition period of several months would be reasonable. Also on remand, the mother needs to demonstrate she is able to care for her children, her current residence is suitable for the

children, she is able to provide for the children, and she has childcare for the children when she is working and attending school. Finally, the Court emphasized that it is in the best interests of the children for the circuit court to provide for the continued, reasonable visitation between the children and their paternal aunt.

Dissenting Opinion by Justice Loughry

Justice Loughry expressed concern in his dissenting opinion that the boys' best interests are not served by the majority opinion. The children have been out of home "twenty-nine of the last thirty-two months," he emphasized. He opined that "the most generous procedural relief warranted under the circumstances of this case would have been to remand the case to the circuit court for the purpose of extending the previous improvement period," not reunification with the mother. He found that "the majority imprudently relies upon the mother's self-serving assertions" instead of other evidence that she did not visit as frequently as granted (about once a month instead of weekly) and still lacks sufficient parenting skills. He also points to allegations by the guardian *ad litem* that the mother has continued a relationship with the boys' biological father, who abused her and whose rights were terminated after numerous positive drug screens and incarceration for selling illicit drugs. Justice Loughry said the circuit court understood that time is of the essence in these cases "and acted in a manner that allowed these children to remain in the stable environment in which they had lived with their paternal aunt for the past two-and-one-half years."

In re K.H., Case No. 14-0363, 2015 WL 1721049 (April 2015)

Factual and Procedural History

Baby K.H.'s mother and brother died in a car accident in 2007. Her maternal grandmother filed for and received guardianship of K.H., whose biological father had had no contact with her and did not object to the guardianship. A year later, the father filed a petition to establish custodial responsibility for K.H. As a result of his petition, the father received parenting time every other weekend and one night per week, and he started paying child support. Two years later, the father filed a petition to revoke the grandmother's guardianship of K.H, which was resolved by an agreed order in 2011, giving the father more parenting time.

In 2013, the father filed another petition to revoke the grandmother's guardianship of K.H. A guardian *ad litem* (GAL) was appointed and recommended that the child be placed in the custody of her father, based on the father's ability to care for the child financially and the grandmother's questionable sharing custody of K.H. with a 76-year-old man with a long criminal record. The grandmother asserted that she was the psychological parent of K.H., and had a psychologist testify that she and K.H. "have a significant bond and that the child honestly views the grandmother as 'mom.'" The family court terminated the grandmother's eight-year guardianship of K.H., who will turn 9 in June. It also denied the grandmother's motion to be considered K.H.'s

psychological parent. The circuit court affirmed the family court's decision. The grandmother then filed this appeal.

Key Syllabus Points

3. "In a contest involving the custody of an infant the welfare of the child is the polar star by which the discretion of the court will be guided." Syl. Pt. 1, *State ex rel. Cash v. Lively*, 155 W.Va. 801, 187 S.E.2d 601 (1972).

4. "A psychological parent is a person who, on a continuing day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills a child's psychological and physical needs for a parent and provides for the child's emotional and financial support. The psychological parent may be a biological, adoptive, or foster parent, or any other person. The resulting relationship between the psychological parent and the child must be of substantial, not temporary, duration and must have begun with the consent and encouragement of the child's legal parent or guardian. To the extent that this holding is inconsistent with our prior decision of *In the Interest of Brandon L.E.*, 183 W.Va. 113, 394 S.E.2d 515 (1990), that case is expressly modified." Syl. Pt. 3, *In re Clifford K.*, 217 W.Va. 625, 619 S.E.2d 138 (2005).

5. "In the law concerning custody of minor children, no rule is more firmly established than that the right of a natural parent to the custody of his or her infant child is paramount to that of any other person; it is a fundamental personal liberty protected and guaranteed by the Due Process Clauses of the West Virginia and United States Constitutions." Syl. Pt. 1, *In re Willis*, 157 W.Va. 225, 207 S.E.2d 129 (1973).

6. "A parent has the natural right to the custody of his or her infant child, unless the parent is an unfit person because of misconduct, neglect, immorality, abandonment or other dereliction of duty, or has waived such right, or by agreement or otherwise has transferred, relinquished or surrendered such custody, the right of the parent to the custody of his or her infant child will be recognized and enforced by the courts." Syllabus, *Whiteman v. Robinson*, 145 W.Va. 685, 116 S.E.2d 691 (1960).

Discussion

The grandmother asserted that the family court failed to apply the new requirements for termination of guardianship under W.Va. Code §44-10-3, which was amended in July 2013, including consideration of the best interests of the child and a material change of circumstances. However, the Supreme Court found that the family court recognized the statutory change in its order and considered the child's best interests and the father's gradual increase in parenting time in its decision. The Court found "the parties' arguments regarding deficiencies in the application of the statute to be unavailing," as the Court has always required "a thorough consideration" of the child's best interests and changed circumstances "in all matters relating to altering custody of children."

Second, the grandmother argued that the family court erred in finding she was not K.H.'s psychological parent. The Supreme Court reviewed opinions regarding psychological parent criteria, including this definition from *In re Clifford K.*, 217 W. Va. 625, 619 S.E.2d 138 (2005):

A psychological parent is a person who, on a continuing day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills a child's psychological and physical needs for a parent and provides for the child's emotional and financial support. The psychological parent may be a biological, adoptive or foster parent, or any other person. The resulting relationship between the psychological parent and the child must be of substantial, not temporary, duration and must have begun with the consent and encouragement of the child's legal parent or guardian. To the extent that this holding is inconsistent with our prior decision of *In the Interest of Brandon L.E.*, 183 W.Va. 113, 394 S.E.2d 515 (1990), that case is expressly modified.

The Supreme Court agreed with the grandmother that the family court erred by not finding her to be K.H.'s psychological parent, as "this was a significant relationship that unquestionably qualifies as a psychological parent."

The next question the Court addressed was whether being K.H.'s psychological parent entitled the grandmother to continued guardianship. Comparing the rights of a biological parent and psychological parent, the Court referred to *In re Clifford K.*:

Recognizing the inherent rights of a biological parent to his or her child, this Court observed in *Clifford K.* that "the limited rights of a psychological parent cannot ordinarily trump those of a biological or adoptive parent to the care, control, and custody of his/her child." 217 W. Va. at 644, 619 S.E.2d at 157; see also *Honaker v. Burnside*, 182 W.Va. 448, 452, 388 S.E.2d 322, 325 (1989) (stating that "[a]lthough we recognize the attachment and secure relationship" between a child and a psychological parent, "such bond cannot alter the otherwise secure natural rights of a parent[.]").

In *In re Antonio R.A.*, 228 W. Va. 380, 719 S.E.2d 850 (2011), the grandmother filed for guardianship after having the child for three years, but his mother objected. In that case, the Court upheld the denial of Antonio's grandmother's guardianship petition, but decided that Antonio was entitled to visitation with his grandmother. In the present case, the Court similarly decided that, while a fit parent's rights trump those of a nonparent, "the rights of K.H. to continued association with her grandmother must be a vital part of this equation."

Conclusion

The Court affirmed the family court's decision to terminate the grandmother's guardianship of K.H. However, it determined that the grandmother was K.H.'s psychological parent and remanded the case for entry of an order "specifying a liberal visitation schedule to permit significant and meaningful opportunity for the grandmother to interact with K.H" that minimizes trauma to the child.

In re L.M. and L.S., Case No. 14-0050, 2015 WL 2359278 (May 2015)

Factual and Procedural History

This case began when a three-year old boy, L.M., was removed from his parents' custody as a result of chronic substance abuse, which included exposure to drug paraphernalia and a clandestine methamphetamine lab. The meth lab was located in the mother's trailer, a home that her parents had bought for her. Originally, L.M. was placed in foster care, but the mother's parents, the grandparents moved to intervene and also requested that he be placed in their home. Over the DHHR's objection, the Court placed L.M. in the physical custody of his grandparents. The court did not, however, grant the grandparents' motion to intervene.

Shortly thereafter, L.M.'s sister, L.S., was born, and she was also placed in the physical custody of her grandparents. On an unannounced visit, the DHHR took photographs and discovered that the grandparents had baby items, a bassinet and baby swing, from the meth-contaminated home. The DHHR requested and were granted emergency custody of the two children, and placed them in foster care. The court conducted a full evidentiary hearing and found that the grandparents were using items from the meth-contaminated home.

During the course of the case, the court terminated the adult respondents' parental rights, and permanent placement of the children became the contested issue on appeal. Approximately seven months after the court conducted the initial hearing on the removal of the children from the grandparents' home, the court conducted another evidentiary hearing on the grandparents' motion to intervene and motion for placement of the children and denied both motions. The circuit court based its findings on the presence of the meth-contaminated items in the grandparents' home, the grandparents' support of their adult children, who have issues with drugs and crime, and the failure to protect the grandchildren. The circuit court also considered the children's need for the continuity of care and caretakers. In turn, the grandparents appealed this decision.

Key Syllabus Points

9. The mandatory language of W. Va. Code § 49-3-1(a)(3) (2001) requires that a home study evaluation be conducted by the West Virginia Department of Health and Human Resources to determine if any interested grandparent would be a suitable adoptive parent.

10. While the grandparent preference statute, at W. Va. Code § 49–3–1(a)(3) (2001), places a mandatory duty on the West Virginia Department of Health and Human Resources to complete a home study before a child may be placed for adoption with an interested grandparent, “the department shall first consider the [grandparent's] suitability and willingness ... to adopt the child.” There is no statutory requirement that a home study be completed in the event that the interested grandparent is found to be an unsuitable adoptive placement and that placement with such grandparent is not in the best interests of the child.

Discussion

Addressing the grandparents’ assignments of error, the Court found that the alleged errors fell into two categories: 1. challenges to the sufficiency of the evidence; and 2. the application of W. Va. Code § 49-3-1 (now W. Va. Code § 49-4-114), the statute that establishes the grandparent preference for adoption. The Court found that the first alleged error, the sufficiency of the evidence, did not provide a basis to overturn the decision. The Court relied primarily on the appropriate deference that is accorded to a circuit court’s factual findings.

With regard to the W. Va. Code § 49-3-1, the grandparents argued that the circuit court erred when it did not apply the statutory presumption in favor of grandparent placement. Secondly, they argued that the court had erred when it failed to consider the results of a home study before it decided the placement of a child.

As an initial matter, the Court found that the applicable statute (W. Va. Code § 49-3-1; now W. Va. Code § 49-4-114) requires the DHHR to conduct a home study to determine whether an interested grandparent would be a suitable adoptive parent. The Court, however, reiterated that the grandparent preference does not override the child’s best interests, the polar star for any placement decision. Applying the statute to the facts of this case, the Court noted first that there had been a finding that the children were at risk of imminent harm while in the grandparents’ home. The Court relied on several memorandum decisions and an earlier reported opinion, *In re Aaron H.*, 229 W. Va. 677, 735 S.E.2d 274 (2012), to hold that: “There is no statutory requirement that a home study be completed in the event that the interested grandparent is found to be an unsuitable adoptive placement and that placement with such grandparent is not in the best interests of the child.”

Conclusion

The Court affirmed the circuit court ruling that determined that the grandparents were not a suitable adoptive placement for the children and that it was not necessary to delay a permanent placement decision pending the completion of a home study for the grandparents.

Factual and Procedural History

This case was initiated after a 13 year old girl, K.P., disclosed that her stepfather, R.C., had engaged in sexual misconduct against her. The initial allegations in the petition against the mother and stepfather related to the stepfather's sexual abuse and the mother's failure to protect her daughter. The DHHR later amended the petition to include allegations that the mother had committed emotional abuse against her daughter.

Over the course of multiple interviews, K.P. stated that her stepfather came into her bedroom and rubbed her back and stomach on July 1, 2013. He also rubbed her vaginal area over her clothes. He asked to lick her breasts, but she said no. He then stayed in the room for another 30 minutes and rubbed her back.

In response, K.P. texted a friend who told her to ask her parents for help. She tried to contact her mother, and her father. Initially, she was only able to reach her stepmother, A.P., who made arrangements to come pick her up. Before K.P. left the home, R.C. begged K.P. not to tell anyone because of the consequences to his life. In addition to this incident, K.P. also disclosed that R.C. had touched her in this manner on multiple occasions during the previous year. She explained that R.C.'s request to lick her breasts worried her because she thought the request could lead to sexual intercourse. That was the reason she decided she needed to tell someone. After K.P.'s stepmother picked her up, she took K.P. to meet her father. Her mother, A.C., met up with her and apparently berated her for disclosing what had occurred.

After the disclosure, a CPS worker interviewed K.P., and a detective watched the interview. During the course of the abuse and neglect case, K.P. was also subject to an interview and diagnostic testing by Dr. Adrienne Bean, a psychologist. At the adjudicatory hearing, Dr. Bean testified about the sexual abuse allegations and also testified about the fact that K.P.'s mother obsessed about K.P.'s weight and limited her food. According to K.P., her mother was more concerned that she had eaten macaroni and cheese the morning she made the disclosures as opposed to the sexual abuse allegations. Dr. Bean also indicated that she found K.P. to be truthful and that K.P. was not exhibiting symptoms typically shown by victims of sexual abuse. She, however, pointed out that K.P. could well experience them in the future.

At the adjudicatory hearing, the stepfather presented the testimony of Dr. Fremouw who performed diagnostic testing of him. Dr. Fremouw testified that R.C. did not have the two most common characteristics of convicted sex offenders: an antisocial-psychopathic personality combined with the presence of cognitive schemas or attitudes that justify adult-child or adult forced sexual interactions. Dr. Fremouw, however, made it clear that the evaluation could not prove whether R.C. had committed the abuse or not. The stepfather did not testify at the adjudicatory hearing.

The mother testified at the adjudicatory hearing and denied the allegations of name-calling. She explained that she restricted unhealthy food from K.P.'s diet. She testified that she knew K.P. was lying on the date of the initial disclosure by the look on her face. She explained that K.P. had fabricated the abuse allegations so that she could live with her father.

Dr. Amy Wilson Strange performed a parental fitness evaluation on K.P.'s mother, and she testified that the mother had a very low risk of maltreating her children or allowing another person to do so. She did admit that she knew very little about the sexual abuse allegations and all of her information concerning the allegations came from the mother.

Upon the motion of the respondent parents, K.P. was interviewed and subject to psychological testing by Dr. Bobby Miller. At the adjudicatory hearing, Dr. Miller testified that K.P. believes she can manage things better than the adults in her life, that K.P. had made simple allegations that are hard to prove or disprove and that he believed that K.P.'s actions were motivated by her grandmother's death and by her desire to live with her father. However, Dr. Miller did admit that K.P. had been consistent in recounting the allegations and there was no indication that she was untrustworthy.

After a multi-day adjudicatory hearing, the circuit court concluded that the DHHR had not, by clear and convincing evidence, proven that K.P. had been abused by either of the respondents. The circuit court also found that the stepfather's refusal to testify could not be used as evidence against him. The circuit court then dismissed the abuse and neglect petition, and the DHHR and the GAL jointly filed the appeal.

Key Syllabus Points

2. " 'Because the purpose of an abuse and neglect proceeding is remedial, where the parent or guardian fails to respond to probative evidence offered against him/her during the course of an abuse and neglect proceeding, a lower court may properly consider that individual's silence as affirmative evidence of that individual's culpability.' Syl. Pt. 2, *West Virginia Dept. of Health and Human Resources ex rel. Wright v. Doris S.*, 197 W.Va. 489, 475 S.E.2d 865 (1996)." Syl. Pt. 2, *In re Daniel D.*, 211 W.Va. 79, 562 S.E.2d 147 (2002).

3. " " " "W.Va. Code, 49-6-2(c) [1980], requires the State Department of Welfare [now the Department of Health and Human Resources], in a child abuse or neglect case, to prove 'conditions existing at the time of the filing of the petition ... by clear and convincing proof.' The statute, however, does not specify any particular manner or mode of testimony or evidence by which the State Department of Welfare is obligated to meet this burden." Syllabus Point 1, *In Interest of S.C.*, 168 W.Va. 366, 284 S.E.2d 867 (1981). Syllabus Point 1, *West Virginia Department of Human Services v. Peggy F.*, 184 W.Va. 60, 399 S.E.2d 460 (1990)." Syllabus Point 1, *In re Beth*, 192 W.Va. 656, 453 S.E.2d 639 (1994). Syl. Pt. 3, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995)." Syl. Pt. 3, *In re F.S.*, 233 W.Va. 538, 759 S.E.2d 769 (2014).

4. “Where there is clear and convincing evidence that a child has suffered physical and/or sexual abuse while in the custody of his or her parent(s), guardian, or custodian, another child residing in the home when the abuse took place who is not a direct victim of the physical and/or sexual abuse but is at risk of being abused is an abused child under W.Va. Code, 49–1–3(a) (1994).” Syl. Pt. 2, *In re Christina L.*, 194 W.Va. 446, 460 S.E.2d 692 (1995).

Discussion

In its opinion, the Court first addressed the father’s refusal to testify at the adjudicatory hearing and whether his silence could be used against him. The Court pointed out that this issue had been “squarely addressed” in *W. Va. DHHR ex rel. Wright v. Doris S.*, 197 W. Va. 489, 475 S.E. 86 (1996) and that the father’s silence could be used against him. The Court went on to discuss that the case of *In re Daniel D.*, 211 W. Va. 79, 562 S.E.2d 147 (2002) and found that it also supported the conclusion that the father’s silence could be used against him. The Court found that the circuit court had erred when it had concluded that silence should only be used at disposition. The Supreme Court pointed out that silence can be considered as affirmative evidence of culpability for civil abuse and neglect. Based upon this reasoning, the Court held that the circuit court erred as a matter of law when it ruled that the stepfather’s silence could not be used as a basis for civil culpability for abuse and neglect.

Secondly, the Court addressed the circuit court’s finding that the DHHR had not presented clear and convincing evidence that the Respondents had committed abuse of K.P. With regard to this issue, the Court noted that the applicable statute, W. Va. Code § 49-6-2(c) (now W. Va. Code §49-4-601(j)) does not specify the manner or mode by which the DHHR must meet its burden. The Court also reiterated that a victim’s uncorroborated testimony may be used to prove sexual abuse. See Syl. Pt. 5, *State v. Beck*, 167 W. Va. 830, 286 S.E.2d 234 (1981).

The Court noted that the Respondents had argued that K.P. was motivated by her desire to live with her father. The Court, however, found the evidence in the record did not support this conclusion. With regard to the alleged inconsistencies in K.P.’s statements, the Court noted that the frequency of the sexual abuse had been described in different ways. As for the inconsistency, the Court noted that K.P.’s inability to be more specific about frequency related to the fact that the conduct occurred frequently, it occurred over the course of a year and the conduct escalated during the course of the year. With regard to the characterization of the allegations as “simple” and lacking a witness or corroborating evidence, the Court found that just because K.P. had not been subject to penetration or ejaculation, it did not mean that she was lying about what her stepfather did to her. After thoroughly examining the record in this case, the Court held that the circuit court erred when it found that the DHHR had not proved its case by clear and convincing evidence.

As for the allegations of emotional abuse by the mother, the Court first determined that there was no evidence that the mother failed to protect her daughter because there was no evidence that she knew about the sexual abuse before K.P. disclosed it. The Court, however, found that the circuit court erred when it failed to recognize that the mother's actions after the disclosure constituted abuse. The Court noted that the mother took actions to prevent K.P. from reporting the abuse and claimed that the stepfather only rubbed the girl's shoulders. Other evidence indicated that the mother told K.P. that the disclosure could ruin the stepfather's life. The Court expressly stated that: **"The post-disclosure conduct of a parent, guardian, or custodian may constitute abuse and neglect."**

Conclusion

Based upon the its analysis, the Court reversed the circuit court and remanded the case for adjudication orders consistent with the opinion and to conduct post-adjudication proceedings and disposition.

In re D.B. v. J.R., Case No.14-0403, 2015 WL 3385063 (May 2015)

Factual and Procedural History

This case addresses a minor guardianship case, not an abuse and neglect case, and involved a dispute between a maternal grandfather and his wife and the child's father over the guardianship of J.R., a three-year old girl. The child's mother had died before the case was initiated, and J.R. and her mother had lived with the maternal grandfather and his wife from the time that the child was one-month old to one month before the mother's death. At that time, the mother of the child had moved in with the child's maternal grandmother.

After the mother died, the maternal grandfather and his wife filed a guardianship petition that the father answered. At an initial hearing, the parties agreed that the grandfather was the temporary guardian for J.R. pending an evidentiary hearing. The evidentiary hearing was not conducted until over a year later.

At the evidentiary hearing, the petitioners presented evidence that the child's father had committed acts of domestic violence against the child's mother. Ultimately, the circuit court found that these acts were not relevant because the child's mother had died. In addition, other potential relatives were ruled out as caregivers. There was also evidence that J.R. called her step-grandmother, "mommy." Finally, the circuit court found that the temporary guardianship had dissolved at the beginning of the final evidentiary hearing and that the syllabus of *Whiteman v. Robinson*, 145 W. Va. 685, 116 S.E.2d 691 (1960), a syllabus that indicates that a parent has the right to custody of his or her child unless he is proven unfit. In its order, the circuit court found that the petitioners had failed to meet their burden to prove that the father was unfit and denied the guardianship petition. It was from this order that the petitioners appealed.

Key Syllabus Points

2. “A parent has the natural right to the custody of his or her infant child and, unless the parent is an unfit person because of misconduct, neglect, immorality, abandonment or other dereliction of duty, or has waived such right, or by agreement or otherwise has transferred, relinquished or surrendered such custody, the right of the parent to the custody of his or her infant child will be recognized and enforced by the courts.” Syllabus, *Whiteman v. Robinson*, 145 W.Va. 685, 116 S.E.2d 691 (1960).

3. “When a natural parent transfers temporary custody of ... [his or her] child to a third person and thereafter seeks to regain custody of that child, the burden of proof shall be upon that parent to prove by clear and convincing evidence that he or she is fit; thereafter the burden of proof shall shift to the third party to prove by clear and convincing evidence that the child's environment should not be disturbed because to do so would constitute a significant detriment to the child notwithstanding the natural parent's assertion of a legal right to the child.” Syl. Pt. 2, in part, *Overfield v. Collins*, 199 W.Va. 27, 483 S.E.2d 27 (1996).

Discussion

On appeal, the petitioners argued that the burden of proof should have been placed on the father pursuant to Syllabus Point 2 of *Overfield v. Collins*, 199 W. Va. 27, 483 S.E.2d 27 (1996) and that the circuit court erred when it found that the domestic violence incidents were not relevant. In response, the father argued that the circuit was correct in finding him to be a fit parent.

To address these issues, the Court first discussed *Whiteman*, a case in which a father had left his child with an uncle for a relatively brief period of time when the child's mother died. In *Whiteman*, the Court noted that there was no evidence that the father had transferred custody of the child to the uncle. In addition, there was no evidence that the father was unfit. For that reason, the burden was placed on the proposed guardians to prove the father unfit.

The Court also discussed *Overfield* which involved a mother, who after experiencing a traumatic injury, executed an affidavit that placed custody of a child with her parents. Suing to regain custody, the mother argued that the transfer of custody was intended to be temporary, and the grandparents argued that the transfer was intended to be permanent. In *Overfield*, the circuit court found that the mother had intended to transfer custody on a permanent basis and that the mother would have to prove that the change of custody was in the child's best interests. On appeal, the Supreme Court reversed and remanded the case and adopted Syllabus Point 2. This syllabus point indicates that when a parent transfers custody, whether temporarily or permanently, to a third person, he or she has the burden to prove his or her fitness as a parent. The burden then shifts to the third party to show that the child's placement should not be disturbed.

To resolve the instant case, the Court found that Syllabus Point 2 of *Overfield* should be applied, not *Whiteman*, because custody had been transferred to the petitioners. Secondly, the Court found that the allegations of domestic violence were relevant to the father's fitness as a parent.

Conclusion

The Court remanded the case with instructions to apply Syllabus Point 2 of *Overfield* and to consider the evidence of the father's acts of domestic violence.

In re B.L., Case Nos. 14-0660, 14-0714, 2015 WL 3631681 (June 2015) (memorandum decision)

This memorandum decision involved a situation in which the Supreme Court had issued a Rule to Show Cause against a GAL for failing to comply with appellate scheduling orders. As an additional sanction, the Court had considered ordering that the attorney would not be eligible for future GAL appointments. Ultimately, the Court did not find the GAL in contempt, but this opinion is an extremely important reminder that the Court expects a high degree of professionalism for attorneys who represent children in child abuse and neglect cases and that it will take action in appropriate cases.

Legislative Highlights

H.B. 2200 (the CIP bill), Revising, rearranging, consolidating and recodifying the laws of the State of West Virginia relating to child welfare
(See comparison chart on page 10.)

S.B. 393 (Juvenile Justice Task Force bill), Reforming juvenile justice system

H.B. 2939, Relating to requirements for mandatory reporting of sexual offenses on school premises involving students

H.B. 2527 ("Erin Merryn's Law"), Creating a Task Force on Prevention of Sexual Abuse of Children

H.B. 2598, Ensuring that teachers of students with disabilities receive complete information about the school's plan for accommodating the child's disabilities

Preventing Sex Trafficking and Strengthening Families Act

(See summary on page 31.)

Comparison of Old Chapter 49 and H.B. 2200

Old Chapter 49	H.B. 2200
Article 1 (purpose, definitions)	Article 1 (purpose, definitions)
§49-1-1. Purpose, location of child welfare services; state and federal cooperation; juvenile services	§49-1-101. Short title; intent of recodification
	§49-1-102. Legislative intent; continuation of existing statutory provisions
	§49-1-103. Operative date of enactment; effect on existing law
	§49-1-104. West Virginia code replacement
	§49-1-105. Purpose
	§49-1-106. Location of child welfare services; state and federal cooperation; juvenile services. (Was in §49-1-1 in current code)
§49-1-2, -3, -4 (definitions)	§49-1-201 to -209. (definitions, pulled from throughout chapter and put in categories)
§49-1-5. Limitation on out-of-home placement (Now in §49-4-106. Limitation on out-of-home placements.)	
Article 2 (state responsibilities for the protection and care of children)	Article 2 (state responsibilities for the protection and care of children)
	PART I. GENERAL AUTHORITY AND DUTIES OF THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES.
§49-2-1. Care for children committed to the state department	§49-2-101. Authorization and responsibility (Combines language from §49-2-1 and §49-2-3.)
§49-2-2. Duration of custody or guardianship of children committed to state department (Now in §49-4-113. Duration of custody or guardianship of children committed to department.)	
	§49-2-102. Minimum staffing complement for child protective services (From old §49-6-1a)
	§49-2-103. Proceedings by the state department (From old §49-7-28)

	§49-2-104. Education of the public (From old §49-2B-15)
	§49-2-105. Administrative and judicial review (From old §49-2B-14)
	§49-2-106. Department responsibility for foster care homes (Taken from old §49-2-1)
§49-2-3. Development of standards of child care. (Now in §49-2-107 and §49-2-110)	§49-2-107. Foster-home care; minimum standards; certificate of operation; inspection. (Taken from old §49-2-3, -5, -6, -10)
§49-2-4, -4a. Repealed in 1981.	
§49-2-5. Same—Supervision, records and reports	
§49-2-6. Same-- Certificate (Now in §49-2-107)	
§49-2-6. Same—Approval of articles of incorporation (Now in §49-2-112. Family homes; approval of incorporation by Secretary of State; approval of articles of incorporation.)	
§49-2-7, -8. Repealed in 1981	
§49-2-9. Unsupervised foster homes-- Generally (Not carried over to bill because antiquated, from 1970)	
§49-2-10. Same—Certificate. (Now in §49-2-113. Licensure, certification, approval and registration requirements.)	
§49-2-11. Same—Visits; records. (Now in §49-2-108.)	§49-2-108. Visits and inspections; records. (From §49-2-11. Same—Visits; records.)
§49-2-12. Same-- Removal of child from undesirable foster home. (Not specifically carried over to bill because this is an older provision from 1970, and it is covered in Article 4)	
§49-2-13. Parole of certain children to state department. (Not carried over to bill because antiquated--from 1978—and unreflective of practice)	
§49-2-14. Criteria and procedure for	

removal of a child from foster home, notice of child's availability for placement; limitations. (Covered in new §49-4-111. Criteria and procedure for temporary removal of child from foster home; foster care arrangement termination; notice of child's availability for placement; adoption; sibling placements; limitations.)	
§49-2-15. Placing children from other states in private homes of State.	§49-2-109. Placing children from other states in private homes of state.
§49-2-16. State responsibility for child care. (This is in a few places in the bill, including §49-2-101; DJS responsibilities in §49-2-801 et. seq.; voluntary placement in §49-4-115; emergency custody by law enforcement in §49-4-301.)	
§49-2-17. Subsidized adoption and legal guardianship. (Now in §49-4-112. Subsidized adoption and legal guardianship.)	
	§49-2-110. Development of standards of child care. (From §49-2-3)
	§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of articles of incorporation. (From §49-3-2)
	§49-2-113. Residential child care centers; licensure, certification, approval and registration; requirements. (From §49-2B-3)
	§49-2-114. Application for license or approval. (From §49-2B-6)
	§49-2-115. Conditions of licensure, approval and registration. (From §49-2B-6)
	§49-2-116. Investigative authority; evaluation; complaint. (From §49-2B-10)
	§49-2-117. Revocation; provisional licensure and approval. (From §49-2B-11)
	§49-2-118. Closing of facilities by the

	secretary; placement of children. (From §49-2B-12)
	§49-2-119. Supervision; consultation; State Fire Marshall to cooperate. (From §49-2B-9)
	§49-2-120. Penalties; injunctions; venue. (From §49-2B-5)
	§49-2-121. Rule-making. (From §49-2B-4)
	§49-2-122. Waivers and variances to rules. (From §49-2B-7)
	§49-2-123. Annual reports; directory; licensing reports and recommendations. (From §49-2B-14)
	§49-2-124. Certificate of need not required; conditions; review. (From §49-7-30)
	§49-2-125. Commission to Study Residential Placement of Children; findings; requirements; reports; recommendations; termination. (From §49-7-34)
	§49-2-122. Waivers and variances to rules.
Article 2A	
§49-2A-1 et seq. Interstate Compact on the Placement of Children (Now in Article 7, §49-7-101 et seq.)	
Article 2B	
§49-2B-1 et seq. Duties of Secretary of DHHR (Now in Article 2, Part I, of the bill, as well as the definitions in Article 1)	
§49-2B-16 (implementation of the Integrated Pest Management Program) (Mentioned in §49-2-121. Rules.)	
Article 2C	
§49-2C-1 et seq. (Interstate Adoption Assistance Compact) (Now in Article 7, §49-7-201 et seq.)	
Article 2D Home-Based Family Preservation Act	PART II. HOME-BASED FAMILY PRESERVATION ACT
§49-2D-1. Findings and purpose.	§49-2-201. Findings and purpose.
§49-2D-2. Definitions. (Now in §49-1-206.)	

§49-2D-3. Hearing required to determine reasonable efforts (Now in §49-4-105.)	
§49-2D-4. When family preservation services required.	§49-2-202. When family preservation services required.
§49-2D-5. Caseload limits for home-based family preservation services.	§49-2-203. Caseload limits for home-based preservation services.
§49-2D-6. Situational criteria requiring service.	§49-2-204. Situational criteria requiring service.
§49-2D-7. Service delivery through service contracts; accountability.	§49-2-205. Service delivery through service contracts; accountability.
§49-2D-8. Provision of special services.	§49-2-206. Special services to be provided.
§49-2D-9. Development of home-based family preservation services.	§49-2-207. Development of home-based family preservation services.
Article 2E Quality Rating and Improvement System	PART III. QUALITY IMPROVEMENT AND RATING SYSTEM FOR CHILD CARE.
§49-2E-1. Findings and intent; advisory council.	§49-2-301. Findings and intent; advisory council.
§49-2E-2. Creation of statewide quality rating system; legislative rule required; minimum provisions.	§49-2-302. Creation of statewide quality rating system; rule-making; minimum requirements.
§49-2E-3. Creation of statewide quality improvement system; financial plan to support implementation and quality improvement required as part of rules.	§49-2-303. Statewide quality improvement system; financial plan; staffing requirements; public awareness campaign; management information system; financial assistance for child care programs; program staff; child care consumers.
§49-2E-4. Quality rating and improvement system pilot projects; independent third-party evaluation; modification of proposed rule and financial plan; report to Legislature; limitations on implementation.	§49-2-304. Quality rating and improvement system pilot projects; independent third-party evaluation; modification of proposed rule and financial plan; report to Legislature; limitations on implementation.
	PART IV. CHILDREN'S TRUST FUND.
	§49-2-401. Continuation, transfer and renaming of trust fund; funding. (From old §49-6C-1)
	PART V. CHILDREN WITH SPECIAL NEEDS. (From Article 4 of old code)
	§49-2-501. Children to whom article applies; intent.
	§49-2-502. Powers of the secretary.
	§49-2-503. Report of birth of special

	health care needs child.
	§49-2-504. Assistance by other agencies.
	§49-2-505. Cost of treatment.
Article 3 (Child Welfare Agencies)	
§49-3-1. Consent by agency or department to adoption of child; statement of relinquishment by parent; petition to terminate parental rights. (Now in §49-4-114.)	
§49-3-2. Approval of incorporation of child care organizations. (Now in §49-2-112.)	
Article 4 (Children with Special Needs) (Now in Part V of Article 2)	
§49-4-1. Purpose.	
§49-4-2. Children to whom this article applies. (Now in §49-2-501.)	
§49-4-3. Powers of state bureau. (Now in §49-2-502.)	
§49-4-4. Report of birth of special health care needs child. (Now in §49-2-503.)	
§49-4-5. Assistance by other state agencies. (Now in §49-2-504.)	
§49-4-6. Cost of treatment. (Now in §49-2-505.)	
§49-4-7. Repealed.	
Article 4A (West Virginia Family Support Program)	PART VI. WEST VIRGINIA FAMILY SUPPORT PROGRAM.
§49-4A-1. Findings.	§49-2-601. Findings; intent.
§49-4A-2. Definitions. (Now in §49-1-206 definitions section)	
§49-4A-3. Family support services.	§49-2-602. Family support services; responsibilities; funds; case management; outreach; differential fees.
§49-4A-4. Eligibility, primary focus.	§49-2-603. Eligibility; primary focus.
§49-4A-5. Program administration.	§49-2-604. Program administration; implementation; procedures; annual evaluation; coordination; plans; grievances; reports.
§49-4A-6. Regional and state family support councils.	§49-2-605. Regional and state family support councils; membership; meetings; reimbursement of expenses.
Article 5. Juvenile Proceedings See Article 2, Part IX for comparison	
Article 5A. Juvenile Referee System. There is no longer a juvenile referee	

system, except for magistrates, but most other provisions are covered in Article 2, Part IX.	
Article 5B. West Virginia Juvenile Offender Rehabilitation Act See Article 2, Part X for comparison.	
Article 5C. Committees on Juvenile Law The bill does not include this article because it is defunct.	
Article 5D. Multidisciplinary Teams See Article 2, Part IV for comparison.	
Article 5E. Division of Juvenile Services See Article II, Part IX.	
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Preventing Sex Trafficking and Strengthening Families Act - Title I: Protecting Children and Youth At Risk of Sex Trafficking –

Subtitle A: Identifying and Protecting Children and Youth at Risk of Sex Trafficking –

(Sec. 101) Amends part E (Foster Care and Adoption Assistance) of title IV (Temporary Assistance for Needy Families) (TANF) of the Social Security Act (SSA) to require the state plan for foster care and adoption assistance to demonstrate that the state agency has developed policies and procedures for identifying, documenting in agency records, and determining appropriate services with respect to, any child or youth over whom the state agency has responsibility for placement, care, or supervision who the state has reasonable cause to believe is, or is at risk of being, a victim of sex trafficking or a severe form of trafficking in persons.

Authorizes a state, at its option, to identify and document any individual under age 26 without regard to whether the individual is or was in foster care under state responsibility.

(Sec. 102) Adds as a state plan requirement the reporting to law enforcement authorities of instances of sex trafficking.

(Sec. 103) Includes sex trafficking data in the adoption and foster care analysis and reporting system (AFCARS).

(Sec. 104) Adds also as a state plan requirement the locating of and responding to children who have run away from foster care.

Directs the state agency to report immediately information on missing or abducted children or youth to law enforcement authorities for entry into the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation (FBI) and to the National Center for Missing and Exploited Children.

(Sec. 105) Directs the Secretary of Health and Human Services (HHS) to report to Congress on information about: (1) children who run away from foster care and their risk of becoming sex trafficking victims, (2) state efforts to provide specialized services, foster family homes, child care institutions, or other forms of placement for children who are sex trafficking victims; and (3) state efforts to ensure children in foster care form and maintain long-lasting connections to caring adults, even when a child in foster care must move to another foster family home or when the child is placed under the supervision of a new caseworker.

Subtitle B: Improving Opportunities for Children in Foster Care and Supporting Permanency –

(Sec. 111) Requires the designated state authority or authorities to: (1) develop a reasonable and prudent parent standard for the child's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities; and (2) apply this standard to any foster family home or child care institution receiving funds under title IV part E.

Directs the Secretary to provide assistance to states on best practices for devising strategies to assist foster parents in applying a reasonable and prudent parent standard in a manner that protects child safety, while also allowing children to experience normal and beneficial activities.

Requires that standards for child care institutions require, as a condition of any contract between an institution and the state agency, the presence on-site of at least one official designated as caregiver for a particular child who is authorized and trained to apply the reasonable and prudent parent standard to decisions involving the child's participation in age- or developmentally-appropriate activities.

Requires that such standards also include policies related to the liability of foster parents and private entities under state contract involving application of the reasonable and prudent parent standard to a child's participation in these activities.

Makes it a purpose of the John H. Chafee Foster Care Independence Program to ensure that children who are likely to remain in foster care until age 18 have regular, ongoing opportunities to engage in age or developmentally-appropriate activities. Authorizes increased appropriations for the program beginning in FY2020.

(Sec. 112) Limits to children age 16 or older the option, in an initial permanency hearing, of being placed in a planned permanent living arrangement other than a return to home, referral for termination of parental rights, or placement for adoption, with a fit and willing relative (including an adult sibling), or with a legal guardian. Prescribes documentation and determination requirements for such an option.

Prescribes requirements for approval of the case plan and the case system review procedure for any child for whom another planned permanent living arrangement is the permanency plan determined for the child. Specifies as requirements at each permanency hearing: (1) documentation of intensive, ongoing, unsuccessful efforts for family placement; (2) redetermination of the appropriateness of the child's permanent placement or, if more appropriate, another planned permanent living arrangement; and (3) demonstration of state agency support for the child's engaging in age or developmentally-appropriate activities and social events.

(Sec. 113) Gives children age 14 and older authority to participate in: (1) the development of their own case plans, in consultation with up to two members of the case planning team; as well as (2) transitional planning for a successful adulthood. Specifies additional requirements for a case plan, including specification of a child's rights with respect to education, health, visitation, and court participation, the right to be

provided with certain documents (indicated in Sec. 114), and the right to stay safe and avoid exploitation.

(Sec. 114) Requires the case review system to assure that foster children leaving foster care because of having attained age 18 (or a greater age the state has elected), unless in foster care less than six months, are not discharged without being provided with a copy of their birth certificate, Social Security card, health insurance information, copy of medical records, and a driver's license or equivalent state-issued identification card.

(Sec. 115) Requires the Secretary to include in the annual report to Congress on state performance on child protection and child welfare program outcome measures any state-by-state data on children in foster care who have been placed in a child care institution or another setting that is not a foster family home, as well as state-by-state data on children in foster care who are pregnant or parenting.

Subtitle C: National Advisory Committee –

(Sec. 121) Amends SSA title XI to establish the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States to advise the Secretary and the Attorney General on practical and general policies concerning improvements to the nation's response to the sex trafficking of children and youth in the United States.

Title II: Improving Adoption Incentives and Extending Family Connection Grants - Subtitle A: Improving Adoption Incentive Payments –

(Sec. 201) Amends SSA title IV part E to extend through FY2016 the adoption incentive program.

Revises state eligibility requirements to repeal the requirement based on the number of foster child adoptions during the fiscal year.

Revises the formula for determining the amount of an incentive award to a state, increasing the basic dollar amounts.

Repeals the formula for an increased incentive payment to a state for exceeding its highest ever foster child adoption rate. Replaces it with requirements for an increased incentive payment during FY2013-FY2015 for each timely adoption state determined by the average number of 24 months or fewer between removal of children from their foster care homes to their placement in finalized adoptions.

Prescribes base rates for:

- foster child adoptions,
- pre-adolescent child adoptions and pre-adolescent foster child guardianships,
- older child adoptions and older foster child guardianships, and
- foster child guardianships.

(Sec. 203) Renames the adoption incentive program as the adoption and legal guardianship incentive payments program.

(Sec. 204) Requires a state to use its incentive payment to supplement, but not supplant, any federal or non-federal funds used to provide specified child and family services (including post-adoption services) or foster care and adoption assistance.

(Sec. 205) Increases from 24 to 36 months the period for which incentive payments are available for expenditure.

(Sec. 206) Requires states to report annually to the Secretary on the calculation and use of savings resulting from the phase-out of eligibility requirements for adoption assistance. Requires a state to spend at least 30% of specified savings on post-adoption services, post guardianship services, and services to support and sustain positive permanent outcomes for children who otherwise might enter into foster care under the responsibility of the state, with at least 66% of the spending to comply with such 30% requirement.

(Sec. 207) Preserves the eligibility of a child for kinship guardianship assistance payments when a guardian is replaced with a successor guardian.

(Sec. 208) Directs the Secretary to promulgate regulations providing for the collection and analysis of information regarding children who enter into foster care under the supervision of a state after prior finalization of an adoption or legal guardianship.

(Sec. 209) Requires notification of parents of a sibling, where the parent has legal custody of the sibling, when a child is removed from parental custody.

Subtitle B: Extending the Family Connection Grant Program –

(Sec. 221) Extends the family connection grant program through FY2014.

Makes universities eligible for matching grants under the program.

Requires a kinship navigator to promote partnerships between public and private agencies to increase their knowledge of the needs of other individuals willing and able to be foster parents for children in foster care under state responsibility who are themselves parents in order to promote better services for those families.

Repeals the mandatory reservation of \$5 million per fiscal year for grants to implement kinship navigator programs.

Title III: Improving International Child Support Recovery –

(Sec. 301) Amends SSA title IV part D (Child Support and Establishment of Paternity) to direct the Secretary to use the authorities otherwise provided by law to ensure U.S.

compliance with any multilateral child support convention to which the United States is a party.

Grants the entity designated as a Central Authority for child support enforcement in a foreign reciprocating country or a foreign treaty country access to the Federal Parent Locator Service (FPLS).

Grants states the option to require individuals in a foreign country to apply through their country's appropriate Central Authority for child support enforcement services in a foreign reciprocating or foreign treaty country.

Allows the collection of past due support from federal tax refunds for state services for establishment of paternity and child support enforcement requested by a foreign reciprocating country or a foreign country with which the state has an arrangement.

Revises state law requirements involving the use of the Uniform Interstate Family Support Act.

(Sec. 302) Grants Indian tribes access to FPLS.

Treats an Indian tribe or tribal organization operating a child support enforcement program to be a state with authority to conduct specified kinds of experimental, pilot, or demonstration projects to assist in promoting child support objectives. Allows waiver of certain requirements in order to carry out such projects.

(Sec. 303) Expresses the sense of the Congress that: (1) establishing parenting time arrangements when obtaining child support orders is an important goal which should be accompanied by strong family violence safeguards, and (2) states should use existing funding sources to support the establishment of parenting time arrangements.

(Sec. 304) Prescribes requirements for data exchange standards for improved interoperability.

(Sec. 305) Directs the Secretary, in conjunction with the strategic plan, to review and provide recommendations for cost-effective improvements to the child support enforcement program, and ensure that the plan addresses the effectiveness and performance of the program, analyzes program practices, identifies possible new collection tools and approaches, and identifies strategies for holding parents accountable.

Directs the Secretary to report to Congress on policy options for improvements in child support enforcement.

(Sec. 306) Amends part D (Child Support and Establishment of Paternity) of SSA title IV to give the employer the option of using electronic transmission methods prescribed by

the Secretary for income withholding in the collection and disbursement of child support payments.

Title IV: Budgetary Effects - (Sec. 401) Requires that the budgetary effects of this Act, for purposes of complying with the Statutory Pay-As-You-Go Act of 2010, be determined by appropriate reference to "Budgetary Effects of PAYGO Legislation."