



West Virginia E-Filing Notice

CC-20-2024-P-361

Judge: Carrie Webster

To: Lesley Marie Nash
lesley@msjlaw.org

NOTICE OF FILING

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
West Virginia State Conference of the NAACP v. Department of Human Services
CC-20-2024-P-361

The following complaint was FILED on 8/15/2024 10:20:00 AM

Notice Date: 8/15/2024 10:20:00 AM

Cathy S. Gatson
CLERK OF THE CIRCUIT COURT
Kanawha County
P.O. Box 2351
CHARLESTON, WV 25301

(304) 357-0440

COVER SHEET

E-FILED | 8/15/2024 10:20 AM
CC-20-2024-P-361
Kanawha County Circuit Clerk
Cathy S. Gatson

GENERAL INFORMATION

IN THE CIRCUIT COURT OF KANAWHA COUNTY WEST VIRGINIA
West Virginia State Conference of the NAACP v. Department of Human Services

First Plaintiff: Business Individual Government Other
First Defendant: Business Individual Government Other

Judge: Carrie Webster

COMPLAINT INFORMATION

Case Type: Miscellaneous Proceedings **Complaint Type:** Other - Civil

Origin: Initial Filing Appeal from Municipal Court Appeal from Magistrate Court

Jury Trial Requested: Yes No **Case will be ready for trial by:** _____

Mediation Requested: Yes No

Substantial Hardship Requested: Yes No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

I am proceeding without an attorney

I have an attorney: Lydia Milnes, 1029 UNIVERSITY AVE STE 100 , MORGANTOWN, WV 26505

SERVED PARTIES

Name: Department of Human Services
Address: One Davis Square, Suite 100 East, Charleston WV 25313
Days to Answer: 20 **Type of Service:** Filer - Private Process Server

Name: State Department of Education
Address: 1900 Kanawha Boulevard East, Charleston WV 25305
Days to Answer: 20 **Type of Service:** Filer - Private Process Server

Name: West Virginia Department of Homeland Security
Address: 1900 Kanawha Blvd E Building 1 Room W-400, Charleston WV 26505
Days to Answer: 20 **Type of Service:** Filer - Private Process Server

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**WEST VIRGINIA STATE CONFERENCE
OF THE NAACP,**

Petitioner,

v.

Misc. Act. No. _____

**WEST VIRGINIA DEPARTMENT OF
HOMELAND SECURITY, WEST
VIRGINIA DEPARTMENT OF HUMAN
SERVICES, & WEST VIRGINIA
DEPARTMENT OF EDUCATION,**

Respondents.

VERIFIED PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

1. In 2015, troubled by the problems plaguing a juvenile legal system that confined youth at a higher rate than any other state in the country, West Virginia's state legislature overwhelmingly passed, and the governor signed into law, Senate Bill 393. This statute prioritized community-based services and alternatives to detention for youth who become involved with the juvenile legal system. Ultimately, the legislature intended to improve youth outcomes such as rates of recidivism and truancy.

2. To improve those youth outcomes, they had to first be measured and understood. The statute required multiple state agencies to jointly establish procedures to collect and compile data—and to actually collect and compile that data—on the effectiveness of various programs for youth that they fund and administer, as well as data on disproportionate contact with the juvenile legal system disaggregated by race and gender.

3. More than eight years later, these agencies have had ample time to establish policies and procedures—and to collect data—in compliance with those requirements. But they have taken

no action to do so, despite clear statutory requirements. These agencies' failure to abide by their duties deprives West Virginia policymakers and policy advocates of data that would help them advocate for and enact maximally effective policies to improve the lives of West Virginia's youth and their communities.

4. Because the respondent agencies failed to comply with their mandated, non-discretionary duties, mandamus should issue to require them to do so.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to Article 8, section 6 of the West Virginia Constitution and West Virginia Code § 53-1-2.

6. Venue is proper pursuant to West Virginia Code § 14-2-2.

PARTIES

7. Petitioner, the **West Virginia State Conference of the NAACP (WV NAACP)**, is the state affiliate of the national NAACP. WV NAACP serves as the leadership body for fourteen local chapters—eight of which are currently active—throughout West Virginia, comprising approximately six hundred members. The mission of the NAACP is to secure the political, educational, social, and economic equality of rights to eliminate racial discrimination and ensure the health and well-being of all persons. The NAACP aims to achieve its mission through advocacy, litigation, education, and mobilization of its members and the public. As part of that mission, WV NAACP has long been concerned with the overrepresentation of Black youth and other youth of color in the juvenile legal system and advocates for effective alternatives to detention, such as diversion and school retention programs that will end the “school-to-prison pipeline.” In developing its advocacy, WV NAACP relies on data to identify effective practices

that maximize positive outcomes for youth and to ensure that it is promoting the investment of resources in those practices.

8. Respondent **West Virginia Department of Homeland Security (Homeland Security)** contains the Division of Corrections and Rehabilitation (DCR), which administers West Virginia’s prisons, regional jails, juvenile centers, community corrections facilities, and parole system. As part of that remit, the DCR encompasses the Bureau of Juvenile Services (BJS). *See* W. Va. Code § 15A-6-1. The BJS is responsible for establishing certain procedures, and for collecting and compiling certain data, pursuant to West Virginia Code § 49-5-106.¹

9. Respondent **West Virginia Department of Human Services (Human Services)** oversees social services programs in West Virginia including Medicaid, the Children’s Health Insurance Program, and Temporary Assistance for Needy Families. Human Services’ Bureau for Social Services manages the foster care system, which includes nearly 6,000 children.² Human Services is responsible for establishing certain procedures, and for collecting and compiling certain data, pursuant to West Virginia Code § 49-5-106.³

¹ West Virginia Code § 49-5-106 sets forth requirements for the “Division of Juvenile Services,” which is defined within the statute to refer to the division within the West Virginia Department of Military Affairs and Public Safety. W. Va. Code § 49-1-208. In 2020—after this statute was enacted—that department was renamed the Department of Homeland Security. *See* W. Va. Dep’t of Homeland Sec., *About Us*, WV.gov, https://dhs.wv.gov/pages/contact_us.aspx (last visited Aug. 2, 2024). *See also* W. Va. Code § 15A-6-1 (requiring the Commissioner of Corrections and Rehabilitation to establish a Bureau of Juvenile Services).

² W. Va. Dep’t of Hum. Servs., *Child Welfare Dashboard*, WV.gov, <https://dhhr.wv.gov/Pages/childwelfareadatadashboard.aspx> (data updated through June 30, 2024).

³ West Virginia Code § 49-5-106 sets forth requirements for the Department of Health and Human Resources (DHHR). After that statute was enacted, the DHHR was reorganized into three separate departments: the Department of Health, the Department of Human Services, and the Department of Health Facilities. *See* Enrolled Committee Substitute for House Bill 2006, 86th Leg., First Regular Session (W. Va. 2023), https://www.wvlegislature.gov/Bill_Text_HTML/2023_SESSIONS/RS/bills/hb2006%20sub%20enr.pdf. (passed Feb. 22, 2023). The newly organized Department of Human Services includes the Bureau of Behavioral Health, Bureau for Child Support Enforcement, Bureau for Family

10. Respondent **West Virginia Department of Education (DOE)** administers West Virginia’s public education system in partnership with West Virginia’s Board of Education.⁴ The DOE is responsible for establishing certain procedures, and for collecting and compiling certain data, pursuant to West Virginia Code § 49-5-106.

FACTUAL ALLEGATIONS

West Virginia’s 2015 Juvenile Legal System Reforms

11. As of 2015, West Virginia confined juveniles at a rate of 330 of every 100,000 children—a higher rate than any other state and more than double the national rate of 152 of every 100,000 children.⁵

12. This high rate of confinement did not affect all West Virginians equally: Compared to white youth, Black youth were more than twice as likely to be confined.⁶

Assistance, Bureau for Medical Services, Bureau for Social Services and Office of Drug Control Policy, *id.*—and therefore, on information and belief, houses the components of DHHR that were responsible for the obligations under West Virginia Code § 49-5-106.

⁴ W. Va. Dep’t of Ed., *West Virginia’s Strategic Plan*, <https://wvde.us/strategic-plan/> (last visited Aug. 2, 2024).

⁵ C. Puzzanchera, T.J Sladky & W. Kang, Off. of Juv. Just. & Delinq. Prevention, *Easy Access to the Census of Juveniles in Residential Placement 2015* (last updated Aug. 28, 2023), https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Race.asp?state=58&topic=State_Race&year=2015&percent=rate&maps=no. This confinement rate encompasses youth who are placed in a facility as part of a court-ordered disposition, youth who are detained prior to adjudication (or awaiting transfer or placement elsewhere), and youth who are sent to a facility in lieu of adjudication as part of a diversion agreement. *See* C. Puzzanchera, T.J Sladky & W. Kang, Off. of Juv. Just. & Delinq. Prevention, *Easy Access to the Census of Juveniles in Residential Placement: 1997-2021, Glossary* (last updated Aug. 28, 2023), <https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/glossary.asp> (defining “Placement status”).

⁶ C. Puzzanchera, T.J Sladky & W. Kang, *Easy Access to the Census of Juveniles in Residential Placement 2015*, *supra* n. 5 (compare confinement rate for Black youth, 764 per 100,000, with rate for white youth, 308 per 100,000). Note, however, that this data is not exact, as “30% or more of the information for race/ethnicity was imputed.” *Id.*

13. Confinement causes devastating long-term harm to youth. Youth who have been incarcerated experience high rates of recidivism, are less likely to graduate from high school, and are more likely to enter the adult criminal legal system compared to other public-school students from their neighborhoods.⁷ Even worse, youth who have been confined suffer poor health outcomes in adulthood and have a shorter life expectancy than the general youth population.⁸ These negative outcomes result more frequently for Black youth and other youth of color who are overrepresented in juvenile detention centers.⁹

14. In addition to having higher rates of juvenile confinement than other states, West Virginia was also trending in the direction of higher confinement rates over time. Between 2006 and 2011, for example, there was a 35% decrease in the number of children confined nationally, but a 5% increase in West Virginia during the same time frame.¹⁰ As then-Governor Earl Ray Tomblin explained, “[b]etween 1997 and 2011, West Virginia saw the largest percentage increase in youth confinements of any state in the country.”¹¹

15. In 2014, Governor Tomblin convened a task force to issue recommendations to reform the state’s juvenile legal system.¹² Among other things, the task force concluded that

⁷ Ted Boettner & Rick Wilson, W.V. Ctr. on Budget & Policy, *Improving Juvenile Justice in West Virginia* 3 (2017), <https://wvpolicy.org/wp-content/uploads/2018/5/JJ-Report-Release-FF-.pdf>.

⁸ Richard Mendel, The Sentencing Proj., *Why Youth Incarceration Fails: An Updated Review of the Evidence* 16 (2023), <https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf>.

⁹ *Id.* at 17.

¹⁰ Anya Slepyan, *WV Remade Its Juvenile Justice System, But Stopped Measuring if the Changes Were Helping Kids*, Mountain State Spotlight (Aug. 19, 2021), <https://mountainstatespotlight.org/2021/08/19/wv-juvenile-justice-system/>.

¹¹ Daniel Luzer, *West Virginia Governor Earl Ray Tomblin’s 2015 State of the State Speech (Text and Video)*, Governing (Jan. 15, 2015), <https://www.governing.com/archive/gov-wv-governor-earl-ray-tomblins-2015-state-of-the-state-speech-text.html>.

¹² *Id.*

because West Virginia agencies did not gather outcome data consistently, and often failed to share data that was collected, the state lacked sufficient information about youth recidivism rates.¹³ As Governor Tomblin put it, “we’ve learned data-driven programs do work,” and so West Virginia “must do everything we can to meet the needs of our youth.”¹⁴ Governor Tomblin therefore proposed legislation to “create a smarter, more effective system for our children.”¹⁵

16. In 2015, the West Virginia state legislature overwhelmingly (and without any dissenting votes) passed Senate Bill 393,¹⁶ which implemented some of the task force’s recommendations, and Governor Tomblin signed it into law.¹⁷

17. SB 393 authorized various diversion programs, such as truancy diversion specialists and restorative justice programs, and provided additional community-based options for youth involved with the juvenile legal system—all aimed at reducing recidivism and truancy.¹⁸

¹³ Pew, *West Virginia’s 2015 Juvenile Justice Reform* (May 12, 2016), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/05/west-virginias-2015-juvenile-justice-reform>.

¹⁴ Luzer, *supra* n. 11.

¹⁵ *Id.*

¹⁶ See West Virginia Senate, *Roll Call*, 82nd Leg., First Regular Session (Feb. 27, 2015), <https://www.wvlegislature.gov/legisdocs/2015/RS/votes/senate/02-27-0008.pdf>; West Virginia House of Delegates, *Reforming juvenile justice system*, 82nd Leg., First Regular Session (Mar. 13, 2015), <https://www.wvlegislature.gov/legisdocs/2015/RS/votes/house/00512.pdf>; West Virginia Senate, *Roll Call*, 82nd Leg., First Regular Session (Mar. 14, 2015), <https://www.wvlegislature.gov/legisdocs/2015/RS/votes/senate/03-14-0006.pdf>; West Virginia House of Delegates, *Reforming juvenile justice system*, 82nd Leg., First Regular Session (Mar. 14, 2015), <https://www.wvlegislature.gov/legisdocs/2015/RS/votes/house/00613.pdf>.

¹⁷ See Enrolled Committee Substitute for Senate Bill No. 393, 82nd Leg., First Regular Session, at 67 (W. Va. 2015) https://www.wvlegislature.gov/Bill_Text_HTML/2015_SESSIONS/RS/signed_bills/senate/SB393%20SUB1%20ENR_signed.pdf.

¹⁸ Pew, *supra* n. 13.

18. To improve oversight and accountability, the statute also includes a section requiring the various state actors involved in the juvenile legal system to work together to establish procedures to jointly collect and compile (or track and record) specific data related to the outcomes of various juvenile programs. W. Va. Code § 49-5-106.

19. That provision, West Virginia Code § 49-5-106, outlines four categories of data that must be collected and compiled (or tracked and recorded) by established procedure: (1) recidivism data; (2) outcomes data for diversion programs; (3) outcomes data for truancy programs; and (4) disproportionality data. *Id.*

20. **Recidivism Data.** The statute first requires Homeland Security’s BJS, Human Services, and the Supreme Court of Appeals to “establish procedures to jointly collect and compile data necessary to calculate juvenile recidivism and the outcome of programs.” *Id.* § 49-5-106(a). As to “each juvenile who enters into a diversion agreement, is placed on an improvement period, is placed on probation or is placed in an out-of-home placement,” those “data and procedures” must include the following recidivism measures: (1) new offense referrals within three years; (2) adjudications, status offenses, or convictions within three years; (3) commitments to BJS or Human Services custody or incarceration within three years; and (4) out-of-home placements where a judge found by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member, or the public. *Id.* § 49-5-106(b).

21. **Diversion Programs’ Outcome Data.** The statute next requires Homeland Security’s BJS, Human Services, and the Supreme Court of Appeals to “develop procedures using, at a minimum, the measures in subsection (b) of this section to track and record outcomes of each” program “operated or funded” by those entities, “including youth reporting centers, juvenile drug

courts, restorative justice programs and teen courts,” and “to demonstrate that the program reduces the likelihood of reoffending for the youth referred to the program.” *Id.* § 49-5-106(c).

22. **Truancy Programs’ Outcomes Data.** The statute also requires Homeland Security’s BJS, Human Services, DOE and the Supreme Court of Appeals to “develop procedures to track and record outcomes” for youth referred to truancy diversion programs they operate or fund or to truancy diversion specialists, and to evaluate whether those programs effectively reduce unexcused absences. *Id.* § 49-5-106(d). The truancy outcomes data must include, at a minimum: (1) the number of youth who successfully complete the truancy diversion program; (2) the number of youth referred to the court system after failing to complete a truancy diversion program; and (3) the number of youth who, after successfully completing a truancy diversion program, accumulate five or more unexcused absences in a current or subsequent school year. *Id.*

23. **Disproportionality Data.** Finally, the statute requires Homeland Security’s BJS, Human Services, DOE, and the Supreme Court of Appeals to “establish procedures to jointly collect and compile data relating to disproportionate minority contact,” that is, the proportion of minority youth who are juvenile system-involved compared to the proportion of minority youth in the general population. *Id.* § 49-5-106(e). That compilation must include “data indicating the prevalence of such disproportionality in each county.” *Id.* The data collected and compiled must also “include, at a minimum, the race and gender of youth arrested or referred to court, entered into a diversion program, adjudicated and disposed.” *Id.*

The Respondent Agencies' Failure to Comply with Section 49-5-106

24. WV NAACP has learned, as the result of a series of FOIA requests,¹⁹ that the respondent agencies have failed to develop any of the required procedures and have failed to generate most of the required data.

Recidivism Data

25. *Procedures.* On information and belief, Homeland Security and Human Services have failed to establish the required procedures to collect recidivism data. Although the statute requires Homeland Security's BJS, Human Services, and the Supreme Court to establish "procedures to jointly collect and compile data," none of these entities possess records of the existence of any such procedures, as revealed in their responses to WV NAACP's FOIA requests for those procedures.

26. *Data from Respondents Homeland Security and Human Services.* On information and belief, Homeland Security and Human Services have failed to collect and compile the required recidivism data. As revealed in their responses to WV NAACP's FOIA requests, neither entity has records of any such recidivism data. *See Exhibits G-H.*²⁰

¹⁹ To obtain the procedures and data mandated by West Virginia Code § 49-5-106, WV NAACP submitted Freedom of Information Act requests to West Virginia Department of Homeland Security's DCR, DHHR (as DHHR had not yet been converted into Human Services at that point), DOE, and the Supreme Court of Appeals, each seeking all of the procedures established and data collected and compiled (or tracked and recorded) under that statute between May 14, 2015 and the date of the agencies' respective searches. *See Exhibits A–D.* In its response, DCR referred WV NAACP to the West Virginia Department of Homeland Security's Division of Administrative Services, Justice and Community Services (JCS), and so WV NAACP submitted an additional FOIA request to that division. *See Exhibit E.* JCS did not have any documents responsive to WV NAACP's request. *See Exhibit F.* This is unsurprising, given that this entity was not tasked with any duties under West Virginia Code § 49-5-106. Each of these entities has stated that their FOIA responses are complete, indicating that the records they have produced comprise the full universe of relevant material.

²⁰ Although the Supreme Court separately produced a spreadsheet with some recidivism data on juveniles in the Division of Probation Services' system since May 14, 2015, *see Exhibit I*, that

Diversion Programs' Outcomes Data

27. *Procedures.* On information and belief, Homeland Security and Human Services have failed to establish the required procedures to track and record diversion programs outcomes data. None of the responsible entities—Homeland Security's BJS, Human Services, and the Supreme Court—possess records of any procedures for collecting data on diversion programs, as revealed in their responses to WV NAACP's FOIA requests for those procedures.

28. *Data from Respondents Homeland Security and Human Services.* On information and belief, Homeland Security and Human Services have failed to track and record the required diversion programs' outcomes data. As revealed in their responses to WV NAACP's FOIA requests, neither entity has records of any diversion programs' outcomes data. *See Exhibits G-H.*²¹

Truancy Programs' Outcomes Data

29. *Procedures.* On information and belief, Homeland Security, Human Services, and DOE have failed to establish the required procedures to track and record truancy programs' outcomes data for each program. The responsible entities'—Homeland Security's BJS, Human

spreadsheet did not include all the statutorily required information, nor was it “compiled” in such a way that would permit a reader to glean any conclusions about the effectiveness of West Virginia's practices in reducing juvenile recidivism. Thus, on information and belief, the Supreme Court's efforts at data collection do not satisfy Homeland Security's and Human Services' responsibilities to collect and compile recidivism data.

²¹ Although the Supreme Court separately provided some data relating to juvenile drug courts it operates, it did not provide data on each of the recidivism measures required by subsection (b) of the statute, nor did it include any information about youth reporting centers, restorative justice programs, or teen courts, as required by the statute. Thus, on information and belief, the Supreme Court's efforts at data collection do not satisfy Homeland Security's and Human Services' responsibilities to track and record outcomes of youth reporting centers, restorative justice programs, and teen courts.

Services, DOE, and the Supreme Court—failure to provide sufficient data confirms that no procedures have been established to collect all the statutorily required data.

30. *Data from Respondents Homeland Security and Human Services.* On information and belief, Homeland Security and Human Services have failed to track and record the required truancy programs’ outcome data. As revealed in their responses to WV NAACP’s FOIA requests, neither entity has possession of any truancy programs’ outcomes data. *See Exhibits G-H.*

31. *Data from Respondent DOE.* On information and belief, DOE has also failed to track and record the required programs’ outcome data. As revealed in its response to WV NAACP’s FOIA request, DOE has no records breaking out the required truancy programs’ outcomes data by program. Instead, DOE possesses a single spreadsheet, entitled “Truancy Diversion Data,” which references data required under West Virginia Code § 49-5-106(d). *See Exhibit J.* WV NAACP thus infers, on information and belief, that the DOE spreadsheet addresses only truancy diversion programs operated or funded by DOE, and does not appear to capture truancy diversion programs operated or funded by Homeland Security’s BJS, Human Services, or the Supreme Court of Appeals.²² But even if DOE’s spreadsheet did capture data from these other truancy diversion programs, it does not identify which truancy diversion programs the data relate to. Mashing all of the truancy diversion programs into one data compilation does not fulfill the statutory mandate to “record outcomes of *each* program.” W. Va. Code § 49-5-106(d) (emphasis

²² For example, the DCR operates at least one Youth Reporting Center with truancy diversion programs. *See* W. Va. Div. of Corrections & Rehab., *Fayette County Youth Reporting Center*, WV.gov, <https://dcr.wv.gov/facilities/Pages/youth-reporting-centers/Fayette-County.aspx> (last visited Aug. 2, 2024); *see also* W. Va. Div. of Corrections & Rehabilitation, *Mason County Youth Reporting Center*, WV.gov, <https://dcr.wv.gov/facilities/Pages/youth-reporting-centers/Mason-County.aspx> (last visited Aug. 2, 2024) (offering a “Truancy/Diversion” group). On information and belief, the spreadsheet provided by DOE does not encompass data for these truancy diversion programs.

added). Without a breakdown by each program, the data is unusable for the purpose of determining which programs are more effective than others.²³

Disproportionality Data

32. *Procedures.* On information and belief, Homeland Security, Human Services, and DOE have failed to establish the required procedures to jointly collect and compile disproportionality data. None of the responsible entities—Homeland Security’s BJS, Human Services, DOE, and the Supreme Court—possess records of any such policies or procedures, as revealed in their responses to WV NAACP’s FOIA requests for those procedures.

33. *Data from Respondents Homeland Security and Human Services.* On information and belief, Homeland Security and Human Services have failed to collect and compile the required disproportionality data. Again, as revealed in their responses to WV NAACP’s FOIA requests for that data, neither entity possesses any such data. *See Exhibits G–H.*

34. *Data from Respondent DOE.* On information and belief, DOE has failed to collect and compile the required disproportionality data. As revealed in its response to WV NAACP’s FOIA request, DOE does not possess any such data. (In response to the request for that data, DOE referred WV NAACP to the Supreme Court, *see Exhibit J*²⁴; the Supreme Court, in turn, referred WV NAACP back to DOE, *see Exhibit I.*)

²³ The Supreme Court also did not produce any data with details about outcomes of truancy diversion programs specifically and referred WV NAACP to DOE for relevant information. *See Exhibit I.* Thus, on information and belief, the Supreme Court’s efforts at data collection do not satisfy Homeland Security’s, Human Services’, and DOE’s responsibilities to track and record truancy programs’ outcome data.

²⁴ The data provided by the Supreme Court (to which DOE referred) includes some demographic information (i.e., race, gender) on juveniles in the Division of Probation Services’ system since May 14, 2015, but does not provide any data at the county level, as the statute requires, nor does it compile outcomes by race and gender. Thus, on information and belief, the Supreme Court’s efforts at data collection do not satisfy Homeland Security’s, Human Services’, and DOE’s responsibilities to collect and compile disproportionality data.

35. In sum, on information and belief, based on their FOIA responses, Homeland Security, Human Services, and DOE have failed to develop policies and procedures for collecting and compiling (or tracking and recording) data as required by West Virginia Code § 49-5-106.

36. Further on information and belief, based on their FOIA responses, Homeland Security, Human Services, and DOE have likewise failed to collect and compile (or track and record) most of the data required under West Virginia Code § 46-5-106.

37. As a result, West Virginia policymakers—and those who advocate for reform, such as WV NAACP—remain without adequate data to propose and enact effective, data-driven changes to the juvenile legal system.²⁵

38. Continuing to reduce the youth confinement rate in West Virginia remains pressing. As of 2021, West Virginia had the second-highest youth confinement rate in the nation, and the disparity in confinement rates between Black and white youth has grown: Black youth in West Virginia are confined at a rate more than four times higher than that of white youth.²⁶

²⁵ Pursuant to West Virginia Code § 55-17-3, on April 29, 2024, WV NAACP, through counsel, notified the chief officer of each agency (i.e., Homeland Security, Human Services, and DOE) and the Attorney General that it intended to file a petition for a writ of mandamus to address these violations of West Virginia Code § 46-5-106. The 30-day notice period had lapsed before this Petition was filed.

²⁶ C. Puzzanchera, T.J Sladky & W. Kang, Off. of Juv. Just. & Delinq. Prevention, *Easy Access to the Census of Juveniles in Residential Placement: Race/Ethnicity by State, 2021* (last updated Aug. 28, 2023), https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Race.asp?state=58&topic=State_Race&year=2021&percent=rate&maps=no (displaying total rate for 2021 as a data table, sorted from highest to lowest and disaggregated by race).

CAUSE OF ACTION

Writ of Mandamus Under West Virginia Code § 53-1-2 *et seq.* — Failure to Comply with West Virginia Code § 49-5-106

39. Petitioner WV NAACP restates and re-alleges paragraphs 1 through 38 above as if fully set forth herein.

40. This Court has the authority to issue a writ of mandamus under West Virginia Code §§ 53-1-2 and 53-1-5.

41. A writ of mandamus shall issue when “three elements coexist-(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.” Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 539, 170 S.E.2d 367, 367 (1969). All three elements coexist here.

42. First, WV NAACP has a clear legal right to the relief sought. Because the question of a “clear legal right to the relief sought is generally a question of standing,” where a petitioner “has a special interest in the sense that he is part of the class that is being affected by the action then he ordinarily is found to have a clear legal right.” *Smith v. W. Va. State Bd. of Edu.*, 170 W. Va. 593, 596, 295 S.E.2d 680, 683 (1982) (citation omitted). “Moreover, where the right sought to be enforced is a public one in the sense that it is based upon a general statute or affects the public at large the mandamus proceeding can be brought by any citizen, taxpayer, or voter.” *Id.* (citations omitted). Here, although no special interest is required because the right sought is based upon a general statute, WV NAACP does have such a special interest: as detailed above, it sought through appropriate channels the data that should have been collected and compiled (or tracked and recorded) pursuant to West Virginia Code § 49-5-106, but was unable to obtain it precisely because of Respondents’ failure to comply with their obligations under that statute. Moreover, as an

organization invested in reforming West Virginia’s juvenile legal system—and combatting racial inequities within that system—WV NAACP relies on this kind of data to develop its advocacy, so that it can engage in data-driven decision-making. WV NAACP’s ability to achieve its mission is therefore especially affected by Respondents’ failure to collect and compile (or track and record) data that would otherwise be accessible through public records requests. Likewise, the respondent agencies’ failure to establish procedures regarding this data significantly diminishes the likelihood that the agencies will in fact keep track of, and make available, that data going forward.

43. Second, Respondents have a legal duty to establish the procedures, and collect and compile (or track and record) the data, outlined in West Virginia Code § 49-5-106. That statutory provision specifically charges the Division of Juvenile Services—now renamed the Bureau of Juvenile Services, a component of the Department of Homeland Security, *see supra* n. 1—with the responsibilities outlined in each subsection of West Virginia Code § 49-5-106. That statutory provision likewise specifically charges the Department of Health and Human Resources²⁷—now renamed the Department of Human Services, *see supra* n. 3—with the responsibilities outlined in each subsection of West Virginia Code § 49-5-106. And that statutory provision specifically charges the Department of Education with the responsibilities outlined in subsections (d) and (e) of West Virginia Code § 49-5-106. Each of these statutory requirements uses the language “shall,” which is interpreted in this state as mandatory. *See* Syl. Pt. 2, *Terry v. Sencindiver*, 153 W. Va. 651, 651, 171 S.E.2d 480, 480 (1969). And it is “well settled by [this state’s Supreme] Court that ‘[a] peremptory writ of mandamus will issue to require the discharge by a public official of a non-

²⁷ West Virginia Code § 49-5-106 sometimes refers to DHHR (the precursor to Human Services) as “the department”; that term is defined to mean the DHHR in West Virginia Code § 49-1-208.

discretionary duty.” *Trumka v. Moore*, 180 W. Va. 284, 287, 376 S.E.2d 178, 181 (1988) (quoting Syl. Pt. 4, *Glover v. Sims*, 121 W. Va. 407, 3 S.E.2d 612 (1939)) (alteration in original).

44. Third, there is an absence of another adequate remedy. As set forth above, WV NAACP has already attempted to access the statutorily mandated data through public records requests, and has learned through them that Respondents have failed to collect and compile (or track and record) the vast majority of the necessary data, or to establish the requisite procedures. WV NAACP is unaware of any adequate remedy under West Virginia law other than mandamus to compel a state agency to take the action it is legally required to undertake when it has to date declined to do so. *See Perry v. Barker*, 169 W. Va. 531, 539, 289 S.E.2d 423, 428 (1982) (“Mandamus is a proper proceeding by which to compel a public officer to perform a mandatory non-discretionary duty.” (citation omitted)); *cf. United Mine Workers of Am. v. Miller*, 170 W. Va. 177, 183, 291 S.E.2d 673, 679 (1982) (explaining that pursuance of declaratory judgment would “be a futile act” where the relevant statute “is clear and unambiguous” and should therefore “be applied and not construed or interpreted”). And should any other remedy be possible, it would not be “equally as beneficial, convenient, and effective” as mandamus. *See Syl. Pt. 4, Cooper v. Gwinn*, 171 W. Va. 245, 248, 298 S.E.2d 781, 784 (1981).

REQUEST FOR RELIEF

WHEREFORE, Petitioner WV NAACP respectfully requests that this Court:

- a. Issue a rule in mandamus, in accordance with its authority under West Virginia Code §§ 53-1-2 and 53-1-5, directing Respondents to show cause why they should not be ordered to comply with their clear legal duties under West Virginia Code § 49-5-106;

- b. Direct Respondents to comply with West Virginia Code § 49-5-106 by establishing the procedures, and collecting and compiling the data, mandated by that statute;
- c. Award Petitioner reasonable attorney's fees and costs incurred in bringing this action, in accordance with this Court's authority under West Virginia Code § 53-1-8; and
- d. Issue such other relief as the Court deems necessary and equitable.

Petitioner
WEST VIRGINIA STATE CONFERENCE
OF THE NAACP,
By Counsel,

/s/ Lydia C. Milnes

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Counsel for Petitioner

VERIFICATION OF WEST VIRGINIA STATE CONFERENCE OF THE NAACP

STATE OF WEST VIRGINIA.

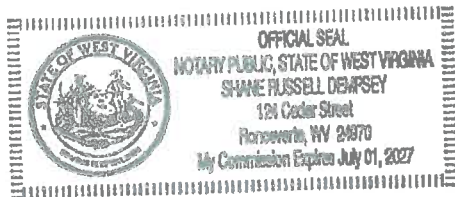
COUNTY OF Greenbrier . TO-WIT:

Loretta Young, in her capacity as President, and on behalf, of Petitioner West Virginia State Conference of the NAACP, named in the foregoing *Verified Petition for Writ of Mandamus*, having been first duly sworn, says the facts and allegations therein contained are true, except insofar as they are herein stated to be on information, and so far as they are therein stated to be on information, I believe them to be true.


LORETTA YOUNG,
for the WEST VIRGINIA STATE
CONFERENCE OF THE NAACP

Taken, subscribed, and sworn to before me this 13 day of August 2024.

My commission expires July 01, 2027.




NOTARY PUBLIC