WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4560
(By Delegates Givens, Douglas, Fleischauer, Mezzatesta, Staton, Facemyer and Trump)

Passed March 14, 1998
In Effect July 1, 1998
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 facility maintained by the state or any county or
municipality thereof, or any agency or facility maintained
by an individual, firm, corporation, association or
organization, public or private, to receive children for care
and maintenance or for placement in residential care
facilities, or any facility that provides care for unmarried
mothers and their children;

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

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

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

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

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

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

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

(9) "Nonsecure facility" means any public or private
residential facility not characterized by construction
fixtures designed to physically restrict the movements and
activities of individuals held in lawful custody in such
facility and which provides its residents access to the
surrounding community with supervision;

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

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

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

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

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

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

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

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

good cause; or

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

minors;

(15) "Valid court order" means a court order given to

a juvenile who was brought before the court and made

subject to such order, and who received, before the

issuance of such order, the full due process rights

guaranteed to such juvenile by the constitutions of the

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.

It shall be the responsibility of the state department to

provide care for neglected children who are committed to

its care for custody or guardianship. For purposes of this

chapter, the department of health and human resources is

responsible for the care of the infant child of an

unmarried mother who has been committed to the custody

of the department while the infant is placed in the same

licensed child welfare agency as his or her mother. The

state department may provide care for such children in

family homes meeting required standards, at board or

otherwise, through a licensed child welfare agency, or in a

state institution providing care for dependent or neglected

children. The department in placing any child in the care

of a family or a child welfare agency shall select as far as

practicable a family holding the same religious belief as

the parents or relatives of the child or a child welfare

agency conducted under religious auspices of the same

belief as the parents or relatives.
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, 1998.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

Earl Ray Tomlin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within __________ day of __________, 1998, approved this the __________ day of __________, 1998.

[Signature]
Governor