



Supreme Court of Appeals State of West Virginia

News

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Supreme Court approves first-ever Rules of Juvenile Procedure For immediate release Tuesday, April 20, 2010

CHARLESTON, W.Va. – The Supreme Court of Appeals of West Virginia has approved West Virginia’s first Rules of Juvenile Procedure.

Chief Justice Robin Jean Davis said, “The Court is pleased to announce the approval of these rules, which are the result of several years’ work.

The rules will become effective on July 1, 2010. An order approving the rules was entered today, April 20, and copy of the rules is posted on the Supreme Court Web site at http://www.state.wv.us/wvsca/Rules/Juvenile_Procedure_Rules.pdf

“Through the Court Improvement Board, the Court earlier adopted the Rules of Procedure for Child Abuse and Neglect Proceedings, and those rules have been an enormous help in improving the quality and timeliness of results in those cases. The Board’s Youth Services Committee, led by attorney Jane Moran, thought a similar set of rules for delinquency/status offense cases would bring about similar benefits, and that is the main purpose of this comprehensive set of rules,” Chief Justice Davis said.

“The rules are a synthesis of the state’s juvenile statutes and case law, including recognized constitutional principles. With added, necessary, procedural steps, they are a comprehensive roadmap,” Chief Justice Davis said. “The rules don’t try to make substantive law.

“The most significant change is the focus on the many children who, unfortunately, are in the juvenile system a long time and need to be better prepared for independence when they ‘age out’ of the system,” she said.

The rules were proposed by the West Virginia Court Improvement Program Oversight Board. They “are intended to provide uniform court procedures to govern juvenile delinquency and status offense cases,” Twenty-Eighth Judicial Circuit Judge Gary Johnson said in a letter to Chief Justice Davis asking the Court to approve the rules. “The rules are designed to protect the statutory and constitutional rights of juveniles, promote access to rehabilitative opportunities, and preserve public safety.”

Judge Johnson is Chairman of the Court Improvement Program Oversight Board. The Youth Services Committee of that Board has spent much of the last five years researching, drafting, and revising a document that has now become the state’s first Rules of Juvenile Procedure.

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“We have never previously had rules to follow,” said Ms. Moran, a Williamson attorney. “The procedure was pieced together from the directives in the juvenile statutes.

“Those of us who worked on the rules believe this practice resulted in a lack of responsiveness to the unique needs and diverse nature of juvenile offenders. There were insufficient procedural protections to prevent unnecessary detention and, where detention was necessary, to limit it to the minimum required for the safety of the juvenile and protection of the public,” Ms. Moran said.

There was no incident that precipitated the Board’s decision to write Juvenile Court Rules, Ms. Moran said.

Historically, the Court Improvement Board’s main focus has been on improving the way the court system handles abuse and neglect cases. The Court Improvement Program’s central purpose is to improve court-related practices affecting children and youth placed out of their homes in foster care, which includes many in the juvenile court system. Additionally, many children who are the victim of abuse and neglect later end up in juvenile court. “It was a natural step for us to try to address the needs of these kids,” Ms. Moran said.

“The Committee did not believe that the constitutional protections afforded adults in the criminal courts were being consistently and conscientiously provided in the juvenile venues, whereas juveniles are assured, in some incidences, more constitutional protections than adults charged with crimes,” Ms. Moran said.

Also, she said, “We didn’t feel there were enough protections for children who were charged with delinquency, in terms of setting up some structure for their future so they didn’t go through a revolving door here. We are trying to expand the rules into something for their future, to help them stay out of trouble, more than the rules have done at this point.”

“Jane should be credited for recognizing the importance of addressing this problem when she formed this committee several years ago,” said Morgantown attorney John Hedges, a member of Ms. Moran’s committee.

“Status offenders ‘age out’ of the system when they turn eighteen. Juvenile delinquent offenders can remain under court jurisdiction until they are twenty-one, in some circumstances. The kids that have been in placement for extended periods typically have very little in terms of supportive family relationships,” Mr. Hedges said.

The rules that address this issue specifically are Rules 45, 46, and 51. Other rules that are designed to improve the system for older juveniles are Rules 35, 26, 37, 40, and 43.

“Congress has now recognized that more attention is needed on preparing these juveniles for adulthood while they’re still in the state’s care. The federal Fostering Connections to Success Act that passed in 2008 requires states to address education stability in a juvenile’s case plan and assist a juvenile aging out of foster care to develop a transition plan,” Mr. Hedges said. “These issues and other measures designed to help these older youth are covered in the new West Virginia Juvenile Rules and should also benefit the state by opening new avenues for additional Title IV-E federal funding.”

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Those funds can be used to pay for certain out-of-home placements, if federal procedural requirements are followed. Those requirements were incorporated into the new West Virginia Juvenile Rules.

The Court Improvement Program Board was created as part of the Omnibus Budget Reconciliation Act of 1993 and designated federal funding beginning in fiscal year 1995 for grants to state court systems to conduct assessments of their foster care laws and judicial processes, and to develop and implement a plan for system improvement. The Supreme Court of Appeals of West Virginia initiated the Court Improvement Program in January 1995 and formed the Board as the advisory group and task force to implement the program the Supreme Court and the Board have continued to obtain federal grant funding and actively participate in Court Improvement Programs every year.

Ms. Moran's Youth Services Committee drafted the new Rules of Juvenile Procedure and gave them to the Board to review and approve. The Board then presented them to the Supreme Court for its approval. The Supreme Court on June 4, 2009, approved a three-month public comment period, which it extended by two months to November 9, 2009. Ms. Moran's Committee then considered all comments and made modifications. It presented the final version of the rules to the Court Improvement Board, which approved the revised rules on January 22, 2010, and sent them back to the Court. The Court today approved that final version.

The members of Ms. Moran's Committee are: Judge Donald H. Cookman, Twenty-Second Judicial Circuit (Hampshire, Hardy, and Pendleton Counties); Denny Dodson, Deputy Director, West Virginia Division of Juvenile Services; Sue Hage, Program Manager for Regulatory Management, Department of Health and Human Resources Bureau for Children & Families; John M. Hedges, Morgantown attorney; Will Jones, Assistant Attorney General for the Department of Health and Human Resources Bureau for Children & Families; Mike Lacy, Director of Probation Services for the Supreme Court of Appeals Administrative Office; Robert Noone, a Logan attorney; Sandra Prather, Youth Services Policy Specialist, Department of Health and Human Resources Bureau for Children & Families; Jack Rogers, Executive Director, West Virginia Public Defender Services; Angela Saunders, Director of Court Services for the Supreme Court of Appeals Administrative Office; Mary Ann Scali, Deputy Director, National Juvenile Defender Center; Robin Walker Sterling, special counsel, National Juvenile Defender Center; John Sullivan, Defense Attorney, Thirteenth Judicial Circuit (Kanawha County) Public Defender's Office; Tom Truman, Chief Deputy Prosecutor in Raleigh County; Robert Wilkinson, Chief Defense Attorney in the Sixth Judicial Circuit (Cabell County) Public Defender's Office.

"More or less, the rules go in chronological order like a typical juvenile case would progress through the court system," Mr. Hedges said.

An outline of the new rules follows.

Rules 1 through 4 define the general purpose and jurisdictional basis for juvenile proceedings.

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Rule 5 addresses a juvenile's right to counsel no later than his initial Court appearance, the limits on public-funded counsel for a juvenile, and the potential for enforcing parental responsibility to pay for a juvenile's representation.

Rules 6 through 9 describe the petition requirements, provide for service of a petition on a juvenile and on the juvenile's parents, protect a juvenile's right to be advised of his or her constitutional protections, and establish the procedure for taking a juvenile charged with a delinquent act into custody and the more limited grounds available to take a charged status offender into custody. The criteria are based on the grounds alleged in a charging petition and are controlled by the need to protect the juvenile as well as the public.

Rule 10 provides for the confidentiality of juvenile proceedings and requires the charged offender, the juvenile's counsel, and the prosecuting attorney to be present and participate in all hearings on the charge, with certain exceptions. The rule imposes a mandatory duty of the parents of the juvenile to appear at all hearings.

Rules 11 through 16 provide guidelines for release or detention of a charged juvenile prior to a preliminary hearing on the charges. The court's alternatives include unconditional release, release on unsecured bond, detention in a non-secure facility, and detention in a secure facility.

Rule 15 provides the procedure for proceeding against a juvenile who is a named a respondent in a Domestic Violence Emergency Protective Order.

Rules 17 and 18 provide procedures for preliminary hearings of juvenile proceedings and the requirement to record the proceedings for later use in a circuit court if probable cause is found at the preliminary level.

Rule 19 sets out the procedure for a diversionary alternative of improvement period of up to one year. If successfully completed, charges will be dismissed. This may involve out-of-home placement by the Department of Health and Human Resources.

Rule 20 sets forth restrictions on and procedures for mandatory or discretionary transfer of juvenile proceedings to adult criminal jurisdiction, with dispositional alternatives.

Rule 21 follows, and in some instances exceeds, the discovery provisions available to an adult in criminal court, thus ensuring the juvenile's right to full disclosure of the evidence against him or her. The rule further defines a juvenile's reciprocal discovery duties.

Rule 22 provides for a juvenile's right to issuance and service of subpoenas of witnesses to hearings.

Rule 23 defines a juvenile's right to severance from a juvenile charged from the same circumstances.

Rules 24 through 26 provide pre-trial procedures, including motion practice, conferences, and competency testing.

Rules 27 through 33 describe the process and procedure for adjudication of juvenile charges, including evidentiary and burden of proof standards.

Rule 28 provides procedure for entering a plea of guilty.

Rule 29 identifies those cases eligible for trial by a jury.

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Rule 34 provides that all juveniles, regardless of the crime of conviction, are entitled to be sentenced in the least restrictive manner possible that will meet their needs and protect the public. The goal in disposition is rehabilitation. The rule sets time schedules for moving to disposition of a proven charge and establishing the requirement of preserving proceedings on record for purposes of appeal.

Rules 35 through 37 establish a structure for a multi-disciplinary approach to developing an individualized service plan for status and delinquent offenders. The rehabilitation goal of placement requires a showing that the juvenile remains in the home or is placed as close to his or her home as the availability of necessary services allow. The multi-disciplinary team is charged with the responsibility of overseeing and adapting the case plan to ensure that it meets the special needs of the individual child.

Rules 39 and 40 provide for investigations and evaluations to assist the court in its dispositional decision regarding status and delinquency offenses and set forth the required elements of the court's dispositional orders. The rules place a mandatory responsibility for parental financial support of the child in placement, whenever possible.

Rule 41 addresses the special needs of a juvenile with mental health problems which are appropriately considered as part of the dispositional plan, and in-patient commitment when necessary. The evaluation process includes placement in out-of-state facilities when no in-state facility can meet the juvenile's needs.

Rule 42 provides for regular court review of the plan and progress toward permanency of a juvenile placed outside the home.

Rule 43 provides for regular report of a child's multi-disciplinary team to the court and judicial evaluation of progress of the child under the existing plan.

Rule 44 reflects federal law and gives notice to parents of a juvenile who has been in an out-of-home placement for fifteen of the last twenty-two months that the West Virginia Department of Health and Human Resources is required by statute to file a petition for termination of parental rights unless a compelling reason is shown that termination would be contrary to the juvenile's best interests.

Rules 45 and 51 provide for aftercare services to the juvenile who has spent an extended period in an out-of-home placement. In the case of juveniles approaching their eighteenth birthdays, the services are to support independent living.

Rule 47 provides a procedure for modification or revocation of a previous court order of juvenile probation that has been violated.

Rule 48 provides for issuance of search warrants in juvenile proceedings.

Rules 49 and 50 protect the confidentiality of juvenile information through sealing of the records, with specified exceptions.