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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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ENROLLED

COM. SUB. FOR
HOUSE BILL No. 2500

(By Delegates THOMPSON, RYAN, J. MARTIN,
STALNAKER, TILLIS, AMORES AND PULLIAM)

— • —

Passed MARCH 9, 1996

In Effect ninety days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2500

(BY DELEGATES THOMPSON, RYAN, J. MARTIN,
STALNAKER, TILLIS, AMORES AND PULLIAM)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to repeal sections one-a and one-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, ten, seventeen and eighteen of said article; and to further amend said article by adding thereto two new sections, designated sections nineteen and twenty, all relating to juvenile proceedings; definitions which are used in this article; jurisdiction of courts in juvenile proceedings; constitutional guarantees for juveniles; hearings, evidence and transcripts of juvenile proceedings; waiver and transfer of juvenile proceedings from the juvenile jurisdiction to the criminal jurisdiction of the courts; confidentiality of juvenile records; expungement of juvenile records; prohibiting discrimination against persons who have been involved in juvenile proceedings whose records have been expunged; juvenile after-care plans; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections one-a and one-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, ten, seventeen and eighteen of said article be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections nineteen and twenty, all to read as follows:

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ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1. Definitions.

1 (a) As used in this article, the term "adult" means a
2 person who is at least eighteen years of age.

3 (b) As used in this article, the term "child" means a
4 person who has not attained the age of eighteen years, or a
5 person who is otherwise subject to the juvenile jurisdiction
6 of a court pursuant to this article.

7 (c) As used in this article, the term "extrajudicial
8 statement" means any utterance, written or oral, which was
9 made outside of court.

10 (d) As used in this article, the term "juvenile" shall
11 have the same meaning as the term "child."

12 (e) As used in this article, the term "res gestae" means
13 a spontaneous declaration made by a person immediately
14 after an event and before the person has had an
15 opportunity to conjure a falsehood.

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

**§49-5-2. Juvenile jurisdiction of circuit courts, magistrate
courts and municipal courts; constitutional
guarantees; hearings; evidence and transcripts.**

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

3 (b) If during a criminal proceeding in any court, it is
4 ascertained or appears that the defendant is under the age
5 of nineteen years and was under the age of eighteen years
6 at the time of the alleged offense, the matter shall be
7 immediately certified to the juvenile jurisdiction of the

8 circuit court. The circuit court shall assume jurisdiction of
9 the case in the same manner as cases which are originally
10 instituted in the circuit court by petition.

11 (c) Notwithstanding any other provision of this article,
12 Magistrate courts shall have concurrent juvenile
13 jurisdiction with the circuit court for a violation of a traffic
14 law of West Virginia or for any violation of chapter twenty
15 of this code. Juveniles shall be liable for punishment for
16 violations of such laws in the same manner as adults
17 except that magistrate courts shall have no jurisdiction to
18 impose a sentence of incarceration for the violation of
19 such laws.

20 (d) Notwithstanding any other provision of this
21 article, municipal courts shall have concurrent juvenile
22 jurisdiction with the circuit court for a violation of any
23 municipal ordinance regulating traffic or for any
24 municipal curfew ordinance which is enforceable.
25 Municipal courts may impose the same punishment for
26 such violations as a circuit court exercising its juvenile
27 jurisdiction could properly impose, except that municipal
28 courts shall have no jurisdiction to impose a sentence of
29 incarceration for the violation of such laws.

30 (e) A juvenile may be brought before the circuit court
31 for proceedings under this article only by the following
32 means:

33 (1) By a juvenile petition requesting that the juvenile
34 be adjudged neglected or delinquent;

35 (2) By certification or transfer to the juvenile
36 jurisdiction of the circuit court from the criminal
37 jurisdiction of the circuit court, from any foreign court, or
38 from any magistrate court or municipal court in West
39 Virginia; or

40 (3) By a warrant, capias or attachment which charges a
41 juvenile with an act of delinquency, is issued by a judge,
42 referee or magistrate, and is returnable to the circuit court.

43 (f) If a juvenile commits an act which would be a
44 crime if committed by an adult, and the juvenile is
45 adjudged a delinquent for such act, the jurisdiction of the

46 court which adjudged the juvenile a delinquent shall
47 continue until the juvenile becomes twenty-one years of
48 age. The court shall have the same power over the person
49 that it had before he or she became an adult, and shall
50 have the further power to sentence the person to a term of
51 incarceration which cannot exceed six months. This
52 authority shall not preclude the court from exercising
53 criminal jurisdiction over the person if he or she violates
54 the law after becoming an adult or if the proceedings have
55 been transferred to the court's criminal jurisdiction
56 pursuant to section ten of this article.

57 (g) A juvenile shall be entitled to be admitted to bail
58 or recognizance in the same manner as an adult and shall
59 have the protection guaranteed by Article III of the West
60 Virginia Constitution.

61 (h) A juvenile shall have the right to be effectively
62 represented by counsel at all stages of proceedings under
63 the provisions of this article. If the juvenile or the
64 juvenile's parents or custodian executes an affidavit
65 showing that the juvenile cannot afford an attorney the
66 court shall appoint an attorney, who will be paid in
67 accordance with article twenty-one, chapter twenty-nine of
68 this code.

69 (i) In all proceedings under this article, the juvenile
70 shall have a meaningful opportunity to be heard. This
71 includes the opportunity to testify and to present and
72 cross-examine witnesses. The general public shall be
73 excluded from all such proceedings except persons whose
74 presence is requested by the parties and other persons
75 whom the circuit court determines have a legitimate
76 interest in the proceedings.

77 (j) At all adjudicatory hearings held under this article,
78 all procedural rights afforded to adults in criminal
79 proceedings shall be applicable unless specifically pro-
80 vided otherwise in this chapter.

81 (k) At all adjudicatory hearings held under this article,
82 the rules of evidence applicable in criminal cases shall
83 apply, including the rule against written reports based
84 upon hearsay.

85 (l) Extrajudicial statements, other than res gestae,
86 which were made by a juvenile under fourteen years of
87 age to law-enforcement officials or while in custody shall
88 not be admissible unless such statements were made in the
89 presence of the juvenile's counsel. Extrajudicial statements,
90 other than res gestae, which were made by a juvenile who
91 is at least fourteen years of age to law-enforcement
92 officials or while in custody shall not be admissible unless
93 such statements were made in the presence of the juvenile's
94 counsel or in the presence of, and with the consent of, the
95 juvenile's parent or custodian who has been fully informed
96 regarding the juvenile's right to a prompt detention
97 hearing, the juvenile's right to counsel, including
98 appointed counsel if the juvenile cannot afford counsel,
99 and the juvenile's privilege against self-incrimination.

100 (m) A transcript or recording shall be made of all
101 transfer, adjudicatory and dispositional hearings. At the
102 conclusion of any hearing, the circuit court shall make
103 findings of fact and conclusions of law, both of which
104 shall appear on the record. The court reporter shall
105 furnish a transcript of the proceedings at no charge to any
106 indigent juvenile who seeks review of any proceeding
107 under this article if an affidavit is filed stating that neither
108 the juvenile nor the juvenile's parents or custodian have
109 the ability to pay for the transcript.

§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 if
6 juvenile jurisdiction should or must be waived and the
7 proceeding transferred to the criminal jurisdiction of the
8 court. Any motion filed in accordance with this section
9 shall state, with particularity, the grounds for the requested
10 transfer, including the grounds relied upon set forth in
11 subsections (d), (e), (f) and (g) of this section and the
12 burden shall be upon the state to establish such grounds
13 by clear and convincing proof. Any hearing held under
14 the provisions of this section shall be held within seven

15 days of the filing of the motion for transfer unless it is
16 continued 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 shall
19 be made by or before the court until a decision shall have
20 been made relative to whether the proceeding is to be
21 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 of
24 fourteen years shall make a demand on the record to be
25 transferred to the criminal jurisdiction of the court. Such
26 cases may then be referred to a magistrate for trial, if
27 otherwise cognizable by a magistrate.

28 (d) The court shall transfer a juvenile proceeding to
29 criminal jurisdiction if there is probable cause to believe
30 that:

31 (1) The child is at least fourteen years of age and has
32 committed the crime of treason under section one, article
33 one, chapter sixty-one of this code; the crime of murder
34 under sections one, two and three, article two of said
35 chapter; the crime of robbery involving the use or
36 presenting of firearms or other deadly weapons under
37 section twelve of said article; the crime of kidnapping
38 under section fourteen-a of said article; the crime of first
39 degree arson under section one, article three of said
40 chapter; or the crime of sexual assault in the first degree
41 under section three, article eight-b of said chapter; or

42 (2) The child is at least fourteen years of age and has
43 committed an offense of violence to the person which
44 would be a felony if the child were an adult: *Provided,*
45 That the child has been previously adjudged delinquent
46 for the commission of an offense of violence to the person
47 which would be a felony if the child were an adult; or

48 (3) The child is at least fourteen years of age and has
49 committed an offense which would be a felony if the child
50 were an adult: *Provided,* That the child has been twice
51 previously adjudged delinquent for the commission of an
52 offense which would be a felony if the child were an adult.

53 (e) The court may transfer a juvenile proceeding to
54 criminal jurisdiction if there is probable cause to believe
55 that the child would otherwise satisfy the provisions of
56 subdivision (1), subsection (d) of this section, but who is
57 younger than fourteen years of age.

58 (f) The court may, upon consideration of the child's
59 mental and physical condition, maturity, emotional
60 attitude, home or family environment, school experience
61 and similar personal factors, transfer a juvenile proceeding
62 to criminal jurisdiction if there is probable cause to believe
63 that the child would otherwise satisfy the provisions of
64 subdivision (2) or (3), subsection (d) of this section, but
65 who is younger than fourteen years of age.

66 (g) The court may, upon consideration of the child's
67 mental and physical condition, maturity, emotional
68 attitude, home or family environment, school experience
69 and similar personal factors, transfer a juvenile proceeding
70 to criminal jurisdiction if there is probable cause to believe
71 that:

72 (1) The child, who is at least fourteen years of age, has
73 committed an offense of violence to the person which
74 would be a felony if the child were an adult; or

75 (2) The child, who is at least fourteen years of age, has
76 committed an offense which would be a felony if the child
77 were an adult: *Provided*, That the child has been
78 previously adjudged delinquent for the commission of a
79 crime which would be a felony if the child were an adult;
80 or

81 (3) The child, who is at least fourteen years of age,
82 used or presented a firearm or other deadly weapon
83 during the commission of a felony; or

84 (4) The child has committed a violation of the
85 provisions of section four hundred one, article four,
86 chapter sixty-a of this code which would be a felony if the
87 child were an adult involving the manufacture, delivery or
88 possession with the intent to deliver a narcotic drug. For
89 purposes of this subdivision, the term "narcotic drug" shall
90 have the same definition as that set forth in section one
91 hundred one, article one of said chapter.

92 (h) For purposes of this section, the term "offense of
93 violence" means an offense which involves the use or
94 threatened use of physical force against a person.

95 (i) If, after a hearing, the court directs the transfer of
96 any juvenile proceeding to criminal jurisdiction, it shall
97 state on the record the findings of fact and conclusions of
98 law upon which its decision is based or shall incorporate
99 such findings of fact and conclusions of law in its order
100 directing transfer.

101 (j) The child shall have the right to directly appeal an
102 order of transfer to the supreme court of appeals of the
103 state of West Virginia: *Provided*, That notice of intent to
104 appeal and a request for transcript be filed within ten days
105 from the date of the entry of any such order and the
106 petition for appeal shall be presented to the supreme court
107 of appeals within forty-five days from the entry of such
108 order, and that, in default thereof, the right of appeal and
109 the right to object to such order of transfer shall be waived
110 and may not thereafter be asserted. The provisions of
111 article five, chapter fifty-eight of this code pertaining to
112 the appeals of judgments in civil actions shall apply to
113 appeals under this chapter except as herein modified.
114 The court may, within forty-five days of the entry of the
115 order of transfer, by appropriate order, extend and
116 re-extend the period in which to file the petition for
117 appeal for such additional time, not to exceed a total
118 extension of sixty days, as in the court's opinion may be
119 necessary for preparation of the transcript: *Provided*,
120 *however*, That the request for such transcript was made by
121 the party seeking appeal within ten days of entry of such
122 order of transfer. In the event any such notice of intent to
123 appeal and request for transcript be timely filed,
124 proceedings in criminal court shall be stayed upon motion
125 of the defendant pending final action of the supreme
126 court of appeals thereon.

§ 49-5-17. Confidentiality of juvenile records.

1 (a) Records of a juvenile proceeding conducted under
2 this chapter are not public records, and therefore they
3 shall not be disclosed to anyone unless disclosure is
4 otherwise authorized by this section.

5 (b) Notwithstanding the provisions of subsection (a)
6 of this section, a copy of a juvenile's records shall
7 automatically be disclosed to certain school officials,
8 subject to the following terms and conditions:

9 (1) Only certain types of juvenile records shall be
10 disclosed. These include and are limited to cases in which:

11 (A) The juvenile has been charged with an offense
12 which would be a crime if it was committed by an adult;
13 and

14 (i) The offense involves violence against another
15 person;

16 (ii) The offense involves possession of a dangerous or
17 deadly weapon; or

18 (iii) The offense involves possession or delivery of a
19 controlled substance as that term is defined in chapter
20 60A-1-101(d) of this code; and

21 (B) The juvenile case has proceeded to a point where
22 one or more of the following has occurred:

23 (i) A judge, magistrate or referee has determined that
24 there is probable cause to believe that the juvenile
25 committed the offense as charged;

26 (ii) A judge, magistrate or referee has placed the
27 juvenile on probation for the offense;

28 (iii) A judge, magistrate or referee has placed the
29 juvenile into an improvement period in accordance with
30 section nine, article five, chapter forty-nine of this code; or

31 (iv) Some other type of disposition has been made of
32 the case other than dismissal.

33 (2) The circuit court for each judicial circuit in West
34 Virginia shall designate one person to supervise the
35 disclosure of juvenile records to certain school officials.

36 (3) If the juvenile attends a West Virginia public
37 school, the person designated by the circuit court shall
38 automatically disclose all records of a juvenile case to the
39 county superintendent of schools in the county in which
40 the juvenile attends school. The person designated by the

41 circuit court shall also automatically disclose all records of
42 a juvenile case to the principal of the school which the
43 juvenile attends.

44 (4) If the juvenile attends a private school in West
45 Virginia, the person designated by the circuit court shall
46 determine the identity of the highest ranking person at
47 that school, and shall automatically disclose all records of
48 a juvenile's case to that person.

49 (5) If the juvenile does not attend school at the time
50 the juvenile's case is pending, the person designated by the
51 circuit court shall not transmit the juvenile's records to any
52 school. However, the person designated by the circuit
53 court shall transmit the juvenile's records to any school in
54 West Virginia which the juvenile subsequently attends.

55 (6) The person designated by the circuit court shall
56 not automatically transmit juvenile records to a school
57 which is not located in West Virginia. Instead, the person
58 designated by the circuit court shall contact the
59 out-of-state school, inform it that juvenile records exist,
60 and make an inquiry regarding whether the laws of that
61 state permit the disclosure of juvenile records. If so, the
62 person designated by the circuit court shall consult with
63 the circuit judge who presided over the case to determine
64 whether the juvenile records should be disclosed to the
65 out-of-state school. The circuit judge shall have discretion
66 in determining whether to disclose the juvenile records,
67 and shall consider whether the other state's law regarding
68 disclosure provides for sufficient confidentiality of
69 juvenile records, using this section as a guide. If the
70 circuit judge orders the juvenile records to be disclosed,
71 they shall be disclosed in accordance with the provisions
72 of subdivision (7) of this subsection.

73 (7) The person designated by the circuit court shall
74 transmit the juvenile's records to the appropriate school
75 official under cover of a letter emphasizing the
76 confidentiality of such records and directing the official to
77 consult this section of the code. A copy of this section of
78 the code shall be transmitted with the juvenile's records
79 and cover letter.

80 (8) Juvenile records must be treated as absolutely
81 confidential by the school official to whom they are
82 transmitted, and nothing contained within the juvenile's
83 records shall be noted on the juvenile's permanent
84 educational record. The juvenile records are to be
85 maintained in a secure location and are not to be copied
86 under any circumstances. However, the principal of a
87 school to whom the records are transmitted shall have the
88 duty to disclose the contents of those records to any
89 teacher who teaches a class in which the subject juvenile is
90 enrolled and to the regular driver of a school bus in which
91 the subject juvenile is regularly transported to or from
92 school. Furthermore, any school official to whom the
93 juvenile's records are transmitted may disclose the contents
94 of such records to any adult within the school system who,
95 in the discretion of the school official, has the need to be
96 aware of the contents of those records.

97 (9) If for any reason a juvenile ceases to attend a
98 school which possesses that juvenile's records, the
99 appropriate official at that school shall seal the records
100 and return them to the circuit court which sent them to
101 that school. If the juvenile has changed schools for any
102 reason, the former school shall inform the circuit court of
103 the name and location of the new school which the
104 juvenile attends or will be attending. If the new school is
105 located within West Virginia, the person designated by the
106 circuit court shall forward the juvenile's records to the
107 juvenile's new school in the same manner as provided in
108 subdivision (7) of this subsection. If the new school is not
109 located within West Virginia, the person designated by the
110 circuit court shall handle the juvenile records in
111 accordance with subdivision (6) of this subsection.

112 If the juvenile has been found to be not guilty of an
113 offense for which records were previously forwarded to
114 the juvenile's school on the basis of a finding of probable
115 cause, the circuit court shall not forward those records to
116 the juvenile's new school. However, this shall not affect
117 records related to other prior or future offenses. If the
118 juvenile has graduated or quit school, or will otherwise not
119 be attending another school, the circuit court shall retain
120 the juvenile's records and handle them as otherwise

121 provided in this article.

122 (10) Under no circumstances shall one school transmit
123 a juvenile's records to another school.

124 (11) Under no circumstances shall juvenile records be
125 automatically transmitted to a college, university or other
126 post-secondary school.

127 (12) No one shall suffer any penalty, civil or criminal,
128 for accidentally or negligently attributing certain juvenile
129 records to the wrong person. However, such person shall
130 have the affirmative duty to promptly correct any mistake
131 that he or she has made in disclosing juvenile records
132 when the mistake is brought to his or her attention. A
133 person who intentionally attributes false information to a
134 certain person shall be subjected to both criminal and civil
135 penalties, in accordance with subsection (d) of this section.

136 (13) If a judge, magistrate or referee has determined
137 that there is probable cause to believe that a juvenile has
138 committed an offense but there has been no final
139 adjudication of the charge, the records which are
140 transmitted by the circuit court shall be accompanied by a
141 notice which clearly states in bold print that there has been
142 no determination of delinquency and that our legal system
143 requires a presumption of innocence.

144 (c) Notwithstanding the provisions of subsection (a) of
145 this section, juvenile records may be disclosed, subject to
146 the following terms and conditions:

147 (1) If a juvenile case is transferred to the criminal
148 jurisdiction of the circuit court, the juvenile records of that
149 particular case may be disclosed if the juvenile who is
150 transferred fails to timely file an appeal of the transfer
151 order; files a timely appeal of the transfer order but the
152 Supreme Court of Appeals of West Virginia refuses to
153 hear the appeal; or files a timely appeal of the transfer
154 order which is affirmed by the Supreme Court of Appeals
155 of West Virginia. All records of the case shall be open to
156 public inspection following any of these occurrences.
157 These records shall be handled pursuant to all of the same
158 strictures, guidelines and requirements of law which exist
159 regarding disclosure of records for adults.

160 (2) Upon a written petition and pursuant to a written
161 order, the circuit court may permit disclosure of juvenile
162 records to:

163 (A) A court which has juvenile jurisdiction and has the
164 juvenile before it in a juvenile proceeding;

165 (B) A court exercising criminal jurisdiction over the
166 juvenile which requests such records for the purpose of a
167 presentence report or disposition proceeding;

168 (C) The juvenile, the juvenile's parents or legal
169 guardian, or the juvenile's counsel;

170 (D) The officials of a public institution to which the
171 juvenile is committed if they require such records for
172 transfer, parole or discharge; or

173 (E) A person who is conducting research. However,
174 juvenile records shall be disclosed for research purposes
175 only upon the condition that information which would
176 identify the subject juvenile or the juvenile's family shall
177 not be disclosed.

178 (d) Any person who willfully violates this section shall
179 be guilty of a misdemeanor, and upon conviction thereof
180 shall be fined not more than one thousand dollars,
181 incarcerated not more than six months, or be both fined
182 and incarcerated. Furthermore, a violator of this section
183 shall be liable for damages in the amount of three
184 hundred dollars or the actual amount of damages,
185 whichever is greater.

§49-5-18. Expungement of juvenile records.

1 (a) One year after the juvenile's eighteenth birthday, or
2 one year after personal or juvenile jurisdiction has
3 terminated, whichever is later, the records of a juvenile
4 proceeding conducted under this chapter, including but
5 not limited to law-enforcement files and records, shall be
6 expunged by operation of law.

7 (b) To expunge juvenile records they shall be returned
8 to the circuit court in which the case was pending and be
9 kept in a separate confidential file. The records shall be
10 physically marked to show that they have been expunged

11 and shall be securely sealed and filed in such a manner
12 that no one can determine the identity of the juvenile.

13 (c) Expunged records cannot be opened except upon
14 order of the circuit court.

15 (d) Expungement of juvenile records has the legal
16 effect of extinguishing the offense as if it never occurred.

17 (e) The records of a juvenile convicted under the
18 criminal jurisdiction of the circuit court pursuant to
19 subdivision (1), subsection (d), section ten of this article
20 shall not be expunged.

21 (f) Any person who willfully violates this section shall
22 be guilty of a misdemeanor, and, upon conviction thereof,
23 shall be fined not more than one thousand dollars,
24 incarcerated not more than six months, or be both fined
25 and incarcerated. Furthermore, a violator of this section
26 shall be liable for damages in the amount of three
27 hundred dollars or the actual amount of damages,
28 whichever is greater.

§ 49-5-19. Discrimination prohibited.

1 (a) No individual, firm, corporation or other entity
2 shall discriminate against any person in any manner due
3 to that person's prior involvement in a proceeding under
4 this article if that person's records have been expunged
5 pursuant to the provisions of this article. This includes, but
6 is not limited to, discrimination relating to employment,
7 housing, education, obtaining credit, and contractual
8 rights.

9 (b) Any person who willfully violates this section shall
10 be guilty of a misdemeanor, and, upon conviction thereof,
11 shall be fined not more than one thousand dollars,
12 incarcerated not more than six months, or be both fined
13 and incarcerated. Furthermore, a violator of this section
14 shall be liable to the person who has been discriminated
15 against for damages in the amount of three hundred
16 dollars or the actual amount of damages, whichever is
17 greater.

§49-5-20. After-care plans.

1 (a) At least forty-five days prior to the discharge of a
2 juvenile from any institution or facility to which the
3 juvenile was committed pursuant to subdivision (5), (6) or
4 (7) of subsection (b), section thirteen of this article, the
5 director of the institution or facility shall forward a copy
6 of the juvenile's proposed after-care plan to the circuit
7 court which committed the juvenile. A copy of the plan
8 shall also be sent to: (1) The juvenile's parents or legal
9 guardian; (2) the juvenile's lawyer; (3) the juvenile's
10 probation officer or community mental health center
11 professional; (4) the prosecuting attorney of the county in
12 which the original commitment proceedings were held;
13 and (5) the principal of the school which the juvenile will
14 attend. The plan shall have a list of the names and
15 addresses of these persons attached to it.

16 (b) The after-care plan shall contain a detailed
17 description of the education, counseling and treatment
18 which the juvenile received while at the institution or
19 facility and it shall also propose a plan for education,
20 counseling and treatment for the juvenile upon the
21 juvenile's discharge. The plan shall also contain a
22 description of any problems the juvenile has, including the
23 source of those problems and it shall propose a manner
24 for addressing those problems upon discharge.

25 (c) Within twenty-one days of receiving the plan, the
26 juvenile's probation officer or community mental health
27 center professional shall submit written comments upon
28 the plan to the circuit court which committed the juvenile.
29 Any other person who received a copy of the plan
30 pursuant to subsection (a) of this section may submit
31 written comments upon the plan to the circuit court which
32 committed the juvenile. Any person who submits com-
33 ments upon the plan shall send a copy of those comments
34 to every other person who received a copy of the plan.

35 (d) Within twenty-one days of receiving the plan, the
36 juvenile's probation officer or community mental health
37 center professional shall contact all persons, organizations
38 and agencies which are to be involved in executing the
39 plan to determine whether they are capable of executing
40 their responsibilities under the plan and to further

41 determine whether they are willing to execute their
42 responsibilities under the plan.

43 (e) If adverse comments or objections regarding the
44 plan are submitted to the circuit court, it shall, within
45 forty-five days of receiving the plan, hold a hearing to
46 consider the plan and the adverse comments or objections.
47 Any person, organization or agency which has responsi-
48 bilities in executing the plan, or their representatives, may
49 be required to appear at the hearing unless they are
50 excused by the circuit court. Within five days of the
51 hearing, the circuit court shall issue an order which adopts
52 the plan as submitted or as modified in response to any
53 comments or objections.

54 (f) If no adverse comments or objections are
55 submitted, a hearing need not be held. In that case, the
56 circuit court shall consider the plan as submitted and shall
57 within forty-five days of receiving the plan, issue an order
58 which adopts the plan as submitted.

59 (g) Notwithstanding the provisions of subsections (e)
60 and (f) of this section, the plan which is adopted by the
61 circuit court shall be in the best interests of the juvenile
62 and shall also be in conformity with West Virginia's
63 interest in youth as embodied in subsection (b), section
64 thirteen of this article .

65 (h) The circuit court which committed the juvenile
66 shall appoint the juvenile's probation officer or a com-
67 munity mental health center professional to act as super-
68 visor of the plan. The supervisor shall report the juvenile's
69 progress under the plan to the circuit court every sixty
70 days, or until the circuit court determines that no report or
71 no further care is necessary.

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

Randy Schoonover
Chairman Senate Committee

Rudy Seacrist
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Parrell E. Reeves
Clerk of the Senate

Gary M. Boush
Clerk of the House of Delegates

Carl Roy Tomblin
President of the Senate

Paul D. Leburn
Speaker of the House of Delegates

The within is approved this the 1st
day of April, 1996.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date

4/1/96

Time

11:14am