

WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1977



ENROLLED

HOUSE BILL No. 114

Originating in the
(By Mr. *House Committee on the Judiciary*)



PASSED May 5, 1977

In Effect ninety days from Passage

ENROLLED

H. B. 114

(Originating in the House Committee on the Judiciary)

[Passed May 5, 1977; in effect ninety days from passage.]

AN ACT to amend and reenact sections eight and ten, article five, chapter forty-nine; and section five, article eleven, chapter fifty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child welfare and juvenile proceedings generally; the filing of juvenile petitions and the grounds for taking juveniles into custody; detention hearings with respect to such juveniles and the procedures relating thereto; providing for representation for such juveniles by counsel and the appointment of such counsel when appropriate; providing for the fees and expenses for such appointed counsel and the payment thereof; providing for procedures for the transfer of juvenile proceedings to criminal proceedings in certain cases and requiring a hearing with respect to any such transfer; and the burden of proof with respect to such hearing; providing procedure for appointment of counsel; providing for appointment of counsel in neglect cases; requiring affidavit of indigency; and duty of circuit court to determine whether person is entitled to appointed counsel.

Be it enacted by the Legislature of West Virginia:

That sections eight and ten, article five, chapter forty-nine and section five, article eleven, chapter fifty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 49. CHILD WELFARE.**ARTICLE 5. JUVENILE PROCEEDINGS.****§49-5-8. Taking a child into custody; detention hearing; counsel.**

1 (a) In proceedings instituted by the filing of a juvenile
2 petition the circuit court may enter an order directing that a
3 child be taken into custody only if the petition shows that
4 grounds exist for the arrest of an adult in identical circum-
5 stances or that the health, safety and welfare of the child
6 demand such custody. A detention hearing shall be held
7 without delay, but in no event shall the delay exceed the
8 next succeeding judicial day, excluding Saturday, and such
9 child shall be released on recognizance to his parent or
10 custodian unless findings are made as specified in subsection
11 (c) of this section.

12 (b) Absent a court order, a child may be taken into custody
13 by a law-enforcement official only if grounds exist for the
14 arrest of an adult in identical circumstances. Upon taking a
15 child into custody, the arresting officer shall: (1) Immediately
16 notify the child's parent, custodian or, if the parent or
17 custodian cannot be located, a close relative; (2) release the
18 child into the custody of his parent or custodian unless the
19 circumstances warrant otherwise; and (3) refer the matter
20 to the prosecuting attorney, state department or probation
21 officer for proceedings under this article. If the circumstances
22 do not warrant the immediate release of the child, the arrest-
23 ing officer shall without undue delay notify the court or
24 referee.

25 (c) In the event that a child is delivered into the custody
26 of a sheriff or director of a detention facility, such sheriff or
27 director shall immediately notify the court or referee. Said
28 sheriff or director shall immediately provide to every child who
29 is delivered into his custody, a written statement explaining
30 the child's right to a prompt detention hearing, his right to
31 counsel including appointed counsel if he cannot afford
32 counsel and his privilege against self-incrimination. In all
33 cases when a child is delivered into custody, the child shall
34 be released to his parent or custodian by the end of the next
35 succeeding judicial day, excluding Saturday, after being de-

36 livered into such custody, unless the child has been placed
37 in detention pursuant to subsection (d) of this section.

38 (d) A child in custody must immediately be taken before
39 a referee or judge of the circuit court and in no event shall
40 a delay exceed the next succeeding judicial day, excluding
41 Saturday. The judge or referee shall inform the child of his
42 right to remain silent, that any statement may be used
43 against him and of his right to counsel, and no interrogation
44 shall be made without the presence of a parent or counsel.
45 If the child or his parent or custodian has not retained counsel,
46 counsel shall be appointed forthwith. The referee or judge
47 shall hear testimony concerning the circumstances for taking
48 the child into custody, probable cause and the possible need
49 for detention in accordance with section two, article five-a
50 of this chapter.

51 If there are shown to be sufficient grounds for the arrest,
52 including probable cause for the offense, the child shall be
53 released on recognizance to his parent, or custodian, except
54 that bail may be required when: (1) There is reasonable cause
55 to believe that the child will be unavailable for court pro-
56 ceedings if the child is not detained; or (2) there is reasonable
57 cause to believe that the child will, if not detained, commit
58 an offense involving serious injury to any person. The findings
59 and order shall be made in accordance with section three,
60 article five-a of this chapter. If sufficient grounds for the
61 arrest and probable cause are not shown, the child shall be
62 released.

63 (e) Upon the presentation to the referee or to the court
64 or judge thereof of a written request for the appointment of
65 counsel and an affidavit by the child, or by his parents, the
66 guardian of his person, his custodian, or any other person
67 standing in loco parentis to him, or by the person named in
68 the petition, showing that neither the child nor any other of
69 the aforementioned persons can pay for the services of counsel,
70 the court or judge, upon being satisfied as to the truth of the
71 information set forth in the affidavit, shall, by order entered
72 of record, appoint an attorney-at-law to represent the child
73 in any proceedings under the provisions of this article. The
74 attorney so appointed shall be paid for his services and ex-

75 penses in accordance with the provisions of article eleven,
76 chapter fifty-one of this code.

§49-5-10. Transfer of jurisdiction.

1 (a) Upon motion of the prosecuting attorney, or upon the
2 recommendation of the referee or upon its own motion, the
3 court may at the time specified in section nine of this article
4 transfer to a criminal proceeding the case of a child who is
5 alleged to have committed, on or after his sixteenth birthday,
6 an offense which, if committed by an adult, would be a felony
7 if there is clear and convincing proof that: (1) The offense
8 allegedly committed by the child is one of violence or evi-
9 dences conduct which constitutes a substantial danger to the
10 public; and (2) there are no reasonable prospects for re-
11 habilitating the child through resources available to the court
12 under this article. With reference to such rehabilitation pros-
13 pects the court shall consider the child's mental and physical
14 condition, maturity, emotional attitude, home or family en-
15 vironment, school experience and such other matters as the
16 court may deem appropriate. The burden of proof in any
17 transfer hearing shall rest with the petitioner.

18 Such motion shall state the grounds for seeking the transfer
19 from a juvenile proceeding to a criminal proceeding and the
20 consequences of such transfer and shall be served upon the
21 child, his parents or custodians and the child's counsel not
22 less than seventy-two hours before the preliminary hearing.
23 If the child's counsel is appointed at the preliminary hearing,
24 the court or referee shall continue the hearing for not less
25 than five days to allow counsel to prepare for the transfer
26 hearing unless counsel indicates that he is prepared to proceed.
27 Testimony of a child at a transfer hearing shall not be ad-
28 missible in a criminal proceeding or at the adjudicatory
29 hearing under this article.

30 (b) The hearing on transfer may not be waived and the
31 failure to object to the transfer shall not constitute a waiver.

32 (c) If the court transfers the case to a criminal proceed-
33 ing, the court's findings of fact and conclusions of law shall
34 be incorporated within the order. The child shall have the
35 right to appeal to the supreme court of appeals from this
36 order.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 11. DEFENSE OF NEEDY PERSONS.

§51-11-5. Appointment of counsel; procedure for determining eligibility; revocation of order of appointment of counsel.

1 (a) A circuit court at any time upon request, and upon
2 the filing of an affidavit of indigency as hereinafter provided
3 shall appoint one or more counsel, at least one of whom shall be
4 reasonably competent in the practice of criminal law:

5 (1) to represent one accused of a felony, or of a misde-
6 meanor punishable by imprisonment;

7 (2) to represent a juvenile under the provisions of article
8 five, chapter forty-nine of this code;

9 (3) to represent a party under the provisions of article six,
10 chapter forty-nine of this code;

11 (4) to represent a person in custody in seeking a writ of
12 habeas corpus;

13 (5) to represent a person entitled to counsel under the
14 provisions of chapter twenty-seven of this code;

15 (6) to represent a person whose order of probation or
16 parole has been revoked under the provisions of article twelve,
17 chapter sixty-two of this code.

18 (b) The affidavit of indigency and the attorney voucher
19 and affidavit shall be upon such form as shall be prescribed
20 by the supreme court of appeals, and shall be signed by
21 the accused or other needy person or the attorney, or, in
22 the event of his disability, by another person in his behalf.

23 (c) It shall be the duty of the circuit court, upon the
24 basis of the affidavit of a person requesting appointment of
25 counsel and of such evidence as may be adduced in open
26 court, to determine whether such person is a needy person
27 so as to be entitled to appointed counsel. If the court
28 should determine that such person is not entitled to ap-
29 pointed counsel, the appointment previously made shall
30 be revoked, and the attorney previously appointed shall
31 be entitled to compensation under the provisions of this
32 article, for services already rendered.

*ok
§51-11-5.*

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Dorcas C. Swanson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J.C. Dillon, Jr.
Clerk of the Senate

V. Blankenship
Clerk of the House of Delegates

W. A. Bricker
President of the Senate

Donald L. Rupp
Speaker House of Delegates

The within is approved this the 16
day of May, 1977.

John D. Ralston
Governor

RECEIVED

MAY 11 11 51 AM '77

OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date May 16, 1977

Time 3:00 p.m.

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OFFICE
GOV. OF STATE