

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



**ENROLLED**

*Committee Substitute for*  
**SENATE BILL NO. 364**

(By Mr. *Hamilton, Mr. Gainer et al.*)



PASSED *March 11,* ..... 1978

In Effect *thirty days from* ..... Passage  


110: 007

# ENROLLED

## COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 364

(MR. HAMILTON, MR. GAINER, MR. KUSIC, MR. BEALL and  
MR. JONES, *original sponsors*)

[Passed March 11, 1978; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four and five, article one; ~~section thirteen, article two~~; sections one, two, three, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five; sections three and five, article five-a; and section one, article seven, all of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; ~~and~~ to amend article five of said chapter by adding thereto five new sections, designated sections one-a, one-b, three-a, sixteen-a and sixteen-b; ~~and~~ to further amend said chapter by adding thereto a new article, designated article six-b; and to amend and reenact section two, article thirteen, chapter sixty-two of said code, all relating to juvenile proceedings generally; and specifically relating to the purposes of the article; definitions of neglected child, abused child and delinquent child; jurisdiction of magistrate courts and municipal courts over persons under eighteen years of age for certain offenses; continuing jurisdiction of juvenile court; noncustodial counseling of child; informal adjustment counseling of child; institution of delinquency proceedings by petition; notice of petition; subpoena to appear; taking children into custody; detention hearing; preliminary hearing; right to counsel; nondetention temporary custody; waiver and transfer of jurisdiction; criteria for transfer of child to adult criminal jurisdiction; appeal from transfer order; adjudicatory hearing; dispositional

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hearing; dispositional alternatives; juvenile probation officers; commitment of children to jail, correctional centers, industrial homes, secure juvenile facilities or the penitentiary; release of paroled children to the state department; rules and regulations governing juvenile facilities; juvenile facilities review panel; expungement of juvenile records; penalties for failure to expunge; detention hearings for custody obtained by state employees; detention hearing orders; detention in other counties; confidentiality of records and penalties therefor; petition for appointment of special guardian for medical purposes and immunity from civil liability.

*Be it enacted by the Legislature of West Virginia:*

That sections one, two, three, four and five, article one; ~~section thirteen, article two~~; sections one, two, three, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five; sections three and five, article five-a; and section one, article seven, all of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article five of chapter forty-nine be further amended by adding thereto five new sections, designated sections one-a, one-b, three-a, sixteen-a and sixteen-b; and that said chapter be further amended by adding thereto a new article, designated article six-b; and that section two, article thirteen, chapter sixty-two be amended and reenacted, all to read as follows:

**CHAPTER 49. CHILD WELFARE.**

**ARTICLE 1. PURPOSES; DEFINITIONS.**

**§49-1-1. Purpose.**

- 1 (a) The purpose of this chapter is to provide a com-
- 2 prehensive system of child welfare throughout the state
- 3 which will assure to each child such care and guidance,
- 4 preferably in his own home, as will serve the spiritual,
- 5 emotional, mental and physical welfare of the child; pre-
- 6 serve and strengthen the child's family ties whenever
- 7 possible with recognition to the fundamental rights of
- 8 parenthood and with recognition of the state's responsi-
- 9 bility to assist the family in providing the necessary

10 education and training and to reduce the rate of juvenile  
 11 delinquency and to provide a system for the rehabilita-  
 12 tion or detention of juvenile delinquents and protect the  
 13 welfare of the general public. In pursuit of these goals it  
 14 is the intention of the Legislature to provide for removing  
 15 the child from the custody of parents only when the  
 16 child's welfare or the safety and protection of the public  
 17 cannot be adequately safeguarded without removal; and,  
 18 when the child has to be removed from his own family,  
 19 to secure for him custody, care and discipline consistent  
 20 with the child's best interests and other goals herein set  
 21 out.

22 (b) The child welfare service of the state shall be  
 23 administered by the state department of welfare and the  
 24 licensing board created by section four-a, article two of  
 25 this chapter.

26 The state department of welfare is designated as the  
 27 agency to cooperate with the United States department  
 28 of health, education and welfare and United States de-  
 29 partment of justice in extending and improving child  
 30 welfare services, to comply with regulations thereof, and  
 31 to receive and expend federal funds for these services.

**§49-1-2. "Child" defined.**

1 "Child" means any person under eighteen years of  
 2 age. Once a child is transferred to a court with criminal  
 3 jurisdiction pursuant to section ten, article five of this  
 4 chapter, he nevertheless remains a child for the purposes  
 5 of the applicability of the provisions of this chapter with  
 6 the exception of sections one through seventeen of article  
 7 five of this chapter, unless otherwise stated therein.

**§49-1-3. "Neglected child" and "abused child" defined.**

1 "Abused child" means a child:  
 2 Whose parent, guardian or custodian inflicts or attempts  
 3 to inflict or allows to be inflicted as a result of inadequate  
 4 supervision, physical injury or substantial emotional in-  
 5 jury upon the child which endangers the present physical  
 6 or mental health of such child or inflicts, attempts to  
 7 inflict, or knowingly allows to be inflicted sexual abuse  
 8 upon the child.

9 "Neglected child" means a child:

10 (1) Whose physical or mental condition is impaired or  
11 endangered as a result of the present refusal, failure or  
12 inability of the child's parent, guardian or custodian to  
13 supply the child with necessary food, clothing, shelter,  
14 supervision, medical care or education and the condition  
15 is not due primarily to the lack of financial means of the  
16 parent, guardian or custodian; or

17 (2) Who is presently without necessary food, clothing,  
18 shelter, medical care, education or supervision because of  
19 the disappearance or absence of the child's parent or  
20 custodian.

21 "Neglected child" does not mean a child:

22 (1) Whose parent, guardian or custodian has failed to  
23 provide him with medical care because such medical care  
24 conflicts with the tenets and practices of a recognized or  
25 religious denomination or order of which such parent,  
26 guardian or custodian is an adherent or member; or

27 (2) Whose education is conducted within the provisions  
28 of section one, article eight, chapter eighteen of this code.

**§49-1-4. "Delinquent child" defined.**

1 "Delinquent child" means a child:

2 (1) Who commits an act which would be a crime under  
3 state law or a municipal ordinance if committed by an  
4 adult punishable by ~~confinement~~ in a jail or imprison-  
5 ment; *Confinement*

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6 (2) Who commits an act designated a crime under a  
7 municipal ordinance or state law not punishable by con-  
8 finement in a jail or imprisonment;

9 (3) Who, without just cause, habitually and continually  
10 refuses to respond to the lawful supervision by such  
11 child's parents, guardian or custodian;

12 (4) Who is habitually absent from school without good  
13 cause; or

14 (5) Who willfully violates a condition of a probation  
15 order or a contempt order of any court.

**§49-1-5. Definitions of other terms.**

1 For the purposes of this chapter:

2 (1) "State department" means the state department  
3 of welfare;

4 (2) "State board" means the state advisory board;

5 (3) "Commissioner" means the commissioner of wel-  
6 fare;

7 (4) "Child welfare agency" means any agency or  
8 institution maintained by a municipality or county, or  
9 any agency or institution maintained by a person, firm,  
10 corporation, association or organization to receive chil-  
11 dren for care and maintenance or for placement in a  
12 family home or day care center or any institution that  
13 provides care for unmarried mothers and their children,  
14 but shall not include county shelters established and  
15 maintained for the detention of delinquent children  
16 or those charged with delinquency;

17 (5) "Licensing board" means the state licensing board  
18 created by section four-a, article two of this chapter;

19 (6) "Custodian" means a person who has or shares  
20 actual physical possession or care and custody of a child,  
21 regardless of whether such person has been granted  
22 custody of the child by any contract, agreement or legal  
23 proceedings;

24 (7) "Referee" means a juvenile referee appointed pur-  
25 suant to section one, article five-a of this chapter, except  
26 that in any county which does not have a juvenile referee  
27 the judge or judges of the circuit court may designate  
28 one or more magistrates of the county to perform the  
29 functions and duties which may be performed by a  
30 referee under this chapter;

31 (8) "Court" means the circuit court of the county with  
32 jurisdiction of the case or the judge thereof in vacation  
33 unless otherwise specifically provided;

34 (9) "Guardian" means a person who has care and cus-  
35 tody of a child as a result of any contract, agreement or  
36 legal proceeding.

*and County*  
**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION  
AND CARE OF CHILDREN.**

**§49-2-13. Parole of certain children to state department.**

1 Children paroled from state institutions and homes for  
2 juveniles shall be paroled to the state department. There-  
3 after, unless the court which committed the child other-  
4 wise provides, the state department shall, notwithstanding  
5 any other provision of this code, have supervisory control  
6 over every child so paroled, and shall have authority  
7 to revoke the parole or to discharge the child from  
8 parole. Upon the revocation of any parole and the return  
9 of the parolee to the institution from which he was  
10 paroled, all authority over the parolee, originally vested  
11 in such institution, shall again become operative.

*Proceedings*  
**ARTICLE 5. JUVENILE JURISDICTION OF THE COURTS.**

**§49-5-1. Jurisdiction of circuit courts over persons under  
eighteen years of age; constitutional guarantees;  
right to counsel; hearings.**

1 (a) The circuit court of the county shall have original  
2 jurisdiction in proceedings brought under this article.

3 If during a criminal proceeding against a person in any  
4 court, it shall be ascertained or shall appear that the  
5 person is under the age of nineteen years and was  
6 under the age of eighteen years at the time of the alleged  
7 offense, the matter shall be immediately certified to  
8 the juvenile jurisdiction of the circuit court, and the cir-  
9 cuit court shall assume jurisdiction of the case in the same  
10 manner as cases originally instituted in the circuit court  
11 by petition: *Provided*, That for violation of a traffic law  
12 of West Virginia, magistrate courts shall have concurrent  
13 jurisdiction with the circuit court, and persons under the  
14 age of eighteen years shall be liable for punishment for  
15 violation of such traffic laws in the same manner as adults  
16 except that magistrate courts shall have no jurisdiction to  
17 impose a sentence of confinement for the violation of  
18 traffic laws.

19 As used in this section, "violation of a traffic law of  
20 West Virginia" means violation of any law contained in  
21 chapter seventeen-a, seventeen-b, seventeen-c and seven-

22 teen-d of this code except sections one and two, article  
23 four (hit and run) and sections one (negligent homicide),  
24 two (driving under influence of alcohol, controlled sub-  
25 stances or drugs) and four (reckless driving), article five,  
26 chapter seventeen-c of this code.

27 (b) Any child shall be entitled to be admitted to bail  
28 or recognizance in the same manner as a person over the  
29 age of eighteen years and shall have the protection guar-  
30 anteed by article three of the constitution of West Vir-  
31 ginia.

32 (c) The child shall have the right to be effectively  
33 represented by counsel at all stages of proceedings under  
34 the provisions of this article. If the child, parent or cus-  
35 todian executes an affidavit showing that he cannot pay  
36 for an attorney appointed by the court or referee, the  
37 court shall appoint counsel, to be paid as provided for in  
38 article eleven, chapter fifty-one of this code.

39 (d) In all proceedings under this article, the child shall  
40 be afforded a meaningful opportunity to be heard includ-  
41 ing the opportunity to testify and to present and cross-  
42 examine witnesses. In all such proceedings the general  
43 public shall be excluded except persons whose presence  
44 is requested by a child or respondent and other persons  
45 the court finds to have a legitimate interest.

46 Except as herein modified, at all adjudicatory hear-  
47 ings, the rules of evidence applicable in criminal cases  
48 shall apply including the rule against written reports  
49 based upon hearsay. Unless otherwise specifically pro-  
50 vided in this chapter, all procedural rights afforded adults  
51 in criminal proceedings shall be applicable. Extra-judicial  
52 statements other than res gestae statements by a child  
53 under sixteen years of age, made to law-enforcement  
54 officials or while the child is in custody and outside the  
55 presence of the child's counsel shall not be admissible. A  
56 transcript or recording shall be made of all transfer, ad-  
57 judicatory and dispositional hearings. At the conclusion  
58 of any hearing, the court shall make findings of fact and  
59 conclusions of law, and the same shall appear of record.

60 (e) The court reporter shall furnish a transcript of the  
61 relevant proceedings to any indigent child who seeks

62 review of any proceeding under this article if an affidavit  
63 is filed stating that the child and his parent or custodian  
64 are unable to pay therefor.

~~ARTICLE 5. JUVENILE PROCEEDINGS.~~

**§49-5-1a. Jurisdiction of magistrate courts over persons under  
eighteen years of age for certain offenses.**

1 For violations of chapter twenty of this code, magistrate  
2 courts shall have concurrent jurisdiction with the circuit  
3 court and persons under the age of eighteen years shall be  
4 liable for punishment for violation of such laws in the  
5 same manner as adults except that magistrate courts shall  
6 have no jurisdiction to impose a sentence of confinement  
7 for the violation of such laws.

**§49-5-1b. Jurisdiction of municipal courts over persons under  
eighteen years of age.**

1 Notwithstanding any other section of this code to the  
2 contrary, municipal courts shall have concurrent juvenile  
3 jurisdiction with the circuit court only for alleged viola-  
4 tions of municipal ordinances regulating traffic except that  
5 municipal courts shall have no jurisdiction to impose a  
6 sentence of confinement for the violation of such laws.

**§49-5-2. Continuing jurisdiction of court.**

1 As used in this article, a "child" shall include a per-  
2 son under the age of eighteen years or a person subject  
3 to the juvenile jurisdiction of the court pursuant to this  
4 section. If a child sixteen years of age or older commits  
5 an act which if committed by an adult would be a crime  
6 and for such act is adjudged delinquent, the jurisdiction of  
7 the court shall continue until the child becomes twenty  
8 years of age with the same power over the child that the  
9 court had prior to the child's becoming an adult, and the  
10 further power to sentence such person to not more than  
11 six months in jail if the offender is over the age of eigh-  
12 teen years. This shall not preclude the exercise of criminal  
13 jurisdiction in case the offender, after becoming an adult,  
14 commits a violation of law. A child may be brought before  
15 the circuit court for proceedings under this article by the  
16 following means and no others:

17 (a) By juvenile petition praying that the child be ad-  
18 judged neglected or delinquent;

19 (b) Certification or transfer to the juvenile jurisdiction  
20 of the circuit court, from the criminal jurisdiction of such  
21 court, from any foreign court or any court of this state  
22 before which such child is brought charged with the  
23 commission of a crime, as provided in section one, one-a or  
24 one-b of this article;

25 (c) By warrant, capias or attachment issued by a judge,  
26 referee or magistrate returnable to the circuit court,  
27 charging a child with an act of delinquency.

**§49-5-3. Noncustodial counseling of a child.**

1 The court at any time, or the state department or other  
2 official upon a request from a parent, guardian, or custo-  
3 dian, may, without institution of proceedings under this  
4 article, refer a child alleged to be delinquent to a coun-  
5 selor at the state department or a community mental  
6 health center or other professional counselor in the com-  
7 munity. In the event the child refuses to respond to such  
8 reference the state department may serve a notice by first  
9 class mail or personal service of process upon the child,  
10 setting forth the facts and stating that the department  
11 will seek a noncustodial order from the court directing  
12 the child to submit to counseling. The notice shall set  
13 forth the time and place for the hearing on the matter.  
14 The court or referee after hearing may direct the child to  
15 participate in a noncustodial period of counseling not to  
16 exceed six months. No information obtained as the result  
17 of such counseling shall be admissible in a subsequent  
18 proceeding under this article except a dispositional pro-  
19 ceeding.

**§49-5-3a. Informal adjustment counseling by probation officer.**

1 (a) Before a petition is filed, the probation officer or  
2 other officer of the court designated by it, subject to its  
3 direction, may give counsel and advice to the parties  
4 with a view to an informal adjustment if it appears:

5 (1) The admitted facts bring the case within the  
6 jurisdiction of the court;

7 (2) Counsel and advice without an adjudication would

8 be in the best interest of the public and the child; and  
9 (3) The child and his parents, guardian or other cus-  
10 todian consent thereto with knowledge that consent is  
11 not obligatory.

12 (b) The giving of counsel and advice cannot extend  
13 beyond six months from the day commenced unless  
14 extended by the court for an additional period.

**§49-5-7. Institution of proceedings by petition; notice to child  
and parents; subpoena.**

1 (a) A petition alleging that a child is a delinquent  
2 child may be filed by a person who has knowledge of or  
3 information concerning the facts alleged. The petition  
4 shall be verified by the petitioner, shall set forth the  
5 name and address of the child's parents, guardians or cus-  
6 todians known to the petitioner unless the petitioner is the  
7 natural parent, guardian or custodian and shall be filed in  
8 the circuit court in the county where the alleged act of  
9 delinquency occurred: *Provided*, That any proceeding  
10 under this chapter may be removed, for good cause shown,  
11 in accordance with the provisions of section one, article  
12 nine, chapter fifty-six of this code. The court may refer  
13 the matter to a state department worker or probation  
14 officer for preliminary inquiry to determine whether the  
15 matter can be resolved informally without the filing of a  
16 petition. The petition shall contain: (1) Reference to the  
17 specific statutory provisions of this chapter which give the  
18 court jurisdiction of the proceeding; (2) specific allega-  
19 tions of the conduct and facts upon which the petition is  
20 based, including the approximate time and place of the  
21 alleged conduct; (3) a statement of the right to have  
22 counsel appointed and consult with counsel at every stage  
23 of the proceedings; and (4) the relief sought.

24 Upon the filing of the petition, the court shall set a time  
25 and place for a preliminary hearing as provided in section  
26 nine of this article and may appoint counsel. A copy of the  
27 petition and summons may be served upon the respondent  
28 child by first class mail or personal service of process. If a  
29 child does not appear in response to a summons served by  
30 mail, no further proceeding may be held until the child is

31 served a copy of the petition and summons by personal  
 32 service of process. If such a child fails to appear in res-  
 33 ponse to a summons served in person upon him an order  
 34 of arrest may be issued by the court for that reason alone.

35 (b) The parents, guardians or custodians shall be named  
 36 in the petition as respondents, and shall be served with  
 37 notice of the proceedings in the same manner as provided  
 38 in subsection (a) of this section for service upon the child  
 39 and required to appear with the child at the time and  
 40 place set for the proceedings. If any such respondent  
 41 cannot be found after diligent search, service may be by  
 42 publication as a Class I legal advertisement in compliance  
 43 with the provisions of article three, chapter fifty-nine of  
 44 this code and the publication area shall be the county.  
 45 The respondent shall have fifteen days after the date of  
 46 publication to appear or answer.

47 (c) The court or referee may order the issuance of a  
 48 subpoena against the person having custody and control of  
 49 the child to bring the child before the court or referee.

50 (d) When any case of a child charged with the com-  
 51 mission of a crime is certified or transferred to the circuit  
 52 court or brought before the court by warrant pursuant to  
 53 section two of this article, the court or referee shall forth-  
 54 with cause the child and his parents, guardians or custo-  
 55 dians to be served with a petition, as provided in subsec-  
 56 tions (a) and (b) of this section. In the event the child  
 57 is in custody the petition shall be served upon the child  
 58 within ninety-six hours of the time custody began, or the  
 59 child shall be released from custody forthwith.

60 (e) The clerk of the court shall promptly notify the  
 61 state department of all proceedings under this article.

**§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  
 3 that a child be taken into custody only if the petition  
 4 shows that grounds exist for the arrest of an adult  
 5 in identical circumstances or that the health, safety  
 6 and welfare of the child demand such custody. A deten-

7 tion hearing shall be held without delay, but in no  
8 event shall the delay exceed the next succeeding judi-  
9 cial day, excluding Saturday, and such child shall be  
10 released on recognizance to his parent, guardian or  
11 custodian unless findings are made as specified in sub-  
12 section (d) of this section.

13 (b) Absent a warrant or court order, a child may be  
14 taken into custody by a law-enforcement official only  
15 if: (1) Grounds exist for the arrest of an adult in iden-  
16 tical circumstances; (2) emergency conditions exist  
17 which in the judgment of the officer pose imminent  
18 danger to the health, safety and welfare of the child;  
19 or (3) the official has reasonable grounds to believe that  
20 the child is a runaway without just cause from the  
21 child's parents or legal custodian and the health, safety  
22 and welfare of the child is endangered. Upon taking a  
23 child into custody, with or without a warrant or court  
24 order, the official shall: (i) Immediately notify the  
25 child's parent, custodian or, if the parent or custodian  
26 cannot be located, a close relative; (ii) release the child  
27 into the custody of his parent or custodian unless the  
28 circumstances warrant otherwise; (iii) refer the matter  
29 to the prosecuting attorney, state department or pro-  
30 bation officer for proceedings under this article; and  
31 (iv) if a child is being held in custody absent a warrant  
32 or court order, cause a warrant, petition or order, as the  
33 case may be, to be immediately issued authorizing the  
34 detention of such child.

35 If a child is taken into custody pursuant to subdivision  
36 (2) or (3) hereunder the state department shall be  
37 immediately notified. Any child taken into custody as  
38 a runaway shall not be held in custody more than forty-  
39 eight hours without a court order, or more than seven  
40 days in any event. Such child shall not be confined in  
41 any facility wherein persons are being detained for  
42 an offense which would be a crime if committed by an  
43 adult.

44 (c) In the event that a child is delivered into the  
45 custody of a sheriff or director of a detention facility,  
46 such sheriff or director shall immediately notify the  
47 court or referee. Said sheriff or director shall imme-

48 diately provide to every child who is delivered into his  
49 custody, a written statement explaining the child's right  
50 to a prompt detention hearing, his right to counsel in-  
51 cluding appointed counsel if he cannot afford counsel  
52 and his privilege against self-incrimination. In all cases  
53 when a child is delivered into custody, the child shall  
54 be released to his parent, guardian or custodian by the  
55 end of the next succeeding judicial day, excluding Sat-  
56 urday, after being delivered into such custody, unless  
57 the child has been placed in detention pursuant to sub-  
58 section (d) of this section.

59 (d) A child in custody must immediately be taken  
60 before a referee or judge of the circuit court and in no  
61 event shall a delay exceed the next succeeding judicial  
62 day: *Provided*, That if there be no judge or referee then  
63 present in the county, then such child shall be taken  
64 immediately before any magistrate in the county for  
65 the sole purpose of holding a detention hearing. The  
66 judge or referee shall inform the child of his right to  
67 remain silent, that any statement may be used against  
68 him and of his right to counsel, and no interrogation  
69 shall be made without the presence of a parent or  
70 counsel. If the child or his parent, guardian or custodian  
71 has not retained counsel, counsel shall be appointed as  
72 soon as practicable. The referee or judge shall hear  
73 testimony concerning the circumstances for taking the  
74 child into custody and the possible need for detention  
75 in accordance with section two, article five-a of this  
76 chapter. The sole mandatory issue at the detention  
77 hearing shall be whether the child shall be detained  
78 pending further court proceedings. The court shall, if  
79 advisable, and if the health, safety and welfare of the  
80 child will not be endangered thereby, release the child  
81 on recognizance to his parents, custodians or an appro-  
82 priate agency; however, if warranted, the court may  
83 require bail, except that bail may be denied in any case  
84 where bail could be denied if the accused were an  
85 adult.

86 The court or referee may, in conjunction with the  
87 detention hearing, conduct a preliminary hearing pur-

88 suant to section nine, article five of this chapter: *Pro-*  
89 *vided*, That all parties are prepared to proceed and the  
90 child has counsel during such hearing.

**§49-5-9. Preliminary hearing; counsel; improvement period.**

1 (a) Following the filing of a juvenile petition, unless a  
2 preliminary hearing has previously been held in conjunc-  
3 tion with a detention hearing with respect to the same  
4 charge contained in the petition, the circuit court or  
5 referee shall hold a preliminary hearing. In the event that  
6 the child is in custody, such hearing shall be held within  
7 seven days of the time the child is taken into custody  
8 unless good cause be shown for a continuance. If no  
9 preliminary hearing is held within seven days of the  
10 time the child is taken into custody, the child shall be  
11 released on recognizance unless the hearing has been  
12 continued for good cause. If the judge is in another  
13 county in the circuit, the hearing may be conducted in  
14 such other county. The preliminary hearing may be  
15 waived by the child, upon advice of his counsel. At the  
16 hearing, the court or referee shall:

17 (1) If the child is not represented by counsel, inform  
18 the child and his parents, guardian or custodian or any  
19 other person standing in loco parentis to him of the  
20 child's right to be represented at all stages of proceedings  
21 under this article and the right to have counsel appointed.

22 (2) Appoint counsel by order entered of record, if  
23 counsel has not already been retained, appointed or  
24 knowingly waived.

25 (3) Determine after hearing if there is probable cause  
26 to believe that the child is a delinquent child. If probable  
27 cause is not found, the child shall be released and the  
28 proceedings dismissed. If probable cause is found, the  
29 case shall proceed to adjudication. At the hearing or as  
30 soon thereafter as is practicable, the date for the adjudi-  
31 catory hearing shall be set to give the child, the child's  
32 parents and attorney at least ten days' notice, unless notice  
33 is waived by all parties.

34 (4) In lieu of placing the child in a detention facility  
35 when bond is not provided, the court may place the child  
36 in the temporary custody of the state department pursuant

37 to section sixteen, article two of this chapter or may  
38 place the child in the custody of a probation officer.  
39 If the child is detained in custody, the detention shall  
40 not continue longer than thirty days without commence-  
41 ment of the adjudicatory hearing unless good cause for  
42 a continuance be shown by either party or, if a jury  
43 trial be demanded, no longer than the next regular term  
44 of said court.

45 (5) Inform the child of the right to demand a jury  
46 trial.

47 (b) The child may move to be allowed an improve-  
48 ment period for a period not to exceed one year. If the  
49 court is satisfied that the best interest of the child is  
50 likely to be served by an improvement period, the court  
51 may delay the adjudicatory hearing and allow a non-  
52 custodial improvement period upon terms calculated to  
53 serve the rehabilitative needs of the child. At the con-  
54 clusion of the improvement period, the court shall dismiss  
55 the proceeding if the terms have been fulfilled; otherwise,  
56 the court shall proceed to the adjudicatory stage. A  
57 motion for an improvement period shall not be construed  
58 as an admission or be used as evidence.

#### **§49-5-10. Waiver and transfer of jurisdiction.**

1 (a) Upon written motion of the prosecuting attorney  
2 filed at least eight days prior to the adjudicatory hearing  
3 and with reasonable notice to the child, the parents,  
4 guardians, or custodians of the child, and the child's  
5 counsel, the court shall conduct a hearing to determine  
6 if juvenile jurisdiction should be waived and the pro-  
7 ceeding should be transferred to the criminal jurisdiction  
8 of the court. Any motion filed in accordance with this  
9 section shall state, with particularity, the grounds for  
10 the requested transfer, including the grounds relied upon  
11 set forth in subsection (d) of this section, and the burden  
12 shall be upon the state to establish such grounds by  
13 clear and convincing proof. Any hearing held under the  
14 provisions of this section shall be held within seven days  
15 of the filing of the motion for transfer unless it is con-  
16 tinued for good cause.

17 (b) No inquiry relative to admission or denial of the

18 allegations of the charge or the demand for jury trial  
19 shall be made by or before the court until a decision  
20 shall have been made relative to whether the proceeding  
21 is to be transferred to criminal jurisdiction.

22 (c) The court shall transfer a juvenile proceeding to  
23 criminal jurisdiction if a child who has attained the age  
24 of sixteen years shall make a demand on the record to  
25 be transferred to the criminal jurisdiction of the court.  
26 Such cases may then be referred to a magistrate for trial,  
27 if otherwise cognizable by a magistrate.

28 (d) The court may, upon consideration of the child's  
29 mental and physical condition, maturity, emotional atti-  
30 tude, home or family environment, school experience and  
31 similar personal factors, transfer a juvenile proceeding  
32 to criminal jurisdiction if there is probable cause to  
33 believe that:

34 (1) The child has committed the crime of treason  
35 under section one, article one, chapter sixty-one of this  
36 code; the crime of murder under sections one, two and  
37 three, article two, chapter sixty-one of this code; the  
38 crime of robbery involving the use or presenting of fire-  
39 arms or other deadly weapons under section twelve,  
40 article two, chapter sixty-one of this code; the crime of  
41 kidnapping under section fourteen-a, article two, chapter  
42 sixty-one of this code; the crime of first degree arson  
43 under section one, article three, chapter sixty-one of  
44 this code; or charging sexual assault in the first degree  
45 under section three, article eight-b, chapter sixty-one of  
46 this code, and in such case, the existence of such probable  
47 cause shall be sufficient grounds for transfer without  
48 further inquiry; or

49 (2) A child has committed an offense of violence to  
50 the person which would be felony if the child were an  
51 adult: *Provided*, That the child has been previously  
52 adjudged delinquent for the commission of an offense  
53 which would be a violent felony if the child were an  
54 adult; or

55 (3) A child has committed an offense which would be  
56 a felony if the child were an adult: *Provided*, That the  
57 child has been twice previously adjudged delinquent for

58 the commission of an offense which would be a felony  
59 if the child were an adult; or

60 (4) A child, sixteen years of age or over, has com-  
61 mitted an offense of violence to the person which would  
62 be a felony if committed by an adult; or

63 (5) A child, sixteen years of age or over, has com-  
64 mitted an offense which would be a felony if committed  
65 by an adult: *Provided*, That such child has been previously  
66 adjudged delinquent for an offense which would be a  
67 felony if the child were an adult.

68 (e) If, after a hearing, the court directs the transfer  
69 of any juvenile proceeding to criminal jurisdiction, it  
70 shall state on the record the findings of fact and con-  
71 clusions of law upon which its decision is based or shall  
72 incorporate such findings of fact and conclusions of law  
73 in its order directing transfer.

74 (f) The child shall have the right to directly appeal  
75 an order of transfer to the supreme court of appeals of  
76 the state of West Virginia: *Provided*, That notice of  
77 intent to appeal and a request for transcript be filed  
78 within ten days from the date of the entry of any such  
79 order and the petition for appeal shall be presented to  
80 the supreme court of appeals within forty-five days from  
81 the entry of such order, and that, in default thereof, the  
82 right of appeal and the right to object to such order of  
83 transfer shall be waived and may not thereafter be  
84 asserted. The provisions of article five, chapter fifty-  
85 eight of this code pertaining to the appeals of judgments  
86 in civil actions shall apply to appeals under this chapter  
87 except as herein modified. The judge of the circuit court  
88 may, prior to the expiration of such period of forty-five  
89 days, by appropriate order, extend and re-extend such  
90 period for such additional period or periods, not to exceed  
91 a total extension of sixty days, as in his opinion may be  
92 necessary for preparation of the transcript: *Provided*,  
93 That the request for such transcript was made by the  
94 party seeking appeal within ten days of entry of such  
95 order of transfer. In the event any such notice of intent  
96 to appeal and request for transcript be timely filed, pro-  
97 ceedings in criminal court shall be stayed upon motion

98 of the defendant pending final action of the supreme  
99 court of appeals thereon.

**§49-5-11. Adjudication.**

1 At the outset of an adjudicatory hearing, the court  
2 shall inquire of the child whether he wishes to admit  
3 or deny the allegations in the petition. The child may  
4 elect to stand mute, in which event the court shall  
5 enter a general denial of all allegations in the petition.

6 (a) If the respondent child admits the allegations of  
7 the petition, the court shall consider the admission to be  
8 proof of the allegations if the court finds (1) the re-  
9 spondent fully understands all his rights under this  
10 article, (2) the respondent voluntarily, intelligently and  
11 knowingly admits all facts requisite for an adjudication  
12 and (3) the respondent in his admission has not set  
13 forth facts which constitute a defense to the allegations.

14 (b) If the respondent child denies the allegations,  
15 the court shall dispose of all pretrial motions and the  
16 court or jury shall proceed to hear evidence.

17 (c) If the allegations in the petition are admitted  
18 or are sustained by proof beyond a reasonable doubt,  
19 the court shall schedule the matter for disposition; other-  
20 wise the petition shall be dismissed and the child dis-  
21 charged from custody. Findings of fact and conclusions  
22 of law addressed to all allegations in the petition shall  
23 be stated on the record or reduced to writing and filed  
24 with the record or incorporated into the order of the  
25 court.

**§49-5-12. Prosecuting attorney to represent petitioner.**

1 The prosecuting attorney shall represent the peti-  
2 tioner in all juvenile proceedings before the court,  
3 referee or magistrate having juvenile jurisdiction.

**§49-5-13. Disposition; appeal.**

1 (a) In aid of disposition, the juvenile probation officer  
2 or state department worker assigned to the court shall,  
3 upon request of the court, make an investigation of the  
4 environment of the child and the alternative dispositions  
5 possible. The court, upon its own motion, or upon re-  
6 quest of counsel, may order a psychological examination

7 of the child. The report of such examination and other  
8 investigative and social reports shall not be made avail-  
9 able to the court until after the adjudicatory hearing.  
10 Unless waived, copies of the report shall be provided  
11 to counsel for the petitioner and counsel for the child  
12 no later than seventy-two hours prior to the dispositional  
13 hearing.

14 (b) Following the adjudication, the court shall con-  
15 duct the dispositional proceeding, giving all parties an  
16 opportunity to be heard. In disposition the court shall  
17 not be limited to the relief sought in the petition and  
18 shall give precedence to the least restrictive of the  
19 following alternatives consistent with the best interests  
20 and welfare of the public and the child:

21 (1) Dismiss the petition;

22 (2) Refer the child and the child's parent or cus-  
23 todian to a community agency for needed assistance  
24 and dismiss the petition;

25 (3) Upon a finding that the child is in need of extra-  
26 parental supervision (a) place the child under the super-  
27 vision of a probation officer of the court or of the court  
28 of the county where the child has its usual place of  
29 abode, or other person while leaving the child in cus-  
30 tody of his parent or custodian and (b) prescribe a  
31 program of treatment or therapy or limit the child's  
32 activities under terms which are reasonable and within  
33 the child's ability to perform;

34 (4) Upon a finding that a parent or custodian is  
35 not willing or able to take custody of the child, that  
36 a child is not willing to reside in the custody of his  
37 parent or custodian, or that a parent or custodian cannot  
38 provide the necessary supervision and care of the child,  
39 the court may place the child in temporary foster care  
40 or temporarily commit the child to the state department  
41 or a child welfare agency;

42 (5) Upon a finding that no less restrictive alternative  
43 would accomplish the requisite rehabilitation of the  
44 child, and upon an adjudication of delinquency pur-  
45 suant to subdivision (1), section four, article one of this  
46 chapter, commit the child to an industrial home or

47 correctional institution for children. Commitments shall  
48 not exceed the maximum term for which an adult could  
49 have been sentenced for the same offense, with discre-  
50 tion as to discharge to rest with the director of the  
51 institution, who may release the child and return him to  
52 the court for further disposition;

53 (6) Upon an adjudication of delinquency pursuant  
54 to subsection (3) or (4), section four, article one of this  
55 chapter, and upon a finding that the child is so totally  
56 unmanageable, ungovernable, and antisocial that the  
57 child is amenable to no treatment or restraint short  
58 of incarceration, commit the child to a rehabilitative  
59 facility devoted exclusively to the custody and reha-  
60 bilitation of children adjudicated delinquent pursuant  
61 to said subsection (3) or (4). Commitments shall not  
62 exceed the maximum period of one year with discretion  
63 as to discharge to rest with the director of the institu-  
64 tion, who may release the child and return him to the  
65 court for further disposition; or

66 (7) After a hearing conducted under the procedures  
67 set out in subsections (c) and (d), section four, article  
68 five, chapter twenty-seven of the code, commit the  
69 child to a mental health facility in accordance with the  
70 child's treatment plan; the director may release a child  
71 and return him to the court for further disposition.

72 (c) The disposition of the child shall not be affected  
73 by the fact that the child demanded a trial by jury or  
74 made a plea of denial. Any dispositional order is sub-  
75 ject to appeal to the supreme court of appeals.

76 (d) Following disposition, it shall be inquired of  
77 the respondent whether or not appeal is desired and  
78 the response transcribed; a negative response shall not  
79 be construed as a waiver. The evidence shall be trans-  
80 cribed as soon as practicable and made available to the  
81 child or his counsel, if the same is requested for pur-  
82 poses of further proceedings. A judge may grant a stay  
83 of execution pending further proceedings.

84 (e) Notwithstanding any other provision of this code  
85 to the contrary, in the event a child charged with de-  
86 linquency under this chapter is transferred to adult

87 jurisdiction and there tried and convicted, the court  
88 may nevertheless, in lieu of sentencing such person as  
89 an adult, make its disposition in accordance with this  
90 section.

**§49-5-14. Modification of dispositional orders.**

1 A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a state  
3 department official or prosecuting attorney;

4 (2) Upon the request of the child or a child's parent  
5 or custodian who alleges a change of circumstances  
6 relating to disposition of the child.

7 Upon such a motion or request, the court shall con-  
8 duct a review proceeding, except that if the last dis-  
9 positional order was within the previous six months the  
10 court may deny a request for review. Notice in writing  
11 of a review proceeding shall be given to the child, the  
12 child's parent or custodian and all counsel not less than  
13 seventy-two hours prior to the proceeding. The court  
14 shall review the performance of the child, the child's  
15 parent or custodian, the child's social worker and other  
16 persons providing assistance to the child or child's family.  
17 If the motion or request for review of disposition is  
18 based upon an alleged violation of a court order, the  
19 court may modify the dispositional order to a more  
20 restrictive alternative if it finds clear and convincing  
21 proof of substantial violation. Otherwise, the dispositional  
22 order may be modified only to one of the less restrictive  
23 alternatives set forth in section thirteen of this article. No  
24 child shall be required to seek a modification order as  
25 provided in this section in order to exercise his right to  
26 seek release by habeas corpus.

**§49-5-15. Juvenile probation officers; duties; expenses; powers.**

1 (a) The commissioner of the state department shall,  
2 with the approval of the court, designate an employee  
3 of the state department to act as a juvenile probation  
4 officer, and when required one or more employees of the  
5 state department to act as assistant to such probation  
6 officer, and such employee or employees, when so as-

7 signed, shall perform their duties under the sole super-  
8 vision and control of the court. There shall be at least  
9 one such juvenile probation officer assigned to each  
10 county, but a juvenile probation officer may be assigned  
11 to more than one county. A juvenile probation officer  
12 shall not be considered to be a law-enforcement official  
13 under any provision of this chapter.

14 The foregoing provisions of this section shall not be  
15 construed as abrogating or affecting in any way the  
16 power and authority vested in any court, subject to the  
17 approval of and in accordance with the rules of the  
18 supreme court of appeals, to select, supervise and dis-  
19 charge its own probation officers and assistants thereto.

20 (b) The clerk of a court shall notify, if practicable,  
21 the chief probation officer of the county when a child  
22 is brought before the court or judge. When notified, or  
23 if the probation officer otherwise obtains knowledge  
24 of such fact, he or one of his assistants shall:

25 (1) Make investigation of the case;

26 (2) Furnish such information and assistance as the  
27 court or judge may require; and

28 (3) Take charge of the child before and after the trial,  
29 as may be directed by the court or judge.

**§49-5-16. Committing children to jail and detention facilities;  
standards.**

1 (a) A child under eighteen years of age shall not be  
2 committed to a jail or police station, except that any child  
3 over fourteen years of age who has been committed to an  
4 industrial home or correctional institution may be held in  
5 the juvenile department of a jail while awaiting transpor-  
6 tation to the institution for a period not to exceed ninety-  
7 six hours, and a child over fourteen years of age who is  
8 charged with a crime which would be a violent felony if  
9 committed by an adult, may, upon an order of the circuit  
10 court, be housed in a juvenile detention portion of a  
11 county facility, but not within sight of adult prisoners. A  
12 child charged with or found to be delinquent solely under  
13 subdivision (3), (4) or (5), section four, article one of  
14 this chapter, shall not be housed in a detention or other

15 facility wherein persons are detained for criminal offenses  
16 or for delinquency involving offenses which would be  
17 crimes if committed by an adult: *Provided*, That a child  
18 who is adjudicated delinquent under subsection (5),  
19 section four, article one of this chapter and who has  
20 violated an order of probation or a contempt order arising  
21 out of a proceeding wherein the child was adjudicated  
22 delinquent for an offense which would be a crime if  
23 committed by an adult may not be housed in a detention  
24 or other facility wherein persons are detained who have  
25 not been adjudicated delinquent for such offenses.

26 (b) No child who has been convicted of an offense  
27 under the adult jurisdiction of the circuit court shall be  
28 held in custody in a penitentiary of this state: *Provided*,  
29 *however*, That such child may be transferred from a  
30 secure juvenile facility to a penitentiary after he shall  
31 attain the age of eighteen years, if in the judgment of  
32 the commissioner of the department of corrections and the  
33 court which committed such child, such transfer is ap-  
34 propriate.

**§49-5-16a. Rules and regulations governing juvenile facilities.**

1 The commissioner of corrections and the commissioner  
2 of welfare shall each prescribe written rules and regula-  
3 tions subject to the provisions of chapter twenty-nine-a of  
4 this code, outlining policies and procedures governing the  
5 operation of those correctional, detention and other facili-  
6 ties in their respective departments wherein juveniles  
7 may be housed. Said policies and procedures shall include,  
8 but shall not be limited to, standards of cleanliness, tem-  
9 perature and lighting; availability of medical and dental  
10 care; provision of food, furnishings, clothing and toilet  
11 articles; supervision; procedures for enforcing rules of  
12 conduct consistent with due process of law, and visitation  
13 privileges. On and after January one, one thousand nine  
14 hundred seventy-nine, a child in custody or detention  
15 shall have, at a minimum, the following rights, and the  
16 policies prescribed shall ensure that:

17 (1) A child shall not be punished by physical force,

18 deprivation of nutritious meals, deprivation of family  
19 visits or solitary confinement;

20 (2) A child shall have the opportunity to participate in  
21 physical exercise each day;

22 (3) Except for sleeping hours a child in a state facility  
23 shall not be locked alone in a room unless such child is  
24 out of control;

25 (4) A child shall be provided his own clothing or in-  
26 dividualized clothing which is clean, supplied by the facil-  
27 ity, and daily access to showers;

28 (5) A child shall have constant access to writing mate-  
29 rials and may send mail without limitation, censorship or  
30 prior reading, and may receive mail without prior reading,  
31 except that mail may be opened in the child's presence,  
32 without being read, to inspect for contraband;

33 (6) A child may make and receive regular local phone  
34 calls without charge and long distance calls to his family  
35 without charge at least once a week, and receive visitors  
36 daily and on a regular basis;

37 (7) A child shall have immediate access to medical care  
38 as needed;

39 (8) A child in a juvenile detention facility or state insti-  
40 tution shall be provided access to education including  
41 teaching, educational materials and books;

42 (9) A child shall have reasonable access to an attorney  
43 upon request; and

44 (10) A child shall be afforded a grievance procedure,  
45 including an appeal mechanism.

46 Upon admission to a jail; detention facility or institu-  
47 tion, a child shall be furnished with a copy of the rights  
48 provided him by virtue of this section and as further pre-  
49 scribed by rules promulgated pursuant to this section.

**§49-5-16b. Juvenile facilities review panel; compensation;  
expenses.**

1 The supreme court of appeals shall appoint and main-  
2 tain a five-member panel, consisting of five persons who  
3 are willing to serve in such capacity, to visit, inspect  
4 and interview residents of all juvenile institutions, de-

5 tention facilities and places in the state wherein juveniles  
6 may be held involuntarily, to make public reports of  
7 such reviews, and to perform such other duties as shall  
8 be prescribed by the governor. The members so ap-  
9 pointed shall serve without compensation for their time,  
10 however each member may be reimbursed for reason-  
11 able and necessary expenses in the performance of their  
12 duties under this article.

13 Copies of the panel's report shall be submitted an-  
14 nually to the president of the Senate and the speaker  
15 of the House of Delegates.

**§49-5-17. Expungement of records; no discrimination.**

1 (a) One year after the child's eighteenth birthday,  
2 or one year after personal or juvenile jurisdiction shall  
3 have terminated, whichever is later, the records of a  
4 juvenile proceeding conducted under this chapter, in-  
5 cluding law-enforcement files and records, fingerprints,  
6 physical evidence and all other records pertaining to  
7 said proceeding shall be expunged by operation of law.  
8 When records are expunged, they shall be returned to  
9 the court in which the case was pending and kept in  
10 a separate confidential file and not opened except upon  
11 order of the court.

12 (b) Expungement shall be accomplished by physi-  
13 cally marking the records to show that such records  
14 have been expunged, and by the secure sealing and  
15 filing of said records in such a manner that no one can  
16 determine the identity of said juvenile except as pro-  
17 vided in subsection (d) of this section. Expungement  
18 shall have the legal effect as if the offense never oc-  
19 curred.

20 (c) The child's counsel, parent, guardian or custodian,  
21 the court, law-enforcement agencies and other public and  
22 private agencies, in response to a request for record  
23 information, shall reply that juvenile records are not  
24 public records and are available only by order of the  
25 circuit court in which the case was pending.

26 (d) Notwithstanding this or any other provision of  
27 this code to the contrary, juvenile records and law-  
28 enforcement records shall not be disclosed or made

29 available for inspection, except that the court may, by  
30 written order pursuant to a written petition, permit  
31 disclosure or inspection when:

32 (1) A court having juvenile jurisdiction has the child  
33 before it in a juvenile proceeding;

34 (2) A court exercising criminal jurisdiction over the  
35 child requests such records for the purpose of a pre-  
36 sentence report or other dispositional proceeding;

37 (3) The child or counsel for the child requests dis-  
38 closure or inspection of such records;

39 (4) The officials of public institutions to which a child  
40 is committed require such records for transfer, parole or  
41 discharge considerations; or

42 (5) A person doing research requests disclosure, on  
43 the condition that information which would identify the  
44 child or family involved in the proceeding shall not be  
45 divulged.

46 (e) No individual, firm, corporation or other entity  
47 shall, on account of a person's prior involvement in a  
48 proceeding under this article, discriminate against any  
49 person in access to, terms of, or conditions of employ-  
50 ment, housing, education, credit, contractual rights or  
51 otherwise.

52 (f) No records of a juvenile convicted under the  
53 criminal jurisdiction of the court pursuant to subdivi-  
54 sion one, subsection (d), section ten of this article shall  
55 be expunged.

56 (g) Any person who willfully violates this section  
57 shall be guilty of a misdemeanor, and, upon conviction  
58 thereof, shall be fined not more than one thousand  
59 dollars, or confined in jail not more than six months,  
60 or both such fine and imprisonment, and shall be liable  
61 for damages in the amount of three hundred dollars or  
62 actual damages, whichever is greater.

**ARTICLE 5A. JUVENILE REFEREE SYSTEM.**

**§49-5A-3. Orders of juvenile referee or judge following deten-  
tion hearing; force and effect and finality of such  
orders.**

1 After a detention hearing conducted by a judge, magis-  
2 trate or referee an order shall be forthwith entered setting

3 forth the findings of fact and conclusions of law with  
 4 respect to further detention pending hearing and disposi-  
 5 tion of the child proceedings involving such juvenile.  
 6 A copy of such order shall be furnished to the court, if  
 7 entered by a referee, and to the child and his attorney,  
 8 if any, and to the parent or parents or guardian of the  
 9 child. A detention order of a judge or referee shall be-  
 10 come effective immediately, subject to the right of review  
 11 provided for in section four of this article, and shall  
 12 continue in effect until modified or vacated by the judge.

**§49-5A-5. Detention in other counties.**

1 If further detention is ordered, the court may order  
 2 or referee direct such child to be detained in a facility  
 3 other than a jail in a county other than the county in  
 4 which such court sits if no facility other than a jail  
 5 exists in the county wherein the court sits.

**ARTICLE 6B. APPOINTMENT OF SPECIAL GUARDIAN TO SE-  
 CURE MEDICAL TREATMENT FOR PERSONS  
 UNDER EIGHTEEN YEARS OF AGE.**

**§49-6B-1. Petition for appointment of special guardian; re-  
 quirements.**

1 Upon the verified petition of any person showing: (a)  
 2 That any person under the age of eighteen years is  
 3 threatened with or there is a substantial possibility that  
 4 such person will suffer death, serious or permanent physi-  
 5 cal or emotional disability, disfigurement or suffering,  
 6 and (b) that such disability, disfigurement or suffering  
 7 is the result of the failure or refusal of any parent,  
 8 guardian or custodian to procure, consent to or authorize  
 9 necessary medical treatment, the circuit court of the  
 10 county in which such person is located may direct the  
 11 appointment of a special guardian for the purposes of  
 12 procuring, consenting to and giving authorization for the  
 13 administration of necessary medical treatment. The cir-  
 14 cuit court shall not consider any petition filed in accord-  
 15 ance with this section unless it shall be accompanied by  
 16 a supporting affidavit of a licensed physician.

**§49-6B-2. Notice of petition.**

1 So far as practicable, the parents, guardian or custodian  
 2 of any person for whose benefit medical treatment is

3 sought shall be given notice of the petition for the ap-  
4 pointment of a special guardian under this article:  
5 *Provided*, That such notice shall not be necessary if it  
6 would cause such delay as would result in the death or  
7 irreparable harm to the person for whose benefit medical  
8 treatment is sought. Such notice may be given in such  
9 form and manner as may be necessary under the circum-  
10 stances.

**§49-6B-3. Discharge of special guardian.**

1 Upon the termination of necessary medical treatment  
2 to any person under this article, the circuit court shall,  
3 by order, direct the discharge of the special guardian  
4 from any further authority, responsibility or duty.

**§49-6B-4. Immunity from civil liability.**

1 No person appointed special guardian in accordance  
2 with the provisions of this article shall be civilly liable  
3 for any act done by virtue of the authority vested in  
4 him by order of the circuit court.

**ARTICLE 7. GENERAL PROVISIONS.**

**§49-7-1. Confidentiality of records.**

1 All records of the state department, the court and its  
2 officials, law-enforcement agencies and other agencies  
3 or facilities concerning a child as defined in this chapter  
4 shall be kept confidential and shall not be released:  
5 *Provided*, That such records, except adoption records,  
6 juvenile court records and records disclosing the identity  
7 of a complainant of child abuse or neglect, shall be made  
8 available (1) where authorized by this chapter; (2) to  
9 the child, parent, or the attorney of the child or parent,  
10 whether or not in connection with judicial proceedings;  
11 (3) with the written consent of the child or of someone  
12 authorized to act in the child's behalf; or (4) pursuant to  
13 subpoena or order of a court of record: *Provided, however*,  
14 That a subpoena for such records may be quashed if the  
15 court determines that disclosure is not for a bona fide  
16 purpose and compromises the confidentiality intended by  
17 this section. The official court file pertaining to the person  
18 who is the subject of a neglect or abuse proceeding shall  
19 be open for inspection only to the child, the child's  
20 parent or custodian, their counsel and other parties to

21 the proceedings before the court. No record or informa-  
 22 tion shall be transmitted to any federal or state agency  
 23 except as specifically provided herein.

24 Except in juvenile proceedings which are transferred  
 25 to criminal proceedings, law-enforcement records and  
 26 files concerning a child shall be kept separate from the  
 27 records and files of adults and not included within the  
 28 court files. Law-enforcement records and files concerning  
 29 a child shall be open to inspection pursuant to the pro-  
 30 visions of section seventeen, article five of this chapter.

31 Any person who willfully violates this section shall be  
 32 guilty of a misdemeanor, and, upon conviction thereof,  
 33 shall be fined not more than one thousand dollars, or  
 34 confined in jail not more than six months, or both such  
 35 fine and imprisonment, and shall be liable for damages  
 36 in the amount of three hundred dollars or actual damages,  
 37 whichever is greater.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 13. CORRECTIONS MANAGEMENT.

#### §62-13-2. Supervision of probationers and parolees; final de- terminations remaining with board of probation and parole.

1 The commissioner of corrections shall supervise all  
 2 persons released on probation and placed in the charge  
 3 of a state probation and parole officer and all persons  
 4 released on parole under any law of this state with the  
 5 exception of those persons paroled pursuant to section  
 6 thirteen, article two, chapter forty-nine of this code.  
 7 The commissioner shall have authority to revoke the  
 8 parole with appropriate due process. He shall also super-  
 9 vise all probationers and parolees whose supervision  
 10 may have been undertaken by this state by reason  
 11 of any interstate compact entered into pursuant to the  
 12 uniform act for out-of-state parolee supervision. The  
 13 commissioner shall prescribe rules and regulations for  
 14 the supervision of probationers and parolees under his  
 15 supervision and control, and shall succeed to all ad-  
 16 ministrative and supervisory powers of the board of  
 17 probation and parole and the authority of said board of  
 18 probation and parole in such matters only.

19 The commissioner of corrections shall administer all  
20 other laws affecting the custody, control, treatment and  
21 employment of persons sentenced or committed to in-  
22 stitutions under the supervision of the department or  
23 affecting the operation and administration of institutions  
24 or functions of the department.

25 The final determination regarding the release of in-  
26 mates from penal institutions and the final determination  
27 regarding revocation of parolees from such institutions  
28 pursuant to the provisions of article twelve, chapter sixty-  
29 two of the code of West Virginia, one thousand nine hun-  
30 dred thirty-one, as amended, shall remain within the ex-  
31 clusive jurisdiction of the board of probation and parole.

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

James L. Davis  
Chairman Senate Committee

Clarence C. Chestnut, Jr.  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. Ch. Wilson, Jr.  
Clerk of the Senate

A. Blankenship  
Clerk of the House of Delegates

W. F. Bratherton, Jr.  
President of the Senate

Donald L. Topp  
Speaker House of Delegates

The within is approved this the 30  
day of March, 1978.

John J. Rhyker  
Governor



APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 23 3 57 PM '78

OFFICE OF THE GOVERNOR

Date Mar. 30, 1978

Time 3:50 p.m.

RECEIVED

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OFFICE  
SECY. OF STATE