WEST VIRGINIA CODE: §49-4-714

§49-4-714. Disposition of juvenile delinquents; appeal.

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the juvenile shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order the use of a standardized screener, as defined in §49-1-206 of this code or, if additional information is necessary, a psychological examination of the juvenile. The report of an examination and other investigative and social reports shall not be relied upon the court in making a determination of adjudication. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than 72 hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall receive and consider the results of a needs assessment, as defined in §49-1-206 of this code, and shall conduct the disposition, giving all parties an opportunity to be heard. The disposition may include reasonable and relevant orders to the parents, custodians or guardians of the juvenile as is necessary and proper to effectuate the disposition. At disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the juvenile and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established pursuant to §22-15A-3 of this code or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that

WV Legislature

the emergency situation made those efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 et seq. of this code and guidelines promulgated by the Supreme Court of Appeals;

(5) (A) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency, the court may commit the juvenile to the custody of the Director of the Division of Corrections and Rehabilitation for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider alternative sentencing arrangements.

(B) Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile's best interests or required by the public welfare to place the juvenile in the custody of the Division of Corrections and Rehabilitation, the court shall provide the Division of Corrections and Rehabilitation with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations, needs assessment results, medical reports and evaluations or any other such records as may be in the court's possession as would enable the Division of Corrections and Rehabilitation to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender.

(C) Commitments may not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable term of confinement to be served in a juvenile correctional facility shall take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in §27-5-4(c) and §27-5-4(d) of this code, commit the juvenile to a mental health facility in accordance with the juvenile's treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible.

The court shall make all reasonable efforts to place the juvenile in the least restrictive alternative appropriate to the needs of the juvenile and the community: Provided, That a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-home placement within the Division of Corrections and Rehabilitation or the department if that juvenile has no prior adjudications as either a status offender or as a delinquent, or no prior dispositions to a pre-adjudicatory improvement period or probation

WV Legislature

for the current matter, excluding placements made for abuse or neglect: Provided, however, That if the court finds by clear and convincing evidence that there is a significant and likely risk of harm, as determined by a needs assessment, to the juvenile, a family member or the public and that continued placement in the home is contrary to the best interest of the juvenile, such juvenile may be ordered to an out-of-home placement: Provided further, That the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

(d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any disposition is subject to appeal to the Supreme Court of Appeals.

(e) Following disposition, the court shall inquire whether the juvenile wishes to appeal and the response shall be transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(f) Following a disposition under §49-4-714(b)(4), §49-4-714(b)(5), or §49-4-714(b)(6) of this code, the court shall include in the findings of fact the treatment and rehabilitation plan the court has adopted upon recommendation of the multidisciplinary team under §49-4-406 of this code.

(g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing the person as an adult.

WV Legislature