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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 4560

(By Delegates Givens, Douglas, Fleischauer,  
Mezzatesta, Stator, Facemyer and Trump)



Passed March 14, 1998

In Effect July 1, 1998

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**H. B. 4560**

(BY DELEGATES GIVENS, DOUGLAS, FLEISCHAUER,  
MEZZATESTA, STATON, FACEMYER AND TRUMP)

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[Passed March 14, 1998; in effect July 1, 1998.]

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AN ACT to amend and reenact section four, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two of said chapter, relating to reinserting homes for unmarried mothers into the definition of "child welfare agency" and providing that the department of health and human resources is responsible for the infant child of an unmarried juvenile who is in the department's custody without requiring that parent to relinquish custody of the infant to the department.

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

That section four, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article two of said chapter be amended and reenacted to read as follows:

**ARTICLE 1. PURPOSES; DEFINITIONS.**

**§49-1-4. Other definitions.**

- 1 As used in this chapter:
- 2 (1) "Child welfare agency" means any agency or
- 3 facility maintained by the state or any county or

4 municipality thereof, or any agency or facility maintained  
5 by an individual, firm, corporation, association or  
6 organization, public or private, to receive children for care  
7 and maintenance or for placement in residential care  
8 facilities, or any facility that provides care for unmarried  
9 mothers and their children;

10 (2) "Community based," when referring to a facility,  
11 program, or service, means located near the juvenile's  
12 home or family and involving community participation in  
13 planning, operation, and evaluation, and which may  
14 include, but is not limited to, medical, educational,  
15 vocational, social and psychological guidance, training,  
16 special education, counseling, alcoholism and any  
17 treatment, and other rehabilitation services;

18 (3) "Court" means the circuit court of the county with  
19 jurisdiction of the case or the judge thereof in vacation  
20 unless otherwise specifically provided;

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

26 (5) "Department" or "state department" means the state  
27 department of health and human resources;

28 (6) "Division of juvenile services" means the division  
29 within the department of military affairs and public safety  
30 pursuant to article five-e of this chapter;

31 (7) "Guardian" means a person who has care and  
32 custody of a child as a result of any contract, agreement or  
33 legal proceeding;

34 (8) "Juvenile delinquent" means a juvenile who has  
35 been adjudicated as one who commits an act which would  
36 be a crime under state law or a municipal ordinance if  
37 committed by an adult;

38 (9) "Nonsecure facility" means any public or private  
39 residential facility not characterized by construction  
40 fixtures designed to physically restrict the movements and

41 activities of individuals held in lawful custody in such  
42 facility and which provides its residents access to the  
43 surrounding community with supervision;

44 (10) "Referee" means a juvenile referee appointed  
45 pursuant to section one, article five-a of this chapter,  
46 except that in any county which does not have a juvenile  
47 referee the judge or judges of the circuit court may  
48 designate one or more magistrates of the county to  
49 perform the functions and duties which may be performed  
50 by a referee under this chapter;

51 (11) "Secretary" means the secretary of health and  
52 human resources;

53 (12) "Secure facility" means any public or private  
54 residential facility which includes construction fixtures  
55 designed to physically restrict the movements and  
56 activities of juveniles or other individuals held in lawful  
57 custody in such facility;

58 (13) "Staff-secure facility" means any public or private  
59 residential facility characterized by staff restrictions of the  
60 movements and activities of individuals held in lawful  
61 custody in such facility and which limits its residents'  
62 access to the surrounding community, but is not  
63 characterized by construction fixtures designed to  
64 physically restrict the movements and activities of  
65 residents;

66 (14) "Status offender" means a juvenile who has been  
67 adjudicated as one:

68 (A) Who habitually and continually refuses to respond  
69 to the lawful supervision by his or her parents, guardian or  
70 legal custodian such that the child's behavior substantially  
71 endangers the health, safety, or welfare of the juvenile or  
72 any other person;

73 (B) Who has left the care of his or her parents,  
74 guardian or custodian without the consent of such person  
75 or without good cause;

76 (C) Who is habitually absent from school without  
77 good cause; or

76 (C) Who is habitually absent from school without  
77 good cause; or

78 (D) Who violates any West Virginia municipal, county,  
79 or state law regarding use of alcoholic beverages by  
80 minors;

81 (15) "Valid court order" means a court order given to  
82 a juvenile who was brought before the court and made  
83 subject to such order, and who received, before the  
84 issuance of such order, the full due process rights  
85 guaranteed to such juvenile by the constitutions of the  
86 United States and the state of West Virginia.

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

**§49-2-1. Care for children committed to the state department.**

1 It shall be the responsibility of the state department to  
2 provide care for neglected children who are committed to  
3 its care for custody or guardianship. For purposes of this  
4 chapter, the department of health and human resources is  
5 responsible for the care of the infant child of an  
6 unmarried mother who has been committed to the custody  
7 of the department while the infant is placed in the same  
8 licensed child welfare agency as his or her mother. The  
9 state department may provide care for such children in  
10 family homes meeting required standards, at board or  
11 otherwise, through a licensed child welfare agency, or in a  
12 state institution providing care for dependent or neglected  
13 children. The department in placing any child in the care  
14 of a family or a child welfare agency shall select as far as  
15 practicable a family holding the same religious belief as  
16 the parents or relatives of the child or a child welfare  
17 agency conducted under religious auspices of the same  
18 belief as the parents or relatives.

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

*Ray Schroyer*  
Chairman Senate Committee

*Nick Santora*  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1998.

*Barbara Wilson*  
Clerk of the Senate

*Dwight M. Day*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *approved* this the *8th*  
day of *April*, 1998.

*[Signature]*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 2:48 pm