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## **Over-Institutionalization, High Caseloads, Neglect in Foster Care System Cited in Lawsuit Charging Gov. Justice with Violating West Virginia Children’s Civil Rights**

(Huntington, West Virginia, October 1) – Twelve children in the West Virginia foster care system filed on Tuesday a federal class-action lawsuit against Governor Jim Justice asserting that the state’s child welfare system is failing to protect its most vulnerable and defenseless citizens.

Lawyers for the plaintiff children who range from two to 17 years old, cite a range of damning statistics and charge the state and its Department of Health and Human Services (DHHR) with failing to provide the necessary services that will protect these and the other 6,800 children in West Virginia foster care for whom the state is now the legal parent .

West Virginia suffers from the highest age-adjusted rate of drug overdose deaths involving opioids in the nation and caregiver addiction and deaths from substance abuse are driving more and more children into the system. The lawsuit, *Jonathan R. v. Justice*, alleges these children are housed in temporary shelters, hotels, institutions or expensive, out-of-state for-profit facilities, where they never see their caseworker and are often subjected to abuse. Statistics tell the story:

- Children are put into institutional facilities and group homes that ignore their needs, disabilities, and case history: 71% of teens aged 12- to 17-year-old are institutionalized
- Children are shipped out-of-state because the state has too few appropriate beds: 327 West Virginia foster children are in out-of-state institutions around the country
- The state has too few community-based mental health services: 39% of foster-children had a mental health diagnosis last year
- DHHR caseworkers receive too little training and face impossible caseloads: 25% of all caseworker positions are vacant.
- Children languish for years, largely ignored and left to “age out” of a system without guidance or support: Only 33% of 19-year-old aged-out foster youth had a job.

Today’s lawsuit seeks a court order directing the fundamental reform of West Virginia’s long-neglected system. The lawsuit names Jim Justice, governor of West Virginia, Bill Crouch, DHHR Cabinet Secretary, Jeremiah Samples, DHHR Deputy Cabinet Secretary, and Linda Watts, Commissioner of the Bureau of Child Welfare, a division of DHHR.

The suit is brought as a class action, seeking to represent all of the 6,800 children in foster care in the state, and focuses as well on three sub-classes of children:

- 1,700 foster care who have disabilities, and are being discriminated against—the ADA sub-class
- 1,600 foster children who are close to aging out of the system without any preparation for adulthood—the aging-out subclass
- 3,400 children who are in kinship care, many in unlicensed homes, who are deprived of necessary services—the kinship sub-class.

The children’s action against DHHR is an opportunity to transform West Virginia's child welfare system by addressing these problems:

- **West Virginia fails to provide children with stable placements-** children are shuffled from facility to facility with little regard for stability and permanency.
- **West Virginia fails to provide necessary therapeutic services to children** that they are entitled to them by the Americans with Disabilities Act.
- **Caseworkers are unable to provide acceptable care** because the state does not provide appropriate funding, leaves caseworkers with impossibly high caseloads, and does not provide adequate training.
- **West Virginia foster youth age out of care and often become homeless** due to DHHR’s failure to provide transitional living plans. At age 19, 18% of aged-out foster youth experienced homelessness in the previous two years and, by age 21, 28% percent experienced homelessness
- **Children in the care of their extended families (kinship care) do not receive the same attention, funding, and care that other placements receive.** A 2019 independent state assessment concluded, “it is not unusual that a relative/kinship caregiver will not see a caseworker after the original placement.”

The lawsuit was filed by three organizations, A Better Childhood, a national advocacy group for children; Disability Rights West Virginia, a statewide disability rights organization; and Shaffer & Shaffer, PLLC, a West Virginia law firm.

“Governor Justice is far from providing justice to the thousands of foster children most in need of it,” said Marcia Robinson Lowry, executive director of A Better Childhood. “For years, the state has ignored repeated recommendations about how to fix the damaging West Virginia foster care system. Children are being sent to institutions, placed in foster homes without any services, and abandoned by the state. West Virginia has some of the worst child welfare statistics in the country, and the state can no longer use the opioid epidemic as an excuse to avoid responsibility for this shameful system.”

“The foster care crisis in West Virginia is not an issue that just arose in the last 4-5 years, it’s a systemic problem that has festered in the state for almost 20 years. The nominal effort put forth by DHHR to improve the system over this period of time hasn’t come close to working,” said Jeremiah Underhill, the legal director of Disability Rights West Virginia. “The children of West Virginia deserve a system that works.”

“Not only are we failing to provide federally mandated care, but we are also failing to prepare these children for what lies ahead and instead condemning many of them to a life of abuse and homelessness once they age out of foster care,” said Richard Walters, a senior attorney with Shaffer & Shaffer, PLLC. “West Virginia’s foster care system has been broken for decades, it is simply unacceptable to say that we are doing the best we can with limited resources when we are talking about the abuse and neglect of young children in our care. We must do better and this litigation is a step in that direction.”

After conducting an exhaustive investigation into the allegations made by the plaintiff children, and interviewing hundreds of stakeholders in the state system (foster parents, service providers, former foster children, former state employees, and lawyers who represent children) the three organizations concluded that a lawsuit was necessary in order to force reform and protect West Virginian children.

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The full complaint filed in *Jonathan R. v. Justice* is available upon request from media contacts above. The named plaintiff stories are attached.