

STATE OF WEST VIRGINIA

At the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on November 25, 2015, the following order was made and entered **in vacation**:

IN RE: **APPROVAL OF AMENDMENTS TO THE WEST VIRGINIA RULES OF JUVENILE PROCEDURE**

On May 4, 2015, Nikki Tennis, Director, Division of Children's Services, presented proposed amendments to the West Virginia Rules of Juvenile Procedure ("Rules"). The proposed amendments were published for comment. A comment was received from Garrett M. Jacobs, Commissioner for the Bureau for Child Support Enforcement, and upon consideration of the comment, hereby adopts an amendment to Rules 38(e) and 39(d) of the Rules.

Upon consideration and review, the Court is of the opinion to approve and adopt the following amendments to the West Virginia Rules of Juvenile Procedure, effective January 1, 2016. The additions are indicated by underscoring and deletions are indicated by strikethrough.

Rules of Juvenile Procedure

Rule 1. Scope, Application and General Purpose

(a) *Scope and Application.* These rules govern the procedures in the courts of West Virginia having jurisdiction over delinquency and status offense matters pursuant to West Virginia Code, ~~Chapter 49, Articles 5 through 5E, §§ 49-2-901 through 49-2-913; 49-2-1001 through 49-2-1006; 49-4-701 through 49-4-725; and 49-5-101 through 49-5-106~~ and apply to both delinquency and status offense proceedings except where otherwise specified or limited. If these rules are in conflict with other rules or statutes, these rules shall apply.

Rule 3. Juvenile Jurisdiction

Juvenile jurisdiction of circuit courts over proceedings related to and controlled by these rules is as provided in West Virginia Code § ~~49-5-2(a) through (f), 49-4-701. Juvenile referees, including those magistrates so designated,~~ Magistrates, as juvenile referees, act under the jurisdiction of the appointing circuit court to the extent authorized by statute. Prepetition diversion generally relating to all alleged status and delinquency offenses is within circuit court

jurisdiction as authorized under West Virginia Code §§ ~~49-5-2a, 3, and 3a.~~ 49-4-702, -702a, -703 and -725. Prepetition diversion specifically relating to alleged delinquency offenses involving ~~harm to an animal-~~ sexting is within circuit court jurisdiction as authorized under West Virginia Code § ~~49-5-13f~~ 49-4-717.

Rule 5. Appointment of Counsel

(a) *Generally.* The juvenile has the right to be represented by an attorney at all stages of proceedings brought under the delinquency and status offense provisions of ~~Chapter 49, Article 5~~ W.Va. Code § 49-4-701, et seq. This right attaches no later than when the juvenile first appears before a magistrate or circuit judge. The attorney shall initially consult with the juvenile privately, outside of the presence of any parent or legal guardian. The attorney, whether court-appointed or privately retained, shall act solely as the counsel for the juvenile.

(b) *Appointment of Counsel.*

(2) Juvenile Traffic Offenses and Other Offenses Heard in Magistrate Court. In any proceeding in which the juvenile is charged in magistrate court with a violation of a traffic law, as defined under West Virginia Code § ~~49-5-1(f)~~ 49-1-207 or with a violation of West Virginia Code §§ 60-6-9 or 11-16-19, or a violation of West Virginia Code, Chapter 20, the juvenile or the juvenile's parents or legal guardians may retain private counsel, but the juvenile does not have a right to appointment of a public defender or other counsel at public expense.

Comments

An example of such conflict of interest under subparagraph (c)(2) would be when a parent is a complaining witness in the juvenile proceeding.

Rule 8(a) reflects the statutory requirement [W.Va. Code § ~~49-5-7(b)~~ 49-4-704] that a juvenile's parents or legal guardians also be named in the juvenile petition as respondents. The provision in Rule 5(d) above limiting parent or guardian participation as full and separate parties in the juvenile proceeding, for reasons detailed in *State v. Kirk N.*, 214 W.Va. 730, 591 S.E. 2d 288 (2003), is not in conflict with the Rule 8(a) requirement.

Rule 6. Taking a Juvenile into Custody

(a) *Orders for Immediate Custody.*

(4) Immediate Custody Order Following Failure to Appear. If a juvenile served by personal service of process with a petition and summons pursuant to West Virginia Code § ~~49-5-7(a)(2)~~ 49-4-704(a)(2) fails to appear for the initial hearing, the circuit court, or a magistrate may issue an order for immediate custody based upon such failure to appear in response to the summons.

Rule 8. Petitions

(c) *Presentation Exceptions for Certain Status Offenses.*

(1) A petition for a status offense under West Virginia Code § ~~49-1-4(14)(A), (B) or (C)~~ 49-1-202 may be presented and sworn by a representative of the department of health and human resources, or by a parent, guardian or custodian showing reason to have reliable information and belief.

(2) A petition for a status offense under West Virginia Code § ~~49-1-4(14)(C)~~ 49-1-202 alleging that a juvenile is habitually absent from school without good cause also may be presented and sworn by a representative of the juvenile's school district showing reason to have reliable information and belief.

Rule 14. Pre-Adjudicatory Placement Factors for Status Offenses

(a) *Mandatory release.* The Court shall release the accused juvenile unless:

(3) The juvenile has run away or absconded from a lawful custody or commitment order of a juvenile court of this State, or any other jurisdiction operating under ~~the Interstate Compact on Juveniles (W. Va. Code § 49-8-1, et seq.)~~ or the Interstate Compact for Juveniles (W. Va. Code § ~~49-8A-1~~ 49-7-301, et seq.).

(b) *Nonsecure or Staff-Secure Placement.* A juvenile placed in custody by reason of subparagraph (a)(1), (2), or (3) above may only be placed in a nonsecure or staff-secure facility. On or after January 1, 2016, a juvenile adjudicated solely as a status offender may not be placed in a Division of Juvenile Services Facility.

Comments

Pre-adjudicatory custody of status offenders is an extraordinary measure. The provisions of West Virginia Code, ~~Chapter 49, Article 5~~ § 49-4-701, *et seq.* contemplate that any necessary pre-adjudicatory services should be in-home services (e.g. truancy prevention).

Rule 15. Domestic Violence Emergency Protective Orders as Juvenile Petitions

(a) *Emergency Protective Orders Treated as Juvenile Petitions.* A domestic violence petition filed pursuant to West Virginia Code § 48-27-403 by or on behalf of the juvenile's parent, legal guardian or other person with whom the juvenile resides that results in the issuance of an emergency protective order naming the juvenile as the respondent shall be treated as a petition arising under ~~Chapter 49, Article 5~~ W.Va. Code § 49-4-701, *et seq.*, alleging the juvenile is a juvenile delinquent. The magistrate court shall notify the prosecuting attorney within 24 hours of the issuance of the emergency protective order, and the prosecuting attorney may file an amended verified petition within two judicial days, if desired. The appointment of a guardian ad litem and the family court hearing shall proceed; and any domestic violence order issued by the family court shall remain in effect until the juvenile petition is addressed by order in the circuit court or the protective order expires under its own terms.

(b) *Notice to Department.* If a law-enforcement official takes into custody a juvenile named as a respondent in an emergency protective order issued pursuant to West Virginia Code § 48-27-403 wherein the individual filing the domestic violence petition is the juvenile's parent or legal guardian or other person with whom the juvenile resides, upon presentment for a detention hearing the court shall immediately notify the department of health and human resources as required by West Virginia Code § ~~49-5-8(e)(C)(3)~~ 49-4-705(c)(3).

(g) *Bond.* Should the juvenile be detained under this rule, release under bond may be addressed after the prosecuting attorney has been notified and given the opportunity to file an amended juvenile petition pursuant to West Virginia Code § ~~49-5-7(f)~~ 49-4-704(f).

Rule 19. ~~Improvement~~ Pre-adjudicatory Community Supervision Periods

(a) *Motion.* At any time prior to adjudication, or in a time frame otherwise specified by the court, the juvenile may, before the circuit court, move for the allowance of ~~an improvement~~ a pre-adjudicatory community supervision period. If the court finds that the best interest of the juvenile is likely to be served by ~~an improvement~~ a pre-adjudicatory community supervision period, the court may delay the adjudicatory hearing and grant ~~an improvement~~ a pre-adjudicatory community supervision period. A motion for ~~an improvement~~ a pre-adjudicatory community supervision period, whether granted or denied, may not be construed as an admission or be used in evidence.

(b) *Duration and Terms.* ~~An improvement~~ A pre-adjudicatory community supervision period may be granted for any period not exceeding one year. The terms of the ~~improvement~~ pre-adjudicatory community supervision period, as determined by the court to address the treatment and rehabilitative needs of the juvenile, shall be set forth in a written order provided to the parties and counsel within 10 days of the hearing in which the motion was granted. In its discretion and based upon the particular circumstances, the court may direct that the juvenile be subject to the supervision of a probation officer during the ~~improvement~~ pre-adjudicatory community supervision period; and may schedule the matter for interim judicial reviews. If the juvenile successfully completes the ~~improvement~~ pre-adjudicatory community supervision period, the court shall dismiss the proceeding.

(c) *Services and Treatment.* As part of the terms of the juvenile's ~~improvement~~ pre-adjudicatory community supervision period, the court may direct the DHHR to provide services and treatment to address the rehabilitative needs of the juvenile and associated needs of his or her family. ~~In appropriate cases, the court may place the juvenile in the custody of the department for out-of-home placement and treatment during all or part of the improvement period. If the juvenile is placed out of the home, the court shall find and state in the written order that continuation in the home is contrary to the best interests of the juvenile and why, and whether or not the department made reasonable efforts to prevent out-of-home placement or that exigent circumstances made such efforts unreasonable or impossible.~~

~~(d) *Revocation.* Upon a motion to revoke the improvement period filed by the prosecuting attorney or probation officer, the court shall schedule a hearing upon the motion with notice to the parties and counsel. If the state proves to the court by clear and convincing evidence that the juvenile has committed a substantial violation of one or more terms of the improvement period, the court shall terminate the improvement period and schedule an adjudicatory hearing on the original petition, to commence within 30 days of the revocation.~~

(d) *Placement Out Of Home.* In appropriate cases, the court may place the juvenile in the custody of the department for out-of-home placement and treatment during all or part of the pre-

adjudicatory community supervision period. If the juvenile is placed out of the home, the court shall find and state in the written order that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the department made reasonable efforts to prevent out-of-home placement or that exigent circumstances made such efforts unreasonable or impossible.

Provided, pursuant to W.Va. Code § 49-4-712, a juvenile adjudicated solely as a status offender — who has no prior adjudication for a status or juvenile delinquency offense or no prior disposition to pre-adjudicatory community supervision or probation for the current matter—may not be placed in an out-of-home placement, excluding placement made for abuse or neglect, unless the court finds by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, family member, or the public.

On or after January 1, 2016, a juvenile adjudicated solely as a status offender may not be placed in a Division of Juvenile Services facility.

(e) *Revocation.* Upon a motion to revoke the pre-adjudicatory community supervision period filed by the prosecuting attorney or probation officer, the court shall schedule a hearing upon the motion with notice to the parties and counsel. If the state proves to the court by clear and convincing evidence that the juvenile has committed a substantial violation of one or more terms of the pre-adjudicatory community supervision period, the court shall terminate the supervision period and schedule an adjudicatory hearing on the original petition, to commence within 30 days of the revocation.

Rule 20. Transfer to Criminal Jurisdiction

(a) *Scope.* This rule applies to juvenile proceedings where a transfer to criminal jurisdiction is sought pursuant to the provisions of West Virginia Code § ~~49-5-10~~ 49-4-710.

(b) *Motion by the State.* Any transfer motion made by the prosecuting attorney shall be filed and served at least eight days prior to the adjudicatory hearing. The motion must state, with particularity, the grounds for the requested transfer, including the statutory basis relied upon as set forth in West Virginia Code § ~~49-5-10~~ 49-4-710.

(e) *Conduct of Hearing on Motion to Transfer.*

(3) **Mandatory Transfer.** The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the conditions listed in West Virginia Code § ~~49-5-10(d)(1), (2) or (3)~~ 49-4-710(d)(1), (2) or (3) exist.

(4) **Discretionary Transfer.** The court may transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the conditions listed in West Virginia Code § ~~49-5-10(e), (f) or (g)~~ 49-4-710(e), (f) or (g) exist.

(5) **Discovery.** The juvenile shall be entitled to full discovery under Rule 21. Discovery obligations shall apply to both evidence regarding the charged offense and any evidence presented regarding personal factors under West Virginia Code § ~~49-5-10(e), (f) or (g)~~ 49-4-710(e), (f) or (g). The juvenile shall be subject to the reciprocal discovery requirements contained in these rules. The prosecuting attorney shall provide discovery no later than seven days prior to the transfer hearing, and the juvenile's counsel shall provide discovery no later than four days prior to the hearing.

(6) **Evidence.** The West Virginia Rules of Evidence shall apply to the portion of the hearing dealing with evidence of the charged offense. The court shall in its discretion admit reliable evidence regarding personal factors under West Virginia Code § ~~49-5-10(e), (f) or (g)~~ 49-4-710(e), (f) or (g).

(f) *Order.* The court shall issue an order containing findings of fact and conclusions of law regarding the issue of transfer. If an order of transfer is issued pursuant to West Virginia Code § ~~49-5-10(e), (f), or (g)~~ 49-4-710(e), (f), or (g) it shall contain detailed factual findings regarding the juvenile's mental state, physical condition, maturity, emotional state, home and family environment, school experience, and other relevant personal factors. For every petition seeking a discretionary transfer, the court shall give specific reasons as to why the transfer was or was not made.

(g) *Appeal.* A juvenile who has been transferred to criminal jurisdiction pursuant to West Virginia Code § ~~49-5-10(e), (f) or (g)~~ 49-4-710(e), (f) or (g) has the right to either directly appeal an order of transfer to the supreme court of appeals or to appeal the order of transfer following a conviction of the offense of transfer. Any appeal shall follow the procedures set forth in West Virginia Code § ~~49-5-10(j)~~ 49-4-710(j).

Rule 21. Discovery

(a) *Initial Disclosures.* The prosecuting attorney shall advise the juvenile's counsel in writing of the following:

(5) Juvenile's Record. Provide the juvenile's counsel with prior allegations of delinquency, prior adjudications and ~~improvement~~ pre-adjudicatory community supervision periods.

Rule 27. Commencement of Adjudication

(d) Dismissal. The petition shall be dismissed without prejudice if the adjudication has not commenced within the time periods set forth in subparagraphs (b) or (c) above, whichever is applicable, and the court has not granted a continuance for good cause or ~~an improvement a~~ pre-adjudicatory community supervision period.

(e) ~~Improvement~~ Pre-adjudicatory Community Supervision Period. If ~~an improvement a pre-~~ adjudicatory community supervision period has been granted, but revoked prior to a successful conclusion, the adjudication shall be commenced within 30 days of the revocation.

Rule 29. Jury at Adjudication

(e) The provisions of this rule have no application to teen court programs conducted under West Virginia Code § ~~49-5-13d~~ 49-4-716.

Rule 31. Evidence

Except as modified in West Virginia Code § ~~49-5-2~~ 49-4-701, the West Virginia Rules of Evidence shall apply, including the use of depositions as contemplated by Rule 15 of the Rules of Criminal Procedure.

Rule 35. ~~Multi-Disciplinary~~ Multidisciplinary Treatment Teams

(a) *Convening of ~~Multi-Disciplinary~~ Multidisciplinary Treatment Teams.* After a juvenile is adjudicated as a status or delinquent offender pursuant to the provisions of West Virginia Code Chapter 49, Article 5 § 49-4-701, *et seq.*, the ~~multi-disciplinary~~ multidisciplinary treatment team shall have the responsibilities specified below:

(b) *Comprehensive Assessment Requirement.*

(1) Status Offenders. Whenever a juvenile is adjudicated as a status offender pursuant to West Virginia Code § 49-5-11(d) ~~49-4-711(4)~~, the department of health and human resources shall promptly convene a ~~multi-disciplinary~~ multidisciplinary treatment team and conduct ~~an~~ a risk and needs assessment, utilizing a standard uniform comprehensive assessment instrument or protocol, to determine the juvenile's mental and physical condition, maturity and education level, home and family environment, rehabilitative needs, and recommended service plan.

(2) Delinquent Offenders. If the juvenile is adjudicated as a delinquent and the court refers the juvenile for comprehensive assessment by the ~~multi-disciplinary~~ multidisciplinary treatment team pursuant to West Virginia Code § ~~49-5D-3~~ 49-4-406, the probation officer shall promptly notify the DHHR and the DJS in order to allow the MDT to convene and develop a comprehensive individualized service plan for the juvenile.

(c) *Assessment Time Frame and Report.*

(2) Upon completion of the assessment, the DHHR shall be responsible for providing the assessment report, forthwith, to members of the ~~multi-disciplinary~~ multidisciplinary treatment team; provided, if the juvenile has been adjudicated delinquent and ordered into the custody of the DJS for examination and diagnosis, the DJS shall be responsible for providing the assessment report to the MDT.

(d) *Access to and Confidentiality of Information.* The ~~multi-disciplinary~~ multidisciplinary treatment team shall be afforded access to information in the possession of the DHHR, DJS, law-enforcement agencies, and other state, county, and local agencies; and the agencies shall cooperate in the sharing of information as may be provided by West Virginia Code §§ ~~49-5D-3(d), 49-5D-6, 49-7-1~~ 49-5-101, 49-5-103, and any other relevant provision of law. Any ~~multi-disciplinary~~ multidisciplinary team member who acquires confidential information shall not disclose such information except as permitted by statute or these rules.

(e) *Responsibilities.* The ~~multi-disciplinary~~ multidisciplinary treatment team shall submit written reports to the court as required by these rules or by the court, shall meet with the court at least

every three months, as long as the juvenile remains in the legal or physical custody of the state, and shall be available for status conferences and hearings as required by the court.

Rule 36. Recommendations of the ~~Multi-Disciplinary~~ Multidisciplinary Treatment Team

(a) *Individualized Service Plan.* Pursuant to W.Va. Code § 49-4-403, ~~The multi-disciplinary~~ the multidisciplinary team shall develop an individualized service plan for the juvenile based upon the assessment report provided pursuant to Rule 35, and based upon the team's independent investigation of the juvenile's circumstances and rehabilitative needs. The ~~multi-disciplinary~~ multidisciplinary treatment team shall provide its proposed individualized service plan to the court and counsel at least 72 hours prior to the juvenile's dispositional hearing.

(b) *Conflicting Determinations Regarding the Plan.* If the ~~multi-disciplinary~~ multidisciplinary treatment team cannot agree on a service plan or if, upon review of the proposed service plan, the court determines not to adopt the team's plan, upon motion or sua sponte, the court shall schedule and hold a hearing within ten days (prior to entry of a dispositional order placing the juvenile in the dispositional custody of the DHHR or in an out-of-home setting) to consider evidence from the team as to its rationale for the ~~purposed~~ proposed service plan or reasons regarding disagreement on the plan. After such hearing, if the court does not adopt the team's recommended service plan for the juvenile, it shall make specific written findings as to why the team's plan was not adopted.

(d) *Exceptions.* Nothing in these rules should be construed to require a ~~multi-disciplinary~~ multidisciplinary team meeting to be held prior to temporarily placing a juvenile out-of-home under exigent circumstances.

Rule 37. Case Plan

(b) *Coordination with ~~Multi-Disciplinary~~ Multidisciplinary Team.* The Case Plan shall be developed in coordination and consultation with the ~~Multi-Disciplinary~~ Multidisciplinary Team and the comprehensive assessment process.

(c) *Contents of Case Plan.* The Case Plan shall include, but need not be limited to:

(2) The factors to be considered in determining the safety and appropriateness of the placement shall include, consistent with the best interest and special needs of the juvenile, whether the placement is the least restrictive setting, the most nurturing setting, in reasonable proximity to the juvenile's home, and any other factor the court deems pertinent. If the juvenile has been placed in a home or facility welfare agency a substantial distance from the home of the parents, or in another State, the reasons why such placement is in the best interests of the juvenile must be set forth.

(6) If a ~~Chapter 49, Article 6~~ W.Va. Code § 49-4-601, *et seq.* proceeding is contemplated by the DHHR, in the case of a juvenile with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the DHHR is taking to find an adoptive family or other permanent living arrangement for the juvenile, to place the juvenile with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include juvenile specific recruitment efforts such as the use of State, regional and national adoption exchanges.

(7) If a ~~Chapter 49, Article 6~~ W.Va. Code § 49-4-601, *et seq.* proceeding is contemplated by the DHHR, in the case of a juvenile with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance subsidy, a description of:

Rule 38. Disposition — Status Offenses

(a) *Referral for Service Plan.* If the allegations in a petition alleging that the juvenile is a status offender are admitted or sustained by clear and convincing proof, the court shall refer the juvenile to the department of health and human resources for services, pursuant to West Virginia Code § ~~49-5-11~~ 49-4-711, and order the DHHR to report back to the court with regard to the juvenile's progress at least every 90 days until the court, upon motion or sua sponte, determines the disposition completed and dismisses the case from its docket. Services provided shall be designed to develop skills and social supports for the juvenile and to resolve problems related to the juvenile and his or her family. Services may include, but are not limited to, referral of the juvenile and parents, guardians and other family members to services for psychiatric or other medical care, or psychological, legal, educational or other social services, as appropriate to the needs of the juvenile and his or her family.

(e) *Financial Support.* If the court places the juvenile in the custody of the DHHR, an appropriate order of financial support shall be imposed upon the parents or legal guardians. The circuit court shall make the determination and enter the order establishing a child support obligation, and any subsequent modification thereto, in accordance with West Virginia Code § ~~49-7-5~~ 49-4-801, et seq., and the Guidelines for Child Support Awards found in West Virginia Code § 48-13-101, *et seq.* Copies of the child support orders shall be provided to the Department of Health and Human Resources, Bureau of Child Support Enforcement as set forth in W.Va. Code § 49-4-801(c). The Guidelines may be disregarded, or the calculation of a support obligation under the Guidelines may be adjusted, only if the court makes specific findings that use of the Guidelines is inappropriate. If there is a child support obligation relating to the juvenile imposed in a divorce or other family court proceeding, the circuit court order entered pursuant to this rule shall supersede the family court support order for the period the juvenile is in DHHR custody, or as otherwise specified by the circuit court.

(g) *Modification of Disposition.* A dispositional order may be modified by the court in conformance with West Virginia Code § ~~49-5-14~~ 49-4-718.

Rule 39. Delinquency Disposition

(d) *Financial Support.* If the court places the juvenile in the custody of the DHHR or DJS, an appropriate order of financial support shall be imposed upon the parents or legal guardians. The circuit court shall make the determination and enter the order establishing a child support obligation, and any subsequent modification thereto, in accordance with West Virginia Code § ~~49-7-5~~ 49-4-801, et seq. and the Guidelines for Child Support Awards found in West Virginia Code § 48-13-101, *et seq.* Copies of the child support orders shall be provided to the Department of Health and Human Resources, Bureau of Child Support Enforcement as set forth in W.Va. Code § 49-4-801(c).The Guidelines may be disregarded, or the calculation of a support obligation under the *Guidelines* may be adjusted, only if the court makes specific findings that use of the Guidelines is inappropriate. If there is a child support obligation relating to the juvenile imposed in a divorce or other family court proceeding, the circuit court order entered pursuant to this rule shall supersede the family court support order for the period the juvenile is in DHHR or DJS custody, or as otherwise specified by the circuit court.

(g) *Modification of Disposition.* A dispositional order may be modified by the court in conformance with West Virginia Code § ~~49-5-14~~ 49-4-718. If the modification sought is revocation of probation, Rule 46 shall apply.

Rule 40. Investigations and Evaluations

(c) *Psychological and Medical Evaluation pursuant to § ~~49-5-13a~~ 49-2-907.*

(2) *Duration.* The period of custody shall not exceed ~~60~~ 30 days.

(3) ~~Multi-Disciplinary~~ Multidisciplinary Team. During the period the juvenile is in custody, the DJS shall convene a ~~multi-disciplinary~~ multidisciplinary team to aid in determining the appropriate recommended disposition for the juvenile. Within ten days after the end of the examination period, the ~~multi-disciplinary~~ multidisciplinary team shall submit a report to the court discussing the results and findings of the examinations, and the team's recommendations for the juvenile.

Rule 41. Mental Health Disposition

(a) *Procedures for Commitment to a Mental Health Facility.* Should the juvenile, the prosecuting attorney, the probation officer, or the court on its own motion, request disposition pursuant to West Virginia Code § ~~49-5-13(b)(6)~~ 49-4-714(b)(6), the following shall apply:

Rule 42. Permanency Hearings

(a) *Timing and Purpose.* For every juvenile in out-of-home custody of the DHHR, the court shall conduct a permanency hearing within 14 months of the date of the juvenile's initial removal from the home, and at least once every 12 months thereafter so long as the juvenile remains out of the home in DHHR custody. The purpose of the hearing is to determine the permanency plan for the juvenile that includes whether, and if applicable when, the child will be returned to the parent or the state will file a petition for termination of parental rights as a proceeding arising out of West Virginia Code ~~Chapter 49, Article 6~~ § 49-4-601, *et seq.*, or referred for legal guardianship, or placed in another planned living arrangement. Procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the juvenile from the home of his parents, to a change in the juvenile's placement and to any determination affecting

visitation privileges of parents; and procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the juvenile, the court consults, in an age-appropriate manner, with the juvenile regarding the proposed permanency or transition plan. In the discretion of the court, the hearing may be scheduled and held concurrently with a judicial review hearing, so long as the permanency plan matters are distinctly addressed in the hearing and reflected in a written order.

Rule 48. Search Warrants

Issuance of search warrants is governed by Rule 41 of the West Virginia Rules of Criminal Procedure, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the ex parte request for such warrant shall be conducted as a closed juvenile proceeding pursuant to Rule 10. The written application and supporting affidavit or affidavits, the original warrant, any duplicate warrant, the transcript of any hearing on the application for the warrant, and any related documents shall be deemed to be confidential juvenile court records under West Virginia Code § ~~49-5-17~~ 49-5-103.

Rule 49. Confidentiality of Juvenile Records

Juvenile proceedings conducted under Chapter 49 of the West Virginia Code are not public proceedings. Additionally, the records of these proceedings are not open for public inspection. Disclosure of juvenile records is not permitted, unless specifically authorized pursuant to West Virginia Code §§ ~~49-5-17(b) or 49-7-1~~ 49-5-101 or 49-5-103. Provided, however, in the interest of assuring that any determination made in proceedings before a family court arising under West Virginia Code, Chapter 48, or West Virginia Code § 44-10-3, does not contravene any determination made by a circuit court in a prior or pending juvenile proceeding, family courts and staff shall have access to all circuit court orders and case indexes in this State in all juvenile proceedings.

Rule 50. Sealing Juvenile Records

(a) *Generally.* The records of juveniles charged with a delinquency or status offense should not follow the juvenile for the rest of his or her life. These records are sealed by the court to protect the rights of the juvenile when they reach adulthood. The records of juvenile proceedings conducted under Chapter 49 of the West Virginia Code should be sealed:

(1) one year after the juvenile's 18th birthday, or

(2) one year after personal or juvenile jurisdiction of the court is terminated, whichever is later, pursuant to W.Va. Code § 49-5-104.

Rule 51. Development of Life Skills Curriculum and Transitional Plan

(a) *Life Skills Curriculum.* For every juvenile between ages 14 and 18 years in the custody of DHHR or DJS, as part of the MDT process, the individualized service plan shall include a Life Skills Curriculum. Life skills to be taught to the juvenile shall include, at a minimum: personal hygiene, food and financial management; housekeeping, nutrition planning, job seeking skills, educational/vocational instruction, and community resources. Pursuant to each juvenile's Life Skills Curriculum, the MDT shall monitor, pursuant to West Virginia § ~~49-5D-3~~ 49-4-406, the instruction of juveniles between the ages of 14 and 18 years who are evaluated as likely to remain in the care and custody of DHHR or DJS until they are 18 years of age. The juvenile shall participate in the formulation of his or her Life Skills Curriculum.

A True Copy

Attest: //s// Rory L. Perry II Clerk of Court

