

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-27-79

Time 5:30 p.m.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

— ● —

# ENROLLED

HOUSE BILL No. 1484

(By Mr. Albright & Mr. Martin, 35th Dist.)

— ● —

Passed March 9, 1979

In Effect Ninety Days From Passage



No. 1484

**ENROLLED**

**H. B. 1484**

(By MR. ALBRIGHT and MR. MARTIN, 35TH DISTRICT)

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[Passed March 9, 1979; in effect ninety days from passage.]

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AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to juvenile offenders rehabilitation; providing for a short title; setting forth legislative purposes and intent; stating definitions; describing the responsibility of the department of welfare; providing for the establishment and maintenance of rehabilitative facilities for status offenders; describing the programs and services of such rehabilitative facilities; requiring county boards of education to provide instruction for children residing at such facilities; authorizing the department of welfare to enforce legal custody; describing reporting requirements; and providing for a catalogue of services.

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

That chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-b, to read as follows:

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.**

**§49-5B-1. Short title.**

- 1 This article shall be known and cited as the "West Virginia
- 2 Juvenile Offender Rehabilitation Act."

**§49-5B-2. Purpose and intent.**

1 It is the purpose and intent of the Legislature to provide  
2 for the creation of all reasonable means and methods that can  
3 be established by a humane and enlightened state, solicitous  
4 of the welfare of its children, for the prevention of delin-  
5 quency and for the care and rehabilitation of delinquent  
6 children. It is further the intent of the Legislature that  
7 this state, through the department of welfare, establish, main-  
8 tain, and continuously refine and develop, a balanced and  
9 comprehensive state program for children who are potentially  
10 delinquent or are delinquent, other than those children com-  
11 mitted to the care and custody of the department of correc-  
12 tions.

**§49-5B-3. Definitions.**

1 For the purposes of this article:

2 (1) "Juvenile offender" means an individual subject to  
3 the exercise of juvenile court jurisdiction for purposes of  
4 adjudication and treatment as a delinquent.

5 (2) "Criminal-type offender" means a juvenile who has  
6 been charged with delinquency or adjudicated a delinquent for  
7 conduct which would be a crime if committed by an adult.

8 (3) "Status offender" means a juvenile who has been  
9 charged with delinquency or adjudicated a delinquent for  
10 conduct which would not be a crime if committed by an adult.

11 (4) "Accused juvenile offender" means a juvenile with re-  
12 spect to whom a petition has been filed in the juvenile court  
13 alleging that such juvenile is a criminal-type offender or is  
14 a status offender and no final adjudication has been made by  
15 the juvenile court.

16 (5) "Adjudicated juvenile offender" means a juvenile  
17 whom the juvenile court has determined is a criminal-type  
18 offender or is a status offender.

19 (6) "Facility" means a place, an institution, a building  
20 or part thereof, set of buildings or an area whether or not  
21 enclosing a building or set of buildings which is used for

22 the lawful custody and treatment of juveniles and may be  
23 owned or operated by public or private agencies.

24 (7) "Secure facility" means a facility which is designed  
25 and operated so as to ensure that all entrances and exits from  
26 such facility are under the exclusive control of the staff of  
27 such facility, whether or not the person being detained has  
28 freedom of movement within the perimeter of the facility, or  
29 which relies on locked rooms and buildings, fences, or physical  
30 restraint in order to control behavior of its residents.

31 (8) "Nonsecure facility" means a facility not character-  
32 ized by use of physically restricting construction, hardware  
33 and procedures and which provides its residents access to the  
34 surrounding community with minimal supervision.

35 (9) "Community-based" when used to describe a facility,  
36 program or service means a small, open group home or other  
37 suitable place located near the juvenile's home or family,  
38 and programs of community supervision and service which  
39 maintain community participation in the planning, operation,  
40 and evaluation of their programs which may include, but are  
41 not limited to, medical, educational, vocational, social and  
42 psychological guidance, training, counseling, alcoholism treat-  
43 ment, drug treatment, and other rehabilitative services.

44 (10) "Lawful custody" means the exercise of care, super-  
45 vision and control over a juvenile offender or nonoffender  
46 pursuant to the provisions of the law or of a judicial order or  
47 decree.

48 (11) "Exclusively," when used to describe the population  
49 of a facility, means that the facility is used only for a specifi-  
50 cally described category of juvenile to the exclusion of all  
51 other types of juveniles.

52 (12) "Temporary resident" means a status offender tem-  
53 porarily residing in a rehabilitative facility awaiting court action  
54 in a detention hearing, adjudicatory hearing, or a dispositional  
55 hearing.

**§49-5B-4. Responsibilities of the department of welfare.**

- 1 (a) The department of welfare is empowered to establish,  
2 and shall establish, subject to the limits of funds available

3 or otherwise appropriated therefor, programs and services  
4 designed to prevent juvenile delinquency, to divert juveniles  
5 from the juvenile justice system, to provide community-based  
6 alternatives to juvenile detention and correctional facilities,  
7 and to encourage a diversity of alternatives within the juvenile  
8 justice system. The development, maintenance and expansion  
9 of programs and services may include, but not be limited to,  
10 the following:

11 (1) Community-based programs and services for the pre-  
12 vention and treatment of juvenile delinquency through the  
13 development of foster-care and shelter-care homes, group  
14 homes, halfway houses, homemaker and home health services,  
15 twenty-four hour intake screening, volunteer and crisis home  
16 programs, day treatment and home probation, and any other  
17 designated community-based diagnostic, treatment or rehabili-  
18 tative service;

19 (2) Community-based programs and services to work with  
20 parents and other family members to maintain and strengthen  
21 the family unit so that the juvenile may be retained in his  
22 home;

23 (3) Youth service bureaus and other community-based pro-  
24 grams to divert youth from the juvenile court or to support,  
25 counsel, or provide work and recreational opportunities for  
26 delinquents and other youth to help prevent delinquency;

✓ 27 (4) Projects designed <sup>ok as per</sup> to develop and implement programs  
28 stressing advocacy activities aimed at improving services for  
29 and protecting the rights of youth impacted by the juvenile  
30 justice system;

31 (5) Educational programs or supportive services designed  
32 to keep delinquents, and to encourage other youth to remain,  
33 in elementary and secondary schools or in alternative learning  
34 situations;

35 (6) Expanded use of probation and recruitment and train-  
36 ing of probation officers, other professional and paraprofes-  
37 sional personnel and volunteers to work effectively with youth;

38 (7) Youth initiated programs and outreach programs de-

39 signed to assist youth who otherwise would not be reached  
40 by traditional youth assistance programs;

41 (8) A statewide program designed to reduce the number of  
42 commitments of juveniles to any form of juvenile facility as a  
43 percentage of the state juvenile population, to increase the use  
44 of nonsecure community-based facilities as a percentage of  
45 total commitments to juvenile facilities, and to discourage the  
46 use of secure incarceration and detention.

47 (b) The department of welfare shall establish, within the  
48 funds available, an individualized program of rehabilitation for  
49 each accused juvenile offender referred to the department after  
50 being allowed an improvement period by the juvenile court,  
51 and for each adjudicated juvenile offender who, after adjudica-  
52 tion, is referred to the department for investigation or treatment  
53 or whose custody is vested in the department. Such individual-  
54 ized program of rehabilitation shall take into account the  
55 programs and services to be provided by other public or  
56 private agencies or personnel which are available in the  
57 community to deal with the <sup>ok. CASE. H.</sup> circumstances of the particular ✓  
58 child. Such individualized program of rehabilitation shall  
59 be furnished to the juvenile court and shall be available to  
60 counsel for the child; it may be modified from time to time  
61 at the direction of the department or by order of the juvenile  
62 court. The department may develop an individualized program  
63 of rehabilitation for any child referred for noncustodial  
64 counseling under section five, article three of this chapter, for  
65 any child receiving counsel and advice under section five,  
66 article three-a of this chapter, or for any other child upon  
67 the request of a public or private agency.

68 (c) The department of welfare is authorized to enter into  
69 cooperative arrangements and agreements with private agencies  
70 or with agencies of the state and its political subdivisions to  
71 effectuate the purpose of this article.

**§49-5B-5. Rehabilitative facilities for status offenders.**

1 (a) The department of welfare shall, within the limits of  
2 state and federal funds appropriated therefor, establish and  
3 maintain one or more rehabilitative facilities to be used ex-  
4 clusively for the lawful custody of status offenders. Each

5 such facility shall be, primarily, a nonsecure facility having  
6 as its primary purpose the rehabilitation of adjudicated juvenile  
7 offenders who are status offenders. Such facility shall not  
8 have a bed capacity for more than twenty children, and shall  
9 minimize the institutional atmosphere and prepare the child  
10 for reintegration into the community: *Provided*, That such  
11 facility may function as a temporary residential facility for  
12 accused juvenile offenders when the juvenile is a status offender  
13 and no final adjudication has been made by the juvenile  
14 court: *Provided, however*, That a portion of such facility may  
15 be designed and operated as a secure facility used exclusively  
16 for status offenders whom the juvenile court has specifically  
17 found to be so unmanageable, ungovernable and antisocial  
18 that no other reasonable alternative exists, or could exist, for  
19 treatment or restraint other than placement in a secure facility.  
20 Temporary residents of the facility shall only be placed  
21 in the secure portion of the facility by order of the juvenile  
22 court upon a specific finding by the court that the child is  
23 likely to injure himself or others or to run away if placed in  
24 a less restrictive environment: *Provided*, That unless the  
25 court order committing the child specifically orders that the  
26 child not be removed from the secure portion of the facility,  
27 the person having control of the facility shall have the authority  
28 to permit any temporary resident to remain in the nonsecure  
29 portions of the facility if such temporary resident demonstrates  
30 a willingness to remain at the facility voluntarily and  
31 to conform his or her conduct to the lawful requirements established  
32 for residents of the nonsecure portions of the facility.

33 (b) Within the funds available, rehabilitative programs and  
34 services shall be provided by or through each such facility and  
35 may include, but not be limited to, medical, educational, vocational,  
36 social and psychological guidance, training, counseling,  
37 alcoholism treatment, drug treatment and other rehabilitative  
38 services. The department of welfare shall provide to each child  
39 adjudicated delinquent and committed to the facility a program  
40 of treatment and services consistent with the individualized  
41 program of rehabilitation developed for such child. In the case  
42 of any other child residing at the facility, the department shall  
43 provide such programs and services as may be proper in the cir-

44 cumstances including, but not limited to, any such programs or  
45 services directed to be provided by the court.

46 (c) The board of education of the county in which the fa-  
47 cility is located shall provide instruction for children residing  
48 at the facility. Residents who can be permitted to do so shall  
49 attend local schools, and instruction shall otherwise take place  
50 at the facility.

51 (d) Facilities established pursuant to this section shall be  
52 structured so as to be or become community-based facilities.

**§49-5B-6. Enforcement of legal custody.**

1 The department of welfare shall have authority to require  
2 any child committed to its legal custody to remain at and to  
3 return to the residence to which the child is assigned by the  
4 department or by the juvenile court. In aid of such authority,  
5 and upon request of a designated employee of the department,  
6 any police officer, sheriff, deputy sheriff, member or officer of  
7 the department of public safety or juvenile court probation of-  
8 ficer is authorized to take any such child into custody and  
9 return such child to his or her place of residence or into the  
10 custody of a designated employee of the department of welfare.

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✓ **§49-5B-6. Reporting requirements; cataloguing of services.**

1 (a) The department of welfare shall from time to time, but  
2 not less often than annually, review its programs and services  
3 and submit a report to the governor, the Legislature, and the  
4 supreme court of appeals, analyzing and evaluating the effec-  
5 tiveness of the programs and services being carried out by the  
6 department. Such report shall include, but not be limited to,  
7 an analysis and evaluation of programs and services continued,  
8 established and discontinued during the period covered by the  
9 report, and shall further describe programs and services which  
10 should be implemented to further the purposes of this article.  
11 Such report shall also include, but not be limited to, relevant  
12 information concerning the number of children comprising the  
13 population of any rehabilitative facility during the period  
14 covered by the report, the length of residence, the nature of the  
15 problems of each child, the child's response to programs and  
16 services and such other information as will enable a user of the



17 report to ascertain the effectiveness of the facility as a re-  
18 habilitative facility.

19 (b) The department of welfare shall, on or before the first  
20 day of August, one thousand nine hundred seventy-nine, and  
21 from time to time thereafter, but not less often than annually,  
22 prepare a descriptive catalogue of its juvenile programs and  
23 services and shall distribute copies of the same to every juvenile  
24 court in the state and, at the direction of the juvenile court,  
25 such catalogue shall be distributed to attorneys practicing be-  
26 fore such court. Such catalogue shall also be made available  
27 to members of the general public upon request. The catalogue  
28 shall contain sufficient information as to the persons or agen-  
29 cies responsible for particular programs and services so as to  
30 enable a user of the catalogue to make inquiries and referrals.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Christen Jr.*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*James L. Davis Jr.*  
Clerk of the Senate

*W. Blankenship*  
Clerk of the House of Delegates

*H. O. B. Smith Jr.*  
President of the Senate

*Clide M. Lee, Jr.*  
Speaker House of Delegates

The within *is approved* this the *27*  
day of *March*, 1979.

*John D. Rhyne*  
Governor

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