

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-24-82

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1010

(By Mr. Stephens)

— ● —

Passed March 13, 1982

In Effect Ninety Days From Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1010

(By MR. STEPTOE)

[Passed March 13, 1982; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, seven, eight, nine, thirteen, fourteen and sixteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section thirteen-b; to amend article five-a of said chapter by adding thereto a new section, designated section six-a; and to amend said chapter forty-nine by adding thereto a new article, designated article five-c, all relating to jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; certain extrajudicial statements by a child not admissible; hearings; transcripts; institution of proceedings by petition; contents of petition; notice to child and parents; notice requirements; taking a child into custody under certain named conditions; detention hearing to be held by judge, juvenile referee or magistrate; constitutional guarantees; preliminary hearing may be held in conjunction with detention hearing, except where detention hearing is by a magistrate; preliminary hearing, time when held; right to counsel; improvement period; methods of disposition; appeal; alternative methods of disposition; authority of the court to order fines, restitution or reparation and participation in public service projects; revocation or denial of

driving privileges; financial inability of child; permitting such alternate disposition of juveniles tried as adults; modification of dispositional orders in juvenile courts; providing that precedence be given to appropriate dispositional alternative even though less restrictive alternatives have not been exhausted; providing for reconsideration of sentence of juvenile convicted as an adult; development of comprehensive state plan for pre-disposition detention; time limit; major contents of plan; responsibilities of commissioner of department of welfare pending development of plan; creation of legislative commission on juvenile law; powers and duties; appointment of members; terms; advisory task force; time and place of meetings; officers; assistance of other agencies; and expenses and reimbursement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§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 person
5 is under the age of nineteen years and was under the age of
6 eighteen years at the time of the alleged offense, the matter
7 shall be immediately certified to the juvenile jurisdiction of
8 the circuit court, and the circuit court shall assume jurisdiction
9 of the case in the same manner as cases originally instituted
10 in the circuit court by petition: *Provided*, That for violation

11 of a traffic law of West Virginia, magistrate courts shall have
12 concurrent jurisdiction with the circuit court, and persons
13 under the age of eighteen years shall be liable for punishment
14 for violation of such traffic laws in the same manner as adults
15 except that magistrate courts shall have no jurisdiction to
16 impose a sentence of confinement for the violation of traffic
17 laws.

18 As used in this section, "violation of a traffic law of West
19 Virginia" means violation of any law contained in chapters
20 seventeen-a, seventeen-b, seventeen-c and seventeen-d of this
21 code except sections one and two, article four (hit and run)
22 and sections one (negligent homicide), two (driving under in-
23 fluence of alcohol, controlled substances or drugs) and four
24 (reckless driving), article five, chapter seventeen-c of this
25 code.

26 (b) Any child shall be entitled to be admitted to bail or
27 recognizance in the same manner as a person over the age of
28 eighteen years and shall have the protection guaranteed by
29 article three of the constitution of West Virginia.

30 (c) The child shall have the right to be effectively repre-
31 sented by counsel at all stages of proceedings under the pro-
32 visions of this article. If the child, parent or custodian exe-
33 cutes an affidavit showing that he cannot pay for an attorney
34 appointed by the court or referee, the court shall appoint
35 counsel, to be paid as provided for in article twenty-one,
36 chapter twenty-nine of this code.

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

44 Except as herein modified, at all adjudicatory hearings, the
45 rules of evidence applicable in criminal cases shall apply,
46 including the rule against written reports based upon hearsay.
47 Unless otherwise specifically provided in this chapter, all
48 procedural rights afforded adults in criminal proceedings shall

49 be applicable. Extra-judicial statements, other than res gestae,
50 by a child under fourteen years of age to law-enforcement
51 officials or while in custody, shall not be admissible unless
52 made in the presence of the child's counsel.

53 Extra-judicial statements, other than res gestae by a child
54 under sixteen years of age but above the age of thirteen to law-
55 enforcement officers or while in custody, shall not be admis-
56 sible unless made in the presence of the child's counsel or made
57 in the presence of and with the consent of the child's parent
58 or custodian who has been fully informed regarding the child's
59 right to a prompt detention hearing, his right to counsel in-
60 cluding appointed counsel if he cannot afford counsel, and his
61 privilege against self-incrimination. A transcript or recording
62 shall be made of all transfer, adjudicatory and dispositional
63 hearings. At the conclusion of any hearing, the court shall
64 make findings of fact and conclusions of law, and the same
65 shall appear of record.

66 (e) The court reporter shall furnish a transcript of the
67 relevant proceedings to any indigent child who seeks review
68 of any proceeding under this article if an affidavit is filed
69 stating that the child and his parent or custodian are unable
70 to pay therefor.

**§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 child
2 may be filed by a person who has knowledge of or information
3 concerning the facts alleged. The petition shall be verified
4 by the petitioner, shall set forth the name and address of the
5 child's parents, guardians or custodians known to the peti-
6 tioner unless the petitioner is the natural parent, guardian or
7 custodian and shall be filed in the circuit court in the county
8 where the alleged act of delinquency occurred: *Provided, That*
9 any proceeding under this chapter may be removed, for good
10 cause shown, in accordance with the provisions of section
11 one, article nine, chapter fifty-six of this code. The court may
12 refer the matter to a state department worker or probation
13 officer for preliminary inquiry to determine whether the mat-
14 ter can be resolved informally without the filing of a petition.

15 The petition shall contain specific allegations of the conduct
16 and facts upon which the petition is based, including the
17 approximate time and place of the alleged conduct; a state-
18 ment of the right to have counsel appointed and consult
19 with counsel at every stage of the proceedings; and the relief
20 sought.

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

32 (b) The parents, guardians or custodians shall be named
33 in the petition as respondents, and shall be served with notice
34 of the proceedings in the same manner as provided in sub-
35 section (a) of this section for service upon the child and
36 required to appear with the child at the time and place set
37 for the proceedings unless such respondent cannot be found
38 after diligent search. If any such respondent cannot be found
39 after diligent search, the court may proceed without further
40 requirement of notice: *Provided*, That the court may order
41 service by first class mail to the last known address of such
42 respondent. The respondent shall have fifteen days after the
43 date of mailing to appear or answer.

44 (c) The court or referee may order the issuance of a sub-
45 poena against the person having custody and control of the
46 child to bring the child before the court or referee.

47 (d) When any case of a child charged with the commission
48 of a crime is certified or transferred to the circuit court or
49 brought before the court by warrant pursuant to section two
50 of this article, the court or referee shall forthwith cause the
51 child and his parents, guardians or custodians to be served
52 with a petition, as provided in subsections (a) and (b) of

53 this section. In the event the child is in custody the petition
54 shall be served upon the child within ninety-six hours of
55 the time custody began, or the child shall be released from
56 custody forthwith.

57 (e) The clerk of the court shall promptly notify the state
58 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 that a
3 child be taken into custody only if one of the following con-
4 ditions exist: (1) The petition shows that grounds exist for
5 the arrest of an adult in identical circumstances; (2) the
6 health, safety and welfare of the child demand such custody;
7 (3) the child is a fugitive from a lawful custody or commit-
8 ment order of a juvenile court; or (4) the child has a record
9 of willful failure to appear at juvenile proceedings, and
10 custody is necessary to assure his presence before the court.
11 A detention hearing shall be held without delay by the
12 judge, juvenile referee or magistrate authorized to conduct
13 such hearing, and in no event shall the delay exceed the next
14 succeeding judicial day, excluding Saturday, and such child
15 shall be released on recognizance to his parent, guardian or
16 custodian unless findings are made as specified in subsection
17 (d) of this section.

18 (b) Absent a warrant or court order, a child may be taken
19 into custody by a law-enforcement official only if one of the
20 following conditions exist: (1) Grounds exist for the arrest
21 of an adult in identical circumstances; (2) emergency con-
22 ditions exist which in the judgment of the officer pose im-
23 minent danger to the health, safety and welfare of the child;
24 (3) the official has reasonable grounds to believe that the
25 child is a runaway without just cause from the child's par-
26 ents or legal custodian and the health, safety and welfare
27 of the child is endangered; or (4) the child is a fugitive from
28 a lawful custody or commitment order of a juvenile court.
29 Upon taking a child into custody, with or without a warrant or
30 court order, the official shall: (i) Immediately notify the
31 child's parent, custodian or, if the parent or custodian cannot

32 be located, a close relative; (ii) release the child into the
33 custody of his parent or custodian unless the circumstances
34 warrant otherwise; (iii) refer the matter to the prosecuting
35 attorney, state department or probation officer for proceedings
36 under this article; and (iv) if a child is being held in custody
37 absent a warrant or court order, cause a warrant, petition or
38 order, as the case may be, to be immediately issued authoriz-
39 ing the detention of such child.

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

48 (c) In the event that a child is delivered into the custody
49 of a sheriff or director of a detention facility, such sheriff or
50 director shall immediately notify the court or referee. Said
51 sheriff or director shall immediately provide to every child
52 who is delivered into his custody, a written statement explain-
53 ing the child's right to a prompt detention hearing, his right
54 to counsel including appointed counsel if he cannot afford
55 counsel and his privilege against self-incrimination. In all
56 cases when a child is delivered into custody, the child shall
57 be released to his parent, guardian or custodian by the end
58 of the next succeeding judicial day, excluding Saturday, after
59 being delivered into such custody, unless the child has been
60 placed in detention pursuant to subsection (d) of this section.

61 (d) A child in custody must immediately be taken before
62 a referee or judge of the circuit court and in no event shall
63 a delay exceed the next succeeding judicial day: *Provided,*
64 That if there be no judge or referee then available in the
65 county, then such child shall be taken immediately before
66 any magistrate in the county for the sole purpose of holding
67 a detention hearing. The judge, referee or magistrate shall
68 inform the child of his right to remain silent, that any state-
69 ment may be used against him and of his right to counsel,
70 and no interrogation shall be made without the presence of

71 a parent or counsel. If the child or his parent, guardian or
72 custodian has not retained counsel, counsel shall be appointed
73 as soon as practicable. The referee, judge or magistrate shall
74 hear testimony concerning the circumstances for taking the
75 child into custody and the possible need for detention in ac-
76 cordance with section two, article five-a of this chapter. The
77 sole mandatory issue at the detention hearing shall be whether
78 the child shall be detained pending further court proceedings.
79 The court shall, if advisable, and if the health, safety and
80 welfare of the child will not be endangered thereby, release
81 the child on recognizance to his parents, custodians or an
82 appropriate agency; however, if warranted, the court may
83 require bail, except that bail may be denied in any case where
84 bail could be denied if the accused were an adult.

85 The judge of the circuit court or referee may, in conjunction
86 with the detention hearing, conduct a preliminary hearing
87 pursuant to section nine, article five of this chapter: *Provided*,
88 That all parties are prepared to proceed and the child has
89 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 conjunction
3 with a detention hearing with respect to the same charge con-
4 tained in the petition, the circuit court or referee shall hold a
5 preliminary hearing. In the event that the child is in custody,
6 such hearing shall be held within ten days of the time the
7 child is taken into custody unless good cause be shown for
8 a continuance. If no preliminary hearing is held within ten
9 days of the time the child is taken into custody, the child shall
10 be released on recognizance unless the hearing has been con-
11 tinued for good cause. If the judge is in another county in
12 the circuit, the hearing may be conducted in such other county.
13 The preliminary hearing may be waived by the child, upon
14 advice to his counsel. At the hearing, the court or referee
15 shall:

16 (1) If the child is not represented by counsel, inform the
17 child and his parents, guardian or custodian or any other
18 person standing in loco parentis to him of the child's right

19 to be represented at all stages of proceedings under this article
20 and the right to have counsel appointed.

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

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

31 (4) In lieu of placing the child in a detention facility when
32 bond is not provided, the court may place the child in the
33 temporary custody of the state department pursuant to sec-
34 tion sixteen, article two of this chapter or may place the
35 child in the custody of a probation officer. If the child is
36 detained in custody, the detention shall not continue longer
37 than thirty days without commencement of the adjudicatory
38 hearing unless good cause for a continuance be shown by either
39 party or, if a jury trial be demanded, no longer than the next
40 regular term of said court.

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

42 (b) The child may move to be allowed an improvement
43 period for a period not to exceed one year. If the court
44 is satisfied that the best interest of the child is likely to be
45 served by an improvement period, the court may delay the
46 adjudicatory hearing and allow a noncustodial improvement
47 period upon terms calculated to serve the rehabilitative needs
48 of the child. At the conclusion of the improvement period,
49 the court shall dismiss the proceeding if the terms have been
50 fulfilled; otherwise, the court shall proceed to the adjudicatory
51 stage. A motion for an improvement period shall not be con-
52 strued as an admission or be used as evidence.

§49-5-13. Disposition; appeal.

1 (a) In aid of disposition, the juvenile probation officer or
2 state department worker assigned to the court shall, upon

3 request of the court, make an investigation of the environment
4 of the child and the alternative dispositions possible. The
5 court, upon its own motion, or upon request of counsel, may
6 order a psychological examination of the child. The report
7 of such examination and other investigative and social re-
8 ports shall not be made available to the court until after the
9 adjudicatory hearing. Unless waived, copies of the report
10 shall be provided to counsel for the petitioner and counsel for
11 the child no later than seventy-two hours prior to the dis-
12 positional hearing.

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

20 (1) Dismiss the petition;

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

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

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

39 (5) Upon a finding that no less restrictive alternative

40 would accomplish the requisite rehabilitation of the child,
41 and upon an adjudication of delinquency pursuant to sub-
42 division (1), section four, article one of this chapter, commit
43 the child to an industrial home or correctional institution for
44 children. Commitments shall not exceed the maximum term
45 for which an adult could have been sentenced for the same
46 offense, with discretion as to discharge to rest with the direc-
47 tor of the institution, who may release the child and return
48 him to the court for further disposition;

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

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

67 (c) The disposition of the child shall not be affected by
68 the fact that the child demanded a trial by jury or made a
69 plea of denial. Any dispositional order is subject to appeal to
70 the supreme court of appeals.

71 (d) Following disposition, it shall be inquired of the
72 respondent whether or not appeal is desired and the response
73 transcribed; a negative response shall not be construed as a
74 waiver. The evidence shall be transcribed as soon as practic-
75 able and made available to the child or his counsel, if the
76 same is requested for purposes of further proceedings. A

77 judge may grant a stay of execution pending further proceed-
78 ings.

79 (e) Notwithstanding any other provision of this code to
80 the contrary, in the event a child charged with delinquency
81 under this chapter is transferred to adult jurisdiction and
82 there tried and convicted, the court may nevertheless, in lieu
83 of sentencing such person as an adult, make its disposition
84 in accordance with this section.

**§49-5-13b. Authority of the courts to order fines, revocation of
vehicle privileges and restitution.**

1 (a) In addition to the methods of disposition provided in
2 section thirteen of this article, the court may enter an order
3 imposing one or more of the following penalties, conditions
4 and limitations:

5 (1) Impose a fine not to exceed one hundred dollars upon
6 such child.

7 (2) Require the child to make restitution or reparation to
8 the aggrieved party or parties for actual damages or loss caused
9 by the offense for which the child was found to be delinquent.

10 (3) Require the child to participate in a public service
11 project under such conditions as the court prescribes.

12 (4) When the child is fifteen years of age or younger and
13 has been adjudged delinquent, the court may order that the
14 child is not eligible to be issued a junior probationary opera-
15 tor's license or when the child is between the ages of sixteen
16 and eighteen years and has been adjudged delinquent, the
17 court may order that the child is not eligible to operate a
18 motor vehicle in this state, and any junior or probationary
19 operator's license shall be surrendered to the court. Such
20 child's driving privileges shall be suspended for a period not
21 to exceed two years, and the clerk of the court shall notify
22 the commissioner of the department of motor vehicles of such
23 order.

24 (b) Nothing herein stated shall limit the discretion of the
25 court in disposing of a juvenile case: *Provided*, That the juve-
26 nile shall not be denied probation or any other disposition
27 pursuant to this article because the juvenile is financially
28 unable to pay a fine or make restitution or reparation: *Pro-*

29 *vided, however,* That all penalties, conditions and limitations
 30 imposed under this section shall be based upon a consideration
 31 by the court of the seriousness of the offense, the child's
 32 ability to pay, and a program of rehabilitation consistent with
 33 the best interests of the child.

34 (c) Notwithstanding any other provisions of this code to
 35 the contrary, in the event a child charged with delinquency
 36 under this chapter is transferred to adult jurisdiction and
 37 there convicted, the court may nevertheless, in lieu of sen-
 38 tencing such person as an adult, make its disposition in
 39 accordance with this section.

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

1 (a) A dispositional order of the court may be modified:

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

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

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

26 (b) In a hearing for modification of a dispositional order,

27 or in any other dispositional hearing, the court shall give
28 precedence to the least restrictive alternative consistent with
29 the best interests and welfare of the public and the child:
30 *Provided*, That a less restrictive alternative need not be
31 ordered merely because such less restrictive alternative has
32 not been previously utilized with respect to the particular
33 child who is the subject of the proceeding.

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

1 (a) A child under eighteen years of age shall not be com-
2 mitted to a jail or police station, except that any child over
3 fourteen years of age who has been committed to an industrial
4 home or correctional institution may be held in the juvenile
5 department of a jail while awaiting transportation to the
6 institution for a period not to exceed ninety-six hours, and
7 a child over fourteen years of age who is charged with a crime
8 which would be a violent felony if committed by an adult,
9 may, upon an order of the circuit court, be housed in a
10 juvenile detention portion of a county facility, but not within
11 sight of adult prisoners. A child charged with or found to be
12 delinquent solely under subdivision (3), (4) or (5), section
13 four, article one of this chapter, shall not be housed in a
14 detention or other facility wherein persons are detained for
15 criminal offenses or for delinquency involving offenses which
16 would be crimes if committed by an adult: *Provided*, That a
17 child who is adjudicated delinquent under subsection (5),
18 section four, article one of this chapter and who has violated
19 an order of probation or contempt order arising out of a
20 proceeding wherein the child was adjudicated delinquent
21 for an offense which would be a crime if committed by an
22 adult may not be housed in a detention or other facility wherein
23 persons are detained who have not been adjudicated delinquent
24 for such offenses.

25 (b) No child who has been convicted of an offense under
26 the adult jurisdiction of the circuit court shall be held in
27 custody in a penitentiary of this state: *Provided*, That
28 such child may be transferred from a secure juvenile facility
29 to a penitentiary after he shall attain the age of eighteen
30 years if, in the judgment of the commissioner of the depart-

31 ment of corrections and the court which committed such
 32 child, such transfer is appropriate: *Provided, however,* That
 33 any other provision of this code to the contrary notwithstand-
 34 ing, prior to such transfer the child shall be returned to the
 35 sentencing court for the purpose of reconsideration and
 36 modification of the imposed sentence, which shall be based
 37 upon a review of all records and relevant information relating
 38 to the child's rehabilitation since his conviction under the
 39 adult jurisdiction of the court.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

**§49-5A-6a. State plan for predisposition detention of juveniles;
 responsibilities of commissioner of welfare until de-
 velopment of state plan.**

1 (a) The commissioner of the department of welfare and
 2 the legislative commission on juvenile law shall develop a
 3 comprehensive plan to establish a unified state system of
 4 predispositional detention for juveniles to be submitted to the
 5 West Virginia Legislature no later than the first day of
 6 January, one thousand nine hundred eighty-three. The plan
 7 shall be developed with input from the department of cor-
 8 rections, the governor's task force on crime, delinquency and
 9 corrections, judicial and law-enforcement officials from
 10 throughout the state.

11 The plan shall include, but not be limited to, the following:

12 (1) The development of the position of youth services
 13 coordinators. These coordinators would operate under the
 14 direction of the department of welfare and would serve each
 15 judicial district.

16 (2) The development of a coordinated plan for the effec-
 17 tive and efficient use of juvenile detention facilities operated
 18 by local units of government and the state, including those
 19 operated regionally by the department of welfare. Standards
 20 and criteria shall be established for the use of detention.
 21 Priorities for the utilization of available space and transporta-
 22 tion of juveniles to and from detention facilities shall also
 23 be established.

24 (3) Recommendations on the use of regional detention
 25 centers for detention hearings.

26 (4) Recommendations regarding the use of emergency
27 home shelters and foster homes for temporary detention.

28 (5) Recommendations regarding the use of regional de-
29 tention facilities and charges to counties for such services.

30 (6) An evaluation of the personnel needs and cost of
31 maintaining all facilities and services recommended in the
32 plan.

33 (b) Until the development and implementation of the plan
34 set forth in subsection (a) of this section, the commissioner
35 of the department of welfare shall do the following:

36 (1) Identify and coordinate all programs currently avail-
37 able in local communities for children in need of detention.
38 These programs shall be listed in a central resource directory
39 available for local authorities. This directory shall identify
40 which juveniles are acceptable to each program and the cost
41 of each program. Any program listed which is operated by a
42 county or community must conform to guidelines established
43 by the department of welfare.

44 (2) Develop additional emergency shelters in those com-
45 munities where no such facilities are now in existence, and
46 where there is a demonstrable need for them.

47 (3) Coordinate a transportation assistance program for
48 counties which have significant difficulty transporting youth to
49 detention facilities. Grants will be made on the basis of
50 proposals submitted to the department by local government
51 units demonstrating special needs based on travel distance,
52 youth detention need and lack of local resources despite good
53 faith attempts to establish or utilize local programs. Reim-
54 bursement grants will not exceed forty thousand dollars for
55 fiscal year one thousand nine hundred eighty-two.

ARTICLE 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

§49-5C-1. Creation of legislative commission.

1 There is hereby created the permanent legislative commis-
2 sion on juvenile law to study, review and examine laws relat-
3 ing to juveniles.

§49-5C-2. Powers and duties.

1 The powers and duties of the commission shall include, but
2 not be limited to, the following:

3 (a) Studying the status and effectiveness of the laws relat-
4 ing to juvenile proceedings, the juvenile referee system, and
5 the West Virginia juvenile offender rehabilitation act, and
6 making recommendations as to any changes needed in the
7 system and the ways and means to effect such changes;

8 (b) Making further and more specific recommendations
9 within the scope of the study as to the detention of juvenile
10 offenders, considering both short and long term detention;

11 (c) Consideration of existing juvenile detention facilities
12 and making recommendations, with particular attention to
13 financing, as to the need for updating present facilities and/or
14 creating new facilities and the location of each;

15 (d) Filing of a report to each regular session of the Legis-
16 lature which will include drafts of legislation necessary to
17 effectuate any recommendations; and

18 (e) Maintenance of reference materials concerning juve-
19 nile offenders including, without limitation, information as to
20 laws and systems in other states.

§49-5C-3. Appointment of members; terms.

1 The commission shall consist of:

2 (1) Three members of the Senate to be appointed by the
3 president of the Senate and three members of the House of
4 Delegates to be appointed by the speaker of the House. No
5 more than two of the three members appointed by the presi-
6 dent of the Senate and the speaker of the House, respectively,
7 may be members of the same political party.

8 (2) The commissioner of the department of welfare and
9 the commissioner of corrections, who shall serve as ex officio
10 members.

11 (3) Two persons trained and employed as school guidance
12 counselors, one to be appointed by the president of the Sen-
13 ate and one to be appointed by the speaker of the House.

14 The first appointed members of the commission shall serve
15 for a term expiring on the thirtieth day of June in the year
16 of the next succeeding regular session of the Legislature. At
17 the commencement of such next succeeding regular session
18 and at the commencement of regular sessions every two years
19 thereafter, members of the commission shall be appointed for
20 two-year terms beginning the first day of July in the year of
21 each such regular session. Vacancies on the commission shall
22 be filled for unexpired terms in the same manner as appoint-
23 ments to the commission.

§49-5C-4. Advisory task force.

1 The commission may provide for an advisory task force
2 to aid and assist the commission in the exercise of its powers
3 and duties.

§49-5C-5. Time and place of meetings; officers.

1 The commission shall hold meetings at such times and
2 places as it may designate. It shall be headed by two
3 cochairmen, one to be selected by and from the members
4 appointed from the Senate, and one to be selected by and
5 from the members appointed from the House of Delegates.

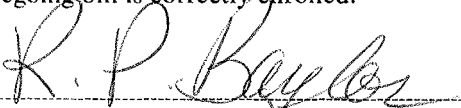
§49-5C-6. Assistance of other agencies.

1 The commission may request information from any state
2 officer or agency in order to assist in carrying out the terms
3 of this article, and such officer or agency is authorized and
4 directed to promptly furnish any data requested.

§49-5C-7. Expenses; reimbursement.

1 The members of the commission and its assistants shall be
2 reimbursed for all expenses actually and necessarily incurred
3 in the performance of their duties hereunder from the fund
4 of the joint committee on government and finance. Compensa-
5 tion and other expenses of the commission may be paid
6 from the fund of the joint committee on government and
7 finance.


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


Chairman Senate Committee

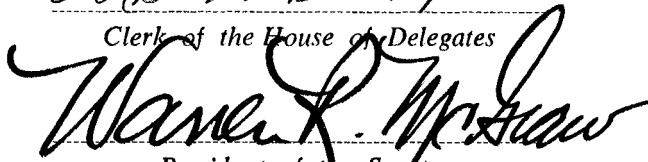

Chairman House Committee

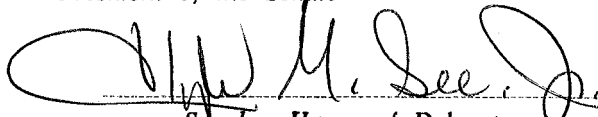
Originating in the House.

Takes effect ninety days from passage.

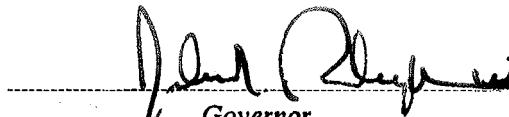

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 24
day of March, 1982.


Governor

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