WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. __2680__

Givens, Staton, Kominar, Mahan,
(By Delegate __________Underwood, Riggsand Smirl__________)

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Passed ________________ April 12, ________________ 1997

In Effect ________________ July 1, 1997 ________________ Passage
ENROLLED

H. B. 2680

(By Delegates Givens, Staton, Kominar, Mahan, Underwood, Riggs and Smirl)

[Passed April 12, 1997; in effect July 1, 1997.]

AN ACT to repeal section sixteen-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one of said chapter; to amend and reenact section sixteen, article two of said chapter; to amend and reenact sections thirteen and sixteen-a, article five of said chapter; to further amend said article five by adding thereto a new section, designated section thirteen-e; to amend and reenact sections six and six-a, article five-a of said chapter; to amend and reenact sections two and four, article five-b of said chapter be amended and reenacted; that article five-c of said chapter be amended and reenacted; to further amend said chapter by adding thereto a new article, designated article five-e; to amend and reenact section eight, article six of said chapter; to amend article seven of said chapter by adding thereto three new sections, designated sections thirty, thirty-one and thirty-two; and to further amend said chapter by adding thereto a new article, designated article nine, all relating to reforming and reorganizing the system of child welfare throughout the state; setting forth purposes and defining certain terms; transferring certain functions to the division of juvenile services within the department of military affairs and public safety; providing for disposition in juvenile proceedings; establishing a comprehensive plan for juveniles; requiring juvenile facility rules; authorizing
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assignment of personnel by division of juvenile services; providing for state plan predispositional detention of juveniles; stating purpose and intent of juvenile offender rehabilitation act; setting forth the responsibilities of the department of health and human resources and the division of juvenile services with regard to juveniles; providing for the creation of oversight committees; prescribing the powers and duties of committees; providing for the appointment of members, time and place of meetings, assistance of other agencies, and reimbursement for expenses; creating the division of juvenile services within the department of military affairs and public safety; prescribing duties and responsibilities of the division of juvenile services; transferring fiscal responsibility for the Kanawha home for children to the division of juvenile services; providing for a study to establish a facility for housing juveniles who have been transferred to adult criminal jurisdiction; requiring legislative rules for specialized training for juvenile corrections officers and detention center employees; establishing a procedure for summary review of certain facilities or services, in lieu of certificate of need review; establishing a special account in the state treasury known as the child assessment and in-state placement fund, providing for a juvenile justice database; creating a child placement alternatives corporation; giving management and control of corporation to board of directors; prescribing the powers of the corporation; providing for a structured risk assessment and classification for children placed in out-of-state facilities; and requiring statistical and analytical reports.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

(a) The purpose of this chapter is to provide a system of child welfare for the children of this state that has goals to:

(1) Assure each child care and guidance;

(2) Serve the mental and physical welfare of the child;

(3) Preserve and strengthen the child's family ties;

(4) Recognize the fundamental rights of children and parents;

(5) Adopt procedures and establish programs that are family-focused rather than focused on specific family members, except where the best interests of the child or the safety of the community are at risk;

(6) Involve the child and his or her family or caregiver in the planning and delivery of programs and services;

(7) Provide services that are community-based, in the least restrictive settings that are consonant with the needs and potentials of the child and his or her family;

(8) Provide for early identification of the problems of children and their families, and respond appropriately with measures and services to prevent abuse and neglect or delinquency;
(9) Provide a system for the rehabilitation or
detention of juvenile delinquents; and

(10) Protect the welfare of the general public.

In pursuit of these goals it is the intention of the
Legislature to provide for removing the child from the
custody of parents only when the child’s welfare or the
safety and protection of the public cannot be adequately
safeguarded without removal; and, when the child has to
be removed from his or her family, to secure for the child
custody, care and discipline consistent with the child’s best
interests and other goals herein set out.

(b) The child welfare service of the state shall be
administered by the state department of health and human
resources and the division of juvenile services of the
department of military affairs and public safety.

The state department of health and human resources
is designated as the agency to cooperate with the United
States department of health and human services and
United States department of justice in extending and
improving child welfare services, to comply with
regulations thereof, and to receive and expend federal
funds for these services. The division of juvenile services
of the department of military affairs and public safety is
designated as the agency to cooperate with the United
States department of health and human services and
United States department of justice in operating,
maintaining and improving juvenile correction facilities
and centers for the predispositional detention of children,
to comply with regulations thereof, and to receive and
expend federal funds for these services

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


The division of juvenile services of the department of
military affairs and public safety is hereby authorized and
empowered to operate and maintain centers for juveniles
needing detention pending disposition by a court having
juvenile jurisdiction or temporary care following such
court action.

The state department of health and human resources
is hereby authorized and empowered to provide care,
support and protective services for children who are
handicapped by dependency, neglect, single parent status,
mental or physical disability, or who for other reasons are
in need of public service. Such department is also hereby
authorized and empowered in its discretion to accept
children for care from their parent or parents, guardian,
custodian or relatives and to accept the custody of
children committed to its care by courts. The department
of human services or any county office of such
department is also hereby authorized and empowered in
its discretion to accept temporary custody of children for
care from any law-enforcement officer in an emergency
situation.

Within ninety days of the date of the signatures to
a voluntary placement agreement, after receipt of physical
custody, the state department of health and human
resources shall file with the court a petition for review of
the placement, stating the child’s situation and the
circumstance that gives rise to the voluntary placement. If
the department intends to extend the voluntary placement
agreement, the department shall file with the court a copy
of the child’s case plan. The court shall appoint an
attorney for the child, who shall also receive a copy of the
case plan. The court shall schedule a hearing and shall
give notice of the time and place and right to be present at
such hearing to: The child’s attorney; the child, if twelve
years of age or older; the child’s parents or guardians; the
child’s foster parents; and any other such persons as the
court may in its discretion direct. The child’s presence at
such hearing may be waived by the child’s attorney at the
request of the child or if the child would suffer emotional
harm. At the conclusion of the proceedings, but no later
than ninety days after the date of the signatures to the
voluntary placement agreement, the court shall enter an
order determining whether or not continuation of the
voluntary placement is in the best interests of the child;
specifying under what conditions the child’s placement
shall continue; and specifying whether or not the
department has made reasonable efforts to reunify the
family and/or provide a plan for the permanent placement
of the child.

ARTICLE 5. JUVENILE PROCEEDINGS.


(a) In aid of disposition, the juvenile probation
officer assigned to the court shall, upon request of the
court, make an investigation of the environment of the
child and the alternative dispositions possible. The court,
upon its own motion, or upon request of counsel, may
order a psychological examination of the child. The
report of such examination and other investigative and
social reports shall not be made available to the court until
after the adjudicatory hearing. Unless waived, copies of
the report shall be provided to counsel for the petitioner
and counsel for the child no later than seventy-two hours
prior to the dispositional hearing.

(b) Following the adjudication, the court shall
conduct the dispositional proceeding, giving all parties an
opportunity to be heard. In disposition the court shall not
be limited to the relief sought in the petition and shall, in
electing from the following alternatives, consider the best
interests of the child and the welfare of the public:

(1) Dismiss the petition;

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

(3) Upon a finding that the child is in need of
extra-parental supervision: (A) Place the child under the
supervision of a probation officer of the court or of the
court of the county where the child has his or her usual
place of abode or other person while leaving the child in
custody of his or her parent or custodian; and (B)
prescribe a program of treatment or therapy or limit the
child's activities under terms which are reasonable and
within the child's ability to perform, including
participation in the litter control program established
pursuant to section twenty-five, article seven, chapter
twenty of this code, or other appropriate programs of
community service;

(4) Upon a finding that a parent or custodian is not
willing or able to take custody of the child, that a child is
not willing to reside in the custody of his parent or
custodian, or that a parent or custodian cannot provide the
necessary supervision and care of the child, the court may
place the child in temporary foster care or temporarily
commit the child to the department of health and human
resources or a child welfare agency. The court order shall
state that continuation in the home is contrary to the best
interest of the child and why; and whether or not the state
department made a reasonable effort to prevent the
placement or that the emergency situation made such
efforts unreasonable or impossible. Whenever the court
transfers custody of a youth to the department of human
services, an appropriate order of financial support by the
parents or guardians shall be entered in accordance with
section five, article seven of this chapter and guidelines
promulgated by the supreme court of appeals;

(5) Upon a finding that the best interests of the child
or the welfare of the public require it, and upon an
adjudication of delinquency pursuant to subdivision (1),
section four, article one of this chapter, the court may
commit the child to an industrial home, correctional
institution for children, or other appropriate facility for
the treatment, instruction and rehabilitation of juveniles:
_Provided, That_ the court maintains discretion to consider
alternative sentencing arrangements. Commitments shall
not exceed the maximum term for which an adult could
have been sentenced for the same offense. The order shall
state that continuation in the home is contrary to the best
interests of the child and why; and whether or not the state
department made a reasonable effort to prevent the
placement or that the emergency situation made such
efforts unreasonable or impossible;

(6) Upon an adjudication of delinquency pursuant to
subdivision (3) or (4), section four, article one of this
chapter, and upon a finding that the child is so totally
unmanageable, ungovernable and antisocial that the child
is amenable to no treatment or restraint short of
incarceration, commit the child to a rehabilitative facility
dedicated exclusively to the custody and rehabilitation of
children adjudicated delinquent pursuant to said
subdivision. Commitments shall not exceed the maximum
period of one year with discretion as to discharge to rest
with the director of the institution, who may release the
child and return him or her to the court for further
disposition. The order shall state that continuation in the
home is contrary to the best interests of the child and why;
and whether or not the state department made a reasonable
effort to prevent the placement or that the emergency
situation made such efforts unreasonable or impossible; or

(7) After a hearing conducted under the procedures
set out in subsections (c) and (d), section four, article five,
chapter twenty-seven of this code, commit the child to a
mental health facility in accordance with the child’s
treatment plan; the director may release a child and return
him to the court for further disposition. The order shall
state that continuation in the home is contrary to the best
interests of the child and why; and whether or not the state
department made a reasonable effort to prevent the
placement or that the emergency situation made such
efforts unreasonable or impossible.

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

(d) Following disposition, it shall be inquired of the
respondent whether or not appeal is desired and the
response transcribed; a negative response shall not be
construed as a waiver. The evidence shall be transcribed
as soon as practicable and made available to the child or
his or her counsel, if the same is requested for purposes of
further proceedings. A judge may grant a stay of
execution pending further proceedings.

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

§49-5-13e. Comprehensive plan for juveniles.

The division of juvenile services within the department of military affairs and public safety shall develop a comprehensive plan to establish a unified state system for social and rehabilitative programming and treatment of juveniles in predispositional detention centers and in juvenile correction facilities and a comprehensive plan for regional juvenile detention facilities and programs. These plans are to be submitted to the West Virginia Legislature no later than the first day of January, one thousand nine hundred ninety-eight.

The comprehensive plan for regional detention programs and facilities shall be based on a needs assessment of juvenile detention services and may locate all newly constructed detention facilities on or near a regional jail facility, with common facilities and administration as permitted by federal law.

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

The director of the division of juvenile services within the department of military affairs and public safety shall prescribe written rules and regulations subject to the provisions of chapter twenty-nine-a of this code, outlining policies and procedures governing the operation of those correctional, detention, predispositional detention centers and other facilities wherein juveniles may be housed. Said policies and procedures shall include, but shall not be limited to, standards of cleanliness, temperature and lighting; availability of medical and dental care; provision of food, furnishings, clothing and toilet articles; supervision; procedures for enforcing rules of conduct consistent with due process of law, and visitation privileges. On and after January one, one thousand nine hundred seventy-nine, a child in custody or detention shall have, at a minimum, the following rights, and the policies prescribed shall ensure that:
(1) A child shall not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or solitary confinement;

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

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

(4) A child shall be provided his own clothing or individualized clothing which is clean, supplied by the facility, and daily access to showers;

(5) A child shall have constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the child’s presence, without being read, to inspect for contraband;

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

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

(8) A child in a juvenile detention facility or state institution shall be provided access to education including teaching, educational materials and books;

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

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

Upon admission to a jail, detention facility or institution, a child shall be furnished with a copy of the rights provided him by virtue of this section and as further prescribed by rules promulgated pursuant to this section.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.
§49-5A-6. Assistance of division of juvenile services of the department of military affairs and public safety.

The division of juvenile services of the department of military affairs and public safety is authorized to assign the necessary personnel and provide adequate space for the support and operation of any facility operated by the division of juvenile services of the department of military affairs and public safety providing for the detention of children as provided in this article, subject to and not inconsistent with the appropriation and availability of funds.

§49-5A-6a. State plan for predispositional detention centers for juveniles.

(a) The division of juvenile services of the department of military affairs and public safety shall develop a comprehensive plan to maintain and improve a unified state system of regional predispositional detention centers for juveniles. The plan shall consider recommendations from the division of corrections, the governor's committee on crime, delinquency and correction, the state board of education, detention center personnel, juvenile probation officers and judicial and law-enforcement officials from throughout the state.

The principal purpose of the plan shall be, through statements of policy and program goals, to provide for the effective and efficient use of regional juvenile detention facilities.

(b) The plan shall identify operational problems of secure detention centers, including, but not limited to, overcrowding, security and violence within centers, difficulties in moving juveniles through the centers within required time periods, health needs, educational needs, transportation problems, staff turnover and morale and other perceived problem areas. The plan shall further provide recommendations directed to alleviate the problems.

(c) The plan shall include, but not be limited to, statements of policies and goals in the following areas:
(1) Licensing of secure detention centers;
(2) Criteria for placing juveniles in detention;
(3) Alternatives to secure detention;
(4) Allocation of fiscal resources to the costs of secure detention facilities;
(5) Information and referral services; and
(6) Educational regulations developed and approved by the West Virginia board of education.

(d) The legislature shall designate a committee or task force thereof, to act in a continuing capacity as an oversight committee, and shall assist the director of the division of juvenile services within the department of military affairs and public safety in the periodic review and update of the state plan for the predispositional detention centers for juveniles.

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-5B-2. Purpose and intent.

It is the purpose and intent of the Legislature to provide for the creation of all reasonable means and methods that can be established by a humane and enlightened state, solicitous of the welfare of its children, for the prevention of delinquency and for the care and rehabilitation of delinquent children. It is further the intent of the Legislature that this state, through the department of health and human resources and the division of juvenile services of the department of military affairs and public safety, establish, maintain, and continuously refine and develop, a balanced and comprehensive state program for children who are potentially delinquent or are delinquent.

§49-5B-4. Responsibilities of the department of health and human resources and division of juvenile services of the department of military affairs and public safety.
(a) The department of health and human resources and the division of juvenile services of the department of military affairs and public safety are empowered to establish, and shall establish, subject to the limits of funds available or otherwise appropriated therefor, programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the juvenile justice system. The development, maintenance and expansion of programs and services may include, but not be limited to, the following:

(1) Community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, halfway houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, day treatment and any other designated community-based diagnostic, treatment or rehabilitative service;

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

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

(4) Projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting rights of youth impacted by the juvenile justice system;

(5) Educational programs or supportive services designed to keep delinquents, and to encourage other youth to remain, in elementary and secondary schools or in alternative learning situations;
(6) Expanded use of professional and paraprofessional personnel and volunteers to work effectively with youth;

(7) Youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

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

(b) The department of health and human resources shall establish, within the funds available, an individualized program of rehabilitation for each accused juvenile offender referred to the department after being allowed an improvement period by the juvenile court, and for each adjudicated juvenile offender who, after adjudication, is referred to the department for investigation or treatment or whose custody is vested in the department. Such individualized program of rehabilitation shall take into account the programs and services to be provided by other public or private agencies or personnel which are available in the community to deal with the circumstances of the particular child. Such individualized program of rehabilitation shall be furnished to the juvenile court and shall be available to counsel for the child; it may be modified from time to time at the direction of the department or by order of the juvenile court. The department may develop an individualized program of rehabilitation for any child referred for noncustodial counseling under section five, article three of this chapter, for any child receiving counsel and advice under section three-a, article five of this chapter, or for any other child upon the request of a public or private agency.

(c) The department of health and human resources and the division of juvenile services of the department of military affairs and public safety are authorized to enter into cooperative arrangements and agreements with private
ARTICLE 5C. COMMITTEES ON JUVENILE LAW.

§49-5C-1. Creation of committees.

The Legislature shall create such committees and forums as may be necessary to oversee matters related to juvenile law, placement, housing, detention and correctional facilities. The Legislature shall delegate or contract such responsibilities and duties to other governmental bodies as needed.

§49-5C-2. Powers and duties.

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

(a) Studying the status and effectiveness of the laws relating to juvenile proceedings, the juvenile referee system, and the West Virginia juvenile offender rehabilitation act, and making recommendations as to any changes needed in the system and the ways and means to effect such changes;

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

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

(d) Filing a report to each regular session of the legislature which will include drafts of legislation necessary to effectuate any recommendations;

(e) Maintaining reference materials concerning juvenile offenders including, without limitation, information as to laws and systems in other states;

(f) Visiting, inspecting, and interviewing residents of juvenile institutions, detention facilities, and places wherein
West Virginia juveniles may be held involuntarily and making public reports of such reviews;

(g) Overseeing the maintenance and improvement of the system of predispositional detention of juveniles.

§49-5C-3. Appointment of members.

The committees may include qualified members of the general public as well as members of the Senate and the House of Delegates. An effort shall be made to include representatives of more than one political party on each committee.

§49-5C-4. Time and place of meetings.

The committees shall hold meetings at such times and places as they may designate.

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

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

§49-5C-6. Expenses; reimbursement.

The members of the committees and their assistants shall be reimbursed for all expenses actually and necessarily incurred in the performance of their duties hereunder by the joint committee on government and finance from the joint expenses fund.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-1. Policy.

It is the policy of the state to provide a continuum of care for its children who have been charged with an offense which would be a crime if committed by an adult and taken into custody. It is further the policy of the state to ensure the safe and efficient custody of a detained child through the entire juvenile justice process, and that this can best be accomplished by the state by and through a
§49-SE-2. Division created; transfer of functions; employment of comprehensive strategy.

There is hereby created the division of juvenile services within the department of military affairs and public safety. The director shall be appointed by the governor with the advice and consent of the Senate, and shall be responsible for the control and supervision of each of its offices. The director may appoint deputy directors and assign them duties as may be necessary for the efficient management and operation of the division.

The division of juvenile services shall consist of two subdivisions:

1. The office of juvenile detention, which shall assume responsibility for operating and maintaining centers for the predispositional detention of juveniles, including juveniles who have been transferred to adult criminal jurisdiction under section ten, article five, of this chapter and juveniles who are awaiting transfer to a juvenile corrections facility; and

2. The office of juvenile corrections, which shall assume responsibility for operating and maintaining juvenile corrections facilities.

§49-SE-3. Transfer of functions; duties and powers; employment of comprehensive strategy.

The division of juvenile services shall assume the following duties performed by the department of health and human resources as to juveniles in detention facilities or juvenile corrections facilities:

1. Cooperating with the United States department of justice in operating, maintaining and improving juvenile correction facilities and predispositional detention centers, complying with regulations thereof, and receiving and expending federal funds for the services, as set forth in section one, article one of this chapter;
(2) Providing care for children needing detention pending disposition by a court having juvenile jurisdiction or temporary care following such court action, as set forth in section sixteen, article two of this chapter;

(3) Assigning the necessary personnel and providing adequate space for the support and operation of any facility providing for the detention of children committed to the care of the division of juvenile services, as set forth in section six, article five-a of this chapter;

(4) Proposing rules which outline policies and procedures governing the operation of correctional, detention and other facilities in its division wherein juveniles may be housed, as set forth in section sixteen-a, article five of this chapter;

(5) Assigning the necessary personnel and providing adequate space for the support and operation of its facilities, as set forth in section six, article five-a of this chapter;

(6) Developing a comprehensive plan to maintain and improve a unified state system of predispositional detention centers for juveniles, as set forth in section six-a, article five-a of this chapter;

(7) Working in cooperation with the department of health and human resources in establishing, maintaining, and continuously refining and developing a balanced and comprehensive state program for children who are delinquent, as set forth in section two, article six-b of this chapter;

(8) In cooperation with the department of health and human resources, establishing programs and services, within available funds, designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities and to encourage a diversity of alternatives within the juvenile justice system, as set forth in section four, article five-b of this chapter;
Working in collaboration with the department of health and human resources, the division of juvenile services shall employ a comprehensive strategy for the social and rehabilitative programming and treatment of juveniles consistent with the principles adopted by the office of juvenile justice and delinquency prevention of the office of justice programs of the United States department of justice.


(a) “Kanawha home for children” means the county home for the detention of juvenile delinquents or children charged with delinquency as established by the county commission of Kanawha County pursuant to the provisions of a local bill, House Bill No. 141, enacted by the Legislature on the fourteenth day of February, one thousand nine hundred fifty-five, as set forth in the Acts of the West Virginia Legislature, Regular Session, 1955, ch. 185.

(b) After the effective date of this section, the division of juvenile services shall assume all fiscal responsibility for operating, maintaining, administering and managing the Kanawha home for children.

§49-SE-5. Adult transfer facility; rules for specialized training for juvenile corrections officers and detention center employees.

(a) On or before the first day of December, one thousand nine hundred ninety-seven, the division of juvenile services shall conduct a study of the appropriateness and cost of renovating the Ohio county jail or other facilities to house juveniles who have been transferred to adult criminal jurisdiction and/or who are awaiting post-sentencing transfer to a correctional facility.

(b) The division of juvenile services shall propose legislative rules to be promulgated by the Legislature according to the provisions of chapter twenty-nine-a of this code, to require juvenile corrections officers and detention center employees to complete specialized
training and certification. The training programs shall meet the standards of those offered or endorsed by the office of juvenile justice and delinquency prevention of the office of justice programs of the United States department of justice.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-8. Foster care review; annual reports to the court.

(a) If, twelve months after receipt (by the state department or its authorized agent) of physical custody of a child either by a court ordered placement or by a voluntary agreement, the state department has not placed a child in permanent foster care or an adoptive home or placed the child with a natural parent, the state department shall file with the court a petition for review of the case. The department shall also file with the court a report detailing the efforts that have been made to place the child in a permanent home and copies of the child’s case plan including the permanency plan as defined in section five, article six of this chapter. Copies of the report shall be sent to the child’s attorney and be made available to the child’s parent(s) or guardian. “Permanent foster care” shall mean a written arrangement with an adult or adults following a six-month trial period whereby the state department places the care, custody and control of a child until the child’s emancipation with such adult or adults. The court shall schedule a hearing in chambers, giving notice and the right to be present to: The child’s attorney; the child, if twelve years of age or older; the child’s parents; the child’s guardians; the child’s foster parents; and such other persons as the court may in its discretion direct. The child’s presence may be waived by the child’s attorney at the request of the child or if the child would suffer emotional harm. The purpose of the hearing is to review the child’s case, to determine whether and under what conditions the child’s commitment to the department shall continue, and to determine what efforts are necessary to provide the child with a permanent home. At the conclusion of the hearing the court shall in accordance with the best interests of the child enter an appropriate
order of disposition. The court order shall state (1) whether or not the department made reasonable effort to prevent out-of-home placement or that the specific situation made such effort unreasonable, (2) the permanency plan for the child, and (3) services required to meet the child's needs. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in temporary foster care, or, when a child is returned to his or her natural parents subject to conditions imposed by the court, for so long as the conditions are effective.

(b) The state department shall file a supplementary petition for review with the court within twelve months and every twelve months thereafter for every child that remains in the physical or legal custody of the state department until the child is placed in an adoptive home or permanent foster care or returned to his or her parents.

(c) The state department shall annually report to the court the current status of the placements of children in permanent care and custody of the state department who have not been adopted.

(d) The state department shall file a report with the court in any case where any child in the temporary or permanent custody of the state receives more than three placements in one year no later than thirty days after the third placement. This report shall be provided to all parties and their counsel. Upon motion by any party, the court shall review these placements and determine what efforts are necessary to provide the child with a stable foster or temporary home: Provided, That no report shall be provided to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(e) The state department shall notify, in writing, the court, the child, if over the age of twelve, the child's attorney, the parents and the parents' attorney forty-eight hours prior to the move if this is a planned move, or within forty-eight hours of the next business day after the move if this is an emergency move, except where such notification would endanger the child or the foster family.
This notice shall not be required in any case where the child is in imminent danger in the child's current placement. The location of the child need not be disclosed, but the purpose of the move should be. This requirement is not waived by placement of the child in a home or other residence maintained by a private provider. No notice shall be provided pursuant to this provision to any parent or parent's attorney whose parental rights have been terminated pursuant to this article.

(f) Nothing in this article precludes any party from petitioning the court for review of the child's case at any time. The court shall grant such petition upon a showing that there is a change in circumstance or needs of the child that warrants court review.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-30. Certificate of need not required.

(a) A certificate of need, as provided for in article two-d, chapter sixteen of this code, is not required by an entity proposing behavioral health care facilities or behavioral health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home, if a summary review is performed in accordance with the provisions of this section.

(b) A summary review of proposed health care facilities or health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home, is initiated when the proposal is recommended to the health care cost review authority by the secretary of the department of health and human resources, and the secretary has made the following findings:

(1) That the proposed facility or service is consistent with the state health plan;

(2) That the proposed facility or service is consistent with the department's programmatic and fiscal plan for behavioral health services for children with mental health and addiction disorders;
(3) That the proposed facility or service contributes to providing services that are child and family driven, with priority given to keeping children in their own homes;

(4) That the proposed facility or service will contribute to reducing the number of child placements in out-of-state facilities by making placements available in in-state facilities;

(5) That the proposed facility or service contributes to reducing the number of child placements in in-state or out-of-state facilities by returning children to their families, placing them in foster care programs, or making available school-based and out-patient services; and

(6) If applicable, that the proposed services will be community-based, locally accessible, and provided in an appropriate setting consistent with the unique needs and potential of each child and his or her family.

c) The secretary’s findings required by subsection (b) of this section shall be filed with the secretary’s recommendation and appropriate documentation. If the secretary’s findings are supported by the accompanying documentation, the proposal shall not require a certificate of need.

d) Any entity that does not qualify for summary review shall be subject to certificate of need review.

§49-7-31. Special account.

(a) There is hereby established a special account in the department of health and human resources in the state treasury to be known as the “Child Assessment and In-state Placement Fund.” Any funds provided for the purposes of this article by line-item appropriation of the Legislature in any fiscal year shall be deposited in the special account and used to carry out the purposes of this article. Balances remaining in the special account at the end of the fiscal year shall not expire or revert to the general revenue: Provided, That balances remaining in the account may be redesignated for other purposes by appropriation of the Legislature. The secretary of the department of health and human resources may order the
transfer of moneys in the special account to other accounts within the department of health and human resources, to the limited extent that children who are the subject of this article are financially and medically eligible for other programs or services of the division of health and human resources, including programs funded, in whole or in part, by federal funds.

(b) Any moneys saved by the department of health and human resources by virtue of returning children from out-of-state placements after implementing the structured risk assessment and classification system provided for in section four, article nine of this chapter shall be deposited in the child assessment and in-state placement fund and used solely for the purpose of developing and implementing programs that will reduce the numbers of children in long-term placements outside of their homes.

§49-7-32. Juvenile justice database.

The criminal justice and highway safety division of the department of military affairs and public safety is responsible for collecting, compiling and disseminating information in the juvenile justice database heretofore maintained by the facilities review panel of the juvenile justice committee. Accordingly, and notwithstanding any other provision of this code to the contrary, the division shall be granted access to confidential juvenile records for the limited purpose of continuing maintenance of the juvenile justice database: Provided, That the divisions shall keep such records confidential and not publish any information that would identify any individual juvenile.

ARTICLE 9. CHILD PLACEMENT ALTERNATIVES.

§49-9-1. Creation of child placement alternatives corporation; composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

(a) There is created as a governmental instrumentality of the state of West Virginia, a public body corporate to be known as the West Virginia child placement alternatives corporation.
(b) The child placement alternatives corporation is created and established to serve a public corporate purpose and to act for the public benefit and as a governmental instrumentality of the state of West Virginia, to act on behalf of the state and its people in serving the needs of children who are placed out of their homes or who are at risk of out-of-home placement, as well as serving families, providers and policy-makers.

(c) The child placement alternatives corporation shall be governed by a board of directors, consisting of nine members, three of whom shall be the secretary of the department of health and human resources, the director of the division of juvenile services within the department of military affairs and public safety, and the chairman of the department of behavioral medicine and psychiatry of the Robert C. Byrd health sciences center at West Virginia university, or their designated representatives as public directors, and six citizen members chosen from the general public residing in the state, no more than two of whom shall be from each congressional district, and not more than three of whom shall be from any political party.

(d) Upon organization of the child placement alternatives corporation, the governor shall appoint, by and with the advice and consent of the Senate, the six private directors to take office and to exercise all powers thereof immediately, with three appointed for terms of two years, and with three appointed for terms of four years, respectively, as the governor shall designate; at the expiration of the initial terms and for all succeeding terms, the governor shall appoint a successor to the office of private director for a term of four years in each case.

(e) In cases of any vacancy in the office of a private director, such vacancy shall be filled by appointment by the governor for the unexpired term.

(f) The governor may remove any private director whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his or her office vacant and may appoint a
person for such vacancy as provided in other cases of vacancy.

(g) The chairman of the board of directors shall be designated by the governor from among the directors.

(h) Five members of the board of directors shall constitute a quorum. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board of directors.

(i) No action shall be taken by the board of directors except upon the affirmative vote of a majority of the directors present and voting.

(j) The directors, including the chairman, vice chairman and the treasurer of the board of directors, and the secretary of the board of directors, shall receive no compensation for their services but shall be entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.


(a) The management and control of the child placement alternatives corporation shall be vested solely in the board of directors in accordance with the provisions of this article.

(b) The chairman shall be the chief executive officer of the corporation, and, in his absence, the vice chairman shall act as chief executive officer.

(c) The board of directors may appoint a chief administrative officer and may fix his title, duties and compensation.

(d) The board of directors of the corporation shall annually elect from its membership a treasurer, and shall annually elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the corporation.
(e) The treasurer of the corporation shall be custodian of all funds of the child placement alternatives corporation, and shall be bonded in such amount as the other members of the board of directors may designate.

§49-9-3. Corporate powers.

The child placement alternatives corporation is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, but not limited to, the following:

1. To act as an information broker or gatekeeper serving children, families, providers and policy-makers, functioning as the single entity responsible for recommending appropriate placements for children out of their homes and alternatives to such placements;

2. To provide one or more diagnostic and evaluation centers to accept referrals and conduct evaluations, including psychiatric, psychological, educational, pediatric and adaptive functioning, as a complement to existing community-based programs and services;

3. To identify the services and availability of services, as gatekeeper, for level assignment and placement;

4. To assist the juvenile justice system, mental health providers and social service agencies in the identification of facilities and services appropriate to the needs of individual children, providing access to placement information through one telephone call and a twenty-four hour response time;

5. To accept appropriations, gifts, grants, bequests and devises and to utilize or dispose of the same to carry out its corporate purposes;

6. To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purposes;
(7) To collect reasonable fees and charges in connection with providing services as prescribed by this article, and in connection with providing professional, consultative and project assistance services;

(8) To sue and be sued;

(9) To have a seal and alter the same at will;

(10) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;

(11) To appoint such officers, employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(12) To acquire, hold and dispose of real and personal property for its corporate purposes;

(13) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association or organization; and

(14) To make and publish such rules and regulations as are necessary to effectuate its corporate purposes.

§49-9-4. Out-of-state placements; needs assessment; screenings; referral for assessment, placement and services; limitations.

(a) On or before first day of October, one thousand nine hundred ninety-seven, the corporation shall develop and implement a structured risk assessment and classification system for West Virginia children currently placed in out-of-state facilities. The risk assessment system shall be designed to identify:

(1) Those children who require long-term placement in a facility with special features not available within this state;

(2) Those children who require long-term placement in a facility that is or may become available within this state;
Those children who require short-term care in a facility of not more than three months followed by movement to a less restrictive setting;

Those children who could be placed directly in a community-based setting with appropriate support and services.

(b) The corporation shall cause an initial screening, based on the risk assessment and classification system, to preliminarily identify those children who require long-term placement in a facility with special features not available within this state and those children for whom appropriate in-state placements may be found. After the initial screening, the corporation may conduct further screenings under this subsection at intervals established by the corporation.

(c) The corporation shall develop and implement a plan for (1) reviewing and assessing the needs of those children for whom appropriate in-state placements may be found and (2) developing and implementing specific in-state alternatives for placement of each child, including recommended support services. Based on the initial screening, any or all of the children for whom appropriate in-state placements may be found may be provided with further review and assessment, appropriate in-state placement, and services under. The corporation shall consider:

(1) Services through community-based programs to assist in the prevention of the need for more costly residential care;

(2) The resources and programming available through family resource networks and multidisciplinary teams;

(3) The recommendations of legislative and executive committees, commissions and task forces established to study issues affecting juvenile placement;

(4) The comprehensive strategy and assessment and classification models endorsed by the office of juvenile
justice and delinquency prevention of the United States
department of justice; and

(5) Individual concerns to be addressed by service
and care providers.

(d) The corporation may issue requests for proposals
to implement the provisions of this section, and may solicit
alternate proposals to meet a defined need. The
corporation may further accept bids from any person,
firm, agency or corporation, and may enter into contracts
or agreements with public or private agencies, licensed
health care providers, or other qualified persons for the
following functions or combinations of the following
functions, according to standards established by the
corporation:

(1) Conducting needs assessments for children
currently in out-of-state facilities for whom appropriate
in-state alternatives may be found and, if the corporation
determines that evaluation of family resources and needs
is necessary, the child's family;

(2) Recommending a service plan that best meets the
individual needs of the child and may include support
services for his or her family;

(3) Obtaining appropriate care, treatment or place-
ment and appropriate community-based service.

§49-9-5. Statistical and analytical reports.

Beginning with the last quarter of the calendar year
one thousand nine hundred ninety-seven, the corporation,
in cooperation with the secretary of health and human
resources shall prepare a quarterly statistical and analytical
report regarding the numbers of children returned to the
state since the inception of the program and during the
quarter, and the effectiveness of the program established
in this article. Copies of the quarterly statistical and
analytical reports shall be furnished to the governor and to
the joint committee on government and finance.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect July 1, 1997.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the ______ day of ______, 1997

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 5/1/97
Time 3:45 PM