

SB 725

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



## ENROLLED

*Committee Substitute For*  
SENATE BILL NO. 725

(By Senator WOOTEN, ET AL)



PASSED MARCH 14, 1998

In Effect NINETY Days From Passage

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SENATE OF WEST VIRGINIA

**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 725**

(SENATORS WOOTON, CRAIGO, JACKSON, WALKER,  
WHITE, BUCKALEW AND SCOTT, *original sponsors*)

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[Passed March 14, 1998; in effect ninety days from passage.]

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AN ACT to repeal section thirteen-c, 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, three, three-a, four, six, seven, eight, eight-a, nine, eleven, eleven-a, twelve, thirteen-a, thirteen-d, fifteen and sixteen-a of said article; and to further amend said article by adding thereto a new section designated section two-a, all relating to making technical corrections and clarifications with regard to juvenile proceedings for status offenses and delinquency; eliminating certain obsolete references and provisions; providing for attendance at juvenile proceedings by certain persons, in the discretion of the presiding judicial

officer; providing authorization for informal resolution by pre-petition diversion; clarifying that proceedings are formally instituted by the filing with the court of a juvenile petition; authorizing the court to require participation in noncustodial counseling a juvenile's parent, guardian or custodian; providing that certain examinations are discretionary with the court; clarifying who may demand a jury trial in a juvenile proceeding; eliminating certain referrals to or instances of custody by juvenile probation officers; eliminating certain obsolete provisions relating to taking juveniles into custody by way of warrant, capias or attachment; requiring a showing of probable cause in certain instances; requiring certain procedures and notifications when a juvenile is taken into custody; requiring the department of health and human resources to make certain reports to the court; providing for further disposition of adjudicated status offenders beyond the initial mandatory referral to the department of health and human resources; providing for appeal of such orders of further disposition; expanding and extending the teen court program as an alternative to juvenile adjudication and/or disposition for certain juveniles; clarifying restrictions on the appointment of juvenile probation officers; and requiring that the director of the division of juvenile services propose certain legislative rules for promulgation.

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

That section thirteen-c, 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, three, three-a, four, six, seven, eight, eight-a, nine, eleven, eleven-a, twelve, thirteen-a, thirteen-d, fifteen and sixteen-a of said article be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section two-a, all to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-1. Definitions.**

1 As used in this article:

2 (a) "Adult" means a person who is at least eighteen years  
3 of age.

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

7 (c) "Extrajudicial statement" means any utterance,  
8 written or oral, which was made outside of court.

9 (d) "Juvenile" has the same meaning as the term "child".

10 (e) "Res gestae" means a spontaneous declaration made  
11 by a person immediately after an event and before the  
12 person has had an opportunity to conjure a falsehood.

13 (f) "Violation of a traffic law of West Virginia" means a  
14 violation of any provision of chapter seventeen-a,  
15 seventeen-b, seventeen-c or seventeen-d of this code  
16 except a violation of section one or two, article four,  
17 chapter seventeen-c of this code (hit and run) or of section  
18 one, article five of said chapter (negligent homicide),  
19 section two of said article (driving under the influence of  
20 alcohol, controlled substances or drugs) or section three of  
21 said article (reckless 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 has original jurisdiction of proceed-  
2 ings 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  
9 of the case in the same manner as cases which are origi-

10 nally instituted in the circuit court by petition.

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

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

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

32 (1) By a juvenile petition requesting that the juvenile be  
33 adjudicated as a status offender or a juvenile delinquent;  
34 or

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

39 (f) If a juvenile commits an act which would be a crime  
40 if committed by an adult, and the juvenile is adjudicated  
41 delinquent for that act, the jurisdiction of the court which  
42 adjudged the juvenile delinquent continues until the  
43 juvenile becomes twenty-one years of age. The court has  
44 the same power over that person that it had before he or

45 she became an adult, and has the further power to sen-  
46 tence that person to a term of incarceration: *Provided,*  
47 That any such term of incarceration may not exceed six  
48 months. This authority does not preclude the court from  
49 exercising criminal jurisdiction over that person if he or  
50 she violates the law after becoming an adult or if the  
51 proceedings have been transferred to the court's criminal  
52 jurisdiction pursuant to section ten of this article.

53 (g) A juvenile is entitled to be admitted to bail or  
54 recognizance in the same manner as an adult and shall be  
55 afforded the protection guaranteed by Article III of the  
56 West Virginia constitution.

57 (h) A juvenile has the right to be effectively represented  
58 by counsel at all stages of proceedings under the provi-  
59 sions of this article. If the juvenile or the juvenile's parent  
60 or custodian executes an affidavit showing that the  
61 juvenile cannot afford an attorney, the court shall appoint  
62 an attorney, who shall be paid in accordance with article  
63 twenty-one, chapter twenty-nine of this code.

64 (i) In all proceedings under this article, the juvenile shall  
65 be afforded a meaningful opportunity to be heard. This  
66 includes the opportunity to testify and to present and  
67 cross-examine witnesses. The general public shall be  
68 excluded from all proceedings under this article except  
69 that persons whose presence is requested by the parties  
70 and other persons whom the circuit court determines have  
71 a legitimate interest in the proceedings may attend:  
72 *Provided,* That in cases in which a juvenile is accused of  
73 committing what would be a felony if the juvenile were an  
74 adult, an alleged victim or his or her representative may  
75 attend any related juvenile proceedings, at the discretion  
76 of the presiding judicial officer: *Provided, however,* That  
77 in any case in which the alleged victim is a juvenile, he or  
78 she may be accompanied by his or her parents or represen-  
79 tative, at the discretion of the presiding judicial officer.

80 (j) At all adjudicatory hearings held under this article,

81 all procedural rights afforded to adults in criminal  
82 proceedings shall be afforded the juvenile unless specifi-  
83 cally provided otherwise in this chapter.

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

88 (l) Except for res gestae, extrajudicial statements made  
89 by a juvenile who has not attained fourteen years of age to  
90 law-enforcement officials or while in custody are not  
91 admissible unless those statements were made in the  
92 presence of the juvenile's counsel. Except for res gestae,  
93 extrajudicial statements made by a juvenile who has not  
94 attained sixteen years of age but who is at least thirteen  
95 years of age to law-enforcement officers or while in  
96 custody, are not admissible unless made in the presence of  
97 the juvenile's counsel or made in the presence of, and with  
98 the consent of, the juvenile's parent or custodian, and the  
99 parent or custodian has been fully informed regarding the  
100 juvenile's right to a prompt detention hearing, the  
101 juvenile's right to counsel, including appointed counsel if  
102 the juvenile cannot afford counsel, and the juvenile's  
103 privilege against self-incrimination.

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

**§49-5-2a. Pre-petition diversion to informal resolution.**

1 Before a juvenile petition is formally filed with the

2 court, the court may refer the matter to a state department  
3 worker or probation officer for preliminary inquiry to  
4 determine whether the matter can be resolved informally  
5 without the formal filing of a petition with the court.

**§49-5-3. Noncustodial counseling of a juvenile.**

1 The court at any time, or the department or other  
2 official upon a request from a parent, guardian or custo-  
3 dian, may, before proceedings under this article are  
4 formally instituted by the filing of a petition with the  
5 court, refer a juvenile alleged to be delinquent or a status  
6 offender to a counselor at the department or a community  
7 mental health center, or other professional counselor in  
8 the community. In the event the juvenile refuses to  
9 respond to this referral, the department may serve a notice  
10 by first class mail or personal service of process upon the  
11 juvenile, setting forth the facts and stating that a  
12 noncustodial order will be sought from the court directing  
13 the juvenile to submit to counseling. The notice shall set  
14 forth the time and place for the hearing on the matter.  
15 The court or referee after a hearing may direct the juvenile  
16 to participate in a noncustodial period of counseling that  
17 may not exceed six months. Upon recommendation of the  
18 department or request by the juvenile's parent, custodian  
19 or guardian, the court or referee may allow or require the  
20 parent, custodian or guardian to participate in this  
21 noncustodial counseling. No information obtained as the  
22 result of this counseling is admissible in a subsequent  
23 proceeding under this article.

**§49-5-3a. Informal adjustment counseling by probation officer.**

1 (a) Before a petition is formally filed with the court, the  
2 probation officer or other officer of the court designated  
3 by it, subject to its direction, may give counsel and advice  
4 to the parties with a view to an informal adjustment if it  
5 appears:

6 (1) The admitted facts bring the case within the jurisdic-



7 tion of the court;

8 (2) Counsel and advice without an adjudication would  
9 be in the best interest of the public and the juvenile; and

10 (3) The juvenile and his parents, guardian or other  
11 custodian consent thereto with knowledge that consent is  
12 not obligatory.

13 (b) The giving of counsel and advice pursuant to this  
14 section may not continue longer than six months from the  
15 day it is commenced unless extended by the court for an  
16 additional period not to exceed six months.

**§49-5-4. Wards of the court.**

1 A person under the age of eighteen years who appears  
2 before the circuit court in proceedings under this article  
3 shall be considered a ward of the court and protected  
4 accordingly. The court or judge thereof may request the  
5 county health officer in any county employing a full-time  
6 health officer to make a physical and mental examination  
7 of the wards of the court as defined in this section. The  
8 health officer shall, as promptly as may be, furnish to the  
9 court or judge a written report of these examinations on  
10 forms to be furnished to the health officer by the court. In  
11 those counties not employing a full-time health officer, the  
12 court or judge may designate a reputable physician of the  
13 county to make mental and physical examinations pursu-  
14 ant to this section and render written reports to the court.  
15 When any such mental and physical examination is made  
16 and any such report rendered, the state shall pay to the  
17 examining physician a sum not to exceed ten dollars for  
18 each such mental and physical examination, upon certifi-  
19 cation of the fact of such examination by the court or the  
20 judge thereof.

**§49-5-6. Jury trial under article.**

1 In a proceeding under this article, the juvenile, the  
2 juvenile's counsel or the juvenile's parent or guardian, or

3 any one of them may demand, or the judge of his or her  
4 own motion, may order a jury of twelve persons to try any  
5 question of fact.

**§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.**

1 (a) (1) A petition alleging that a juvenile is a status  
2 offender or a juvenile delinquent may be filed by a person  
3 who has knowledge of or information concerning the facts  
4 alleged. The petition shall be verified by the petitioner,  
5 shall set forth the name and address of the juvenile's  
6 parents, guardians or custodians, if known to the peti-  
7 tioner, and shall be filed in the circuit court in the county  
8 where the alleged status offense or act of delinquency  
9 occurred: *Provided*, That any proceeding under this  
10 chapter may be removed, for good cause shown, in accor-  
11 dance with the provisions of section one, article nine,  
12 chapter fifty-six of this code. The petition shall contain  
13 specific allegations of the conduct and facts upon which  
14 the petition is based, including the approximate time and  
15 place of the alleged conduct; a statement of the right to  
16 have counsel appointed and consult with counsel at every  
17 stage of the proceedings; and the relief sought.

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

30 (b) The parents, guardians or custodians shall be named  
31 in the petition as respondents, and shall be served with

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

43 (c) The court or referee may order the issuance of a  
44 subpoena against the person having custody and control  
45 of the juvenile ordering him or her to bring the juvenile  
46 before the court or referee.

47 (d) When any case of a juvenile charged with the com-  
48 mission of a crime is certified or transferred to the circuit  
49 court, the court or referee shall forthwith cause the  
50 juvenile and his or her parents, guardians or custodians to  
51 be served with a petition, as provided in subsections (a)  
52 and (b) of this section. In the event the juvenile is in  
53 custody, the petition shall be served upon the juvenile  
54 within ninety-six hours of the time custody began, and if  
55 the petition is not served within that time, the juvenile  
56 shall be released forthwith.

57 (e) The clerk of the court shall promptly notify the  
58 department of health and human resources of all proceed-  
59 ings under this article.

#### **§49-5-8. Taking a juvenile into custody.**

1 (a) In proceedings formally instituted by the filing of a  
2 juvenile petition, the circuit court, a juvenile referee or a  
3 magistrate may issue an order directing that a juvenile be  
4 taken into custody before adjudication only upon a  
5 showing of probable cause to believe that one of the  
6 following conditions exists: (1) The petition shows that

7 grounds exist for the arrest of an adult in identical  
8 circumstances; (2) the health, safety and welfare of the  
9 juvenile demand such custody; (3) the juvenile is a fugitive  
10 from a lawful custody or commitment order of a juvenile  
11 court; or (4) the juvenile is alleged to be a juvenile delin-  
12 quent with a record of willful failure to appear at juvenile  
13 proceedings and custody is necessary to assure his or her  
14 presence before the court. A detention hearing pursuant  
15 to section eight-a of this article shall be held by the judge,  
16 juvenile referee or magistrate authorized to conduct such  
17 hearings without unnecessary delay and in no event may  
18 any delay exceed the next day.

19 (b) Absent a court order, a juvenile may be taken into  
20 custody by a law-enforcement official only if one of the  
21 following conditions exists: (1) Grounds exist for the  
22 arrest of an adult in identical circumstances; (2) emer-  
23 gency conditions exist which, in the judgment of the  
24 officer, pose imminent danger to the health, safety and  
25 welfare of the juvenile; (3) the official has reasonable  
26 grounds to believe that the juvenile has left the care of his  
27 or her parents, guardian or custodian without the consent  
28 of such person, and the health, safety and welfare of the  
29 juvenile is endangered; (4) the juvenile is a fugitive from  
30 a lawful custody or commitment order of a juvenile court;  
31 or (5) the official has reasonable grounds to believe the  
32 juvenile to have been driving a motor vehicle with any  
33 amount of alcohol in his or her blood.

34 (c) Upon taking a juvenile into custody, with or without  
35 a court order, the official shall:

36 (1) Immediately notify the juvenile's parent, guardian,  
37 custodian or, if the parent, guardian or custodian cannot  
38 be located, a close relative;

39 (2) Release the juvenile into the custody of his or her  
40 parent, guardian or custodian unless:

41 (A) Circumstances present an immediate threat of

42 serious bodily harm to the juvenile if released;

43 (B) No responsible adult can be found into whose  
44 custody the juvenile can be delivered: *Provided*, That  
45 each day the juvenile is detained, a written record must be  
46 made of all attempts to locate such a responsible adult; or

47 (C) The juvenile has been taken into custody for an  
48 alleged act of delinquency for which secure detention is  
49 permissible.

50 (3) If the juvenile is an alleged status offender, immedi-  
51 ately notify the department of health and human re-  
52 sources, and, if the circumstances of either paragraph (A)  
53 or (B), subdivision (2) of this subsection exist and the  
54 requirements therein are met, the official may detain the  
55 juvenile, but only in a nonsecure or staff-secure facility;

56 (4) Take the juvenile without unnecessary delay before  
57 a juvenile referee or judge of the circuit court for a  
58 detention hearing pursuant to section eight-a of this  
59 article: *Provided*, That if no judge or juvenile referee is  
60 then available in the county, the official shall take the  
61 juvenile without unnecessary delay before any magistrate  
62 then available in the county for the sole purpose of  
63 conducting such a detention hearing. In no event may any  
64 delay in presenting the juvenile for a detention hearing  
65 exceed the next day after he or she is taken into custody.

66 (d) In the event that a juvenile is delivered into the  
67 custody of a sheriff or director of a detention facility, the  
68 sheriff or director shall immediately notify the court or  
69 juvenile referee. The sheriff or director shall immediately  
70 provide to every juvenile who is delivered into his or her  
71 custody a written statement explaining the juvenile's right  
72 to a prompt detention hearing, his or her right to counsel,  
73 including appointed counsel if he or she cannot afford  
74 counsel, and his or her privilege against self-incrimina-  
75 tion. In all cases when a juvenile is delivered into a  
76 sheriff's or detention center director's custody, that

77 official shall release the juvenile to his or her parent,  
78 guardian or custodian by the end of the next day unless  
79 the juvenile has been placed in detention after a hearing  
80 conducted pursuant to section eight-a of this article.

**§49-5-8a. Detention hearing; counsel.**

1 (a) The judge, juvenile referee or magistrate shall inform  
2 the juvenile of his or her right to remain silent, that any  
3 statement may be used against him or her and of his or her  
4 right to counsel, and no interrogation may be made  
5 without the presence of a parent or counsel. If the juve-  
6 nile or his or her parent, guardian or custodian has not  
7 retained counsel, counsel shall be appointed as soon as  
8 practicable. The referee, judge or magistrate shall hear  
9 testimony concerning the circumstances for taking the  
10 juvenile into custody and the possible need for detention  
11 in accordance with section two, article five-a of this  
12 chapter. The sole mandatory issue at the detention  
13 hearing is whether the juvenile should be detained pend-  
14 ing further court proceedings. The court shall, if the  
15 health, safety and welfare of the juvenile will not be  
16 endangered thereby, release the juvenile on recognizance  
17 to his or her parents, custodians or an appropriate agency;  
18 however, if warranted, the court may require bail, except  
19 that bail may be denied in any case where bail could be  
20 denied if the accused were an adult. The court shall:

21 (1) Immediately notify the juvenile's parent, guardian or  
22 custodian or, if the parent, guardian or custodian cannot  
23 be located, a close relative;

24 (2) Release the juvenile into the custody of his or her  
25 parent, guardian or custodian unless:

26 (A) Circumstances present an immediate threat of  
27 serious bodily harm to the juvenile if released;

28 (B) No responsible adult can be found into whose  
29 custody the juvenile can be delivered: *Provided*, That  
30 each day the juvenile is detained, a written record must be

31 made of all attempts to locate such a responsible adult; or

32 (C) The juvenile is charged with an act of delinquency  
33 for which secure detention is permissible; and

34 (3) If the juvenile is an alleged status offender, immedi-  
35 ately notify the department of health and human re-  
36 sources, and, if the circumstances of either paragraph (A)  
37 or (B), subdivision (2) of this subsection exist and the  
38 requirements therein are met, the court may order the  
39 juvenile detained, but only in a nonsecure or staff-secure  
40 facility. Any juvenile detained pursuant to this subdivi-  
41 sion shall be placed in the legal custody of the department  
42 of health and human resources pending further proceed-  
43 ings by the court.

44 (b) The judge of the circuit court or the juvenile referee  
45 may, in conjunction with the detention hearing, conduct  
46 a preliminary hearing pursuant to section nine of this  
47 article: *Provided*, That all parties are prepared to proceed  
48 and the juvenile has counsel during such hearing.

**§49-5-9. Preliminary hearing; counsel; improvement period.**

1 (a) Following the filing of a juvenile petition, unless a  
2 preliminary hearing has previously been held in conjunc-  
3 tion with a detention hearing with respect to the same  
4 charge contained in the petition, the circuit court or  
5 referee shall hold a preliminary hearing. In the event that  
6 the juvenile is being detained, the hearing shall be held  
7 within ten days of the time the juvenile is placed in  
8 detention unless good cause is shown for a continuance.  
9 If no preliminary hearing is held within ten days of the  
10 time the juvenile is placed in detention, the juvenile shall  
11 be released on recognizance unless the hearing has been  
12 continued for good cause. If the judge is in another county  
13 in the circuit, the hearing may be conducted in that other  
14 county. The preliminary hearing may be waived by the  
15 juvenile, upon advice of counsel. At the hearing, the court  
16 or referee shall:

17 (1) If the juvenile is not represented by counsel, inform  
18 the juvenile and his or her parents, guardian or custodian  
19 or any other person standing in loco parentis to him or her  
20 of the juvenile's right to be represented at all stages of  
21 proceedings under this article and the right to have  
22 counsel appointed;

23 (2) Appoint counsel by order entered of record, if counsel  
24 has not already been retained, appointed or knowingly  
25 waived;

26 (3) Determine after hearing if there is probable cause to  
27 believe that the juvenile is a status offender or a juvenile  
28 delinquent. If probable cause is not found, the juvenile, if  
29 in detention, shall be released and the proceedings dis-  
30 missed. If probable cause is found, the case shall proceed  
31 to adjudication. At this hearing or as soon thereafter as is  
32 practicable, the date for the adjudicatory hearing shall be  
33 set to give the juvenile and the juvenile's parents and  
34 attorney at least ten days' notice, unless notice is waived  
35 by all parties;

36 (4) In lieu of placing the juvenile in a detention facility,  
37 the court may place the juvenile in the temporary legal  
38 and/or physical custody of the department. If the juvenile  
39 is detained, the detention may not continue longer than  
40 thirty days without commencement of the adjudicatory  
41 hearing unless good cause for a continuance is shown by  
42 either party or, if a jury trial is demanded, no longer than  
43 the next regular term of the court: *Provided*, That a  
44 juvenile who is alleged to be a status offender may not be  
45 placed in a secure detention facility; and

46 (5) Inform the juvenile of the right to demand a jury  
47 trial.

48 (b) The juvenile may move to be allowed an improve-  
49 ment period for a period not to exceed one year. If the  
50 court is satisfied that the best interest of the juvenile is  
51 likely to be served by an improvement period, the court



52 may delay the adjudicatory hearing and allow a  
53 noncustodial improvement period upon terms calculated  
54 to serve the rehabilitative needs of the juvenile. At the  
55 conclusion of the improvement period, the court shall  
56 dismiss the proceeding if the terms have been fulfilled;  
57 otherwise, the court shall proceed to the adjudicatory  
58 stage. A motion for an improvement period may not be  
59 construed as an admission or be used as evidence.

**§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.**

1 At the outset of an adjudicatory hearing, the court shall  
2 inquire of the juvenile whether he or she wishes to admit  
3 or deny the allegations in the petition. The juvenile may  
4 elect to stand mute, in which event the court shall enter a  
5 general denial of all allegations in the petition.

6 (a) If the respondent juvenile admits the allegations of  
7 the petition, the court shall consider the admission to be  
8 proof of the allegations if the court finds: (1) The respon-  
9 dent fully understands all of his or her rights under this  
10 article; (2) the respondent voluntarily, intelligently and  
11 knowingly admits all facts requisite for an adjudication;  
12 and (3) the respondent in his or her admission has not set  
13 forth facts which constitute a defense to the allegations.

14 (b) If the respondent juvenile denies the allegations, the  
15 court shall dispose of all pretrial motions and the court or  
16 jury shall proceed to hear evidence.

17 (c) If the allegations in a petition alleging that the  
18 juvenile is delinquent are admitted or are sustained by  
19 proof beyond a reasonable doubt, the court shall schedule  
20 the matter for disposition pursuant to section thirteen of  
21 this article.

22 (d) If the allegations in a petition alleging that the  
23 juvenile is a status offender are admitted or sustained by  
24 clear and convincing proof, the court shall refer the

25 juvenile to the department of health and human resources  
26 for services, pursuant to section eleven-a of this article  
27 and order the department to report back to the court with  
28 regard to the juvenile's progress at least every ninety days  
29 or until the court, upon motion or *sua sponte*, orders  
30 further disposition under section eleven-a of this article or  
31 dismisses the case from its docket.

32 (e) If the allegations in a petition are not sustained by  
33 proof as provided in subsections (c) and (d) of this section,  
34 the petition shall be dismissed and the juvenile shall be  
35 discharged if he or she is in custody.

36 (f) Findings of fact and conclusions of law addressed to  
37 all allegations in the petition shall be stated on the record  
38 or reduced to writing and filed with the record or incorpo-  
39 rated into the order of the court.

**§49-5-11a. Status offenders: Intervention and services by state  
department pursuant to initial disposition;  
enforcement; further disposition; detention; out-  
of-home placement; state department custody;  
least restrictive alternative; appeal.**

1 (a) Services provided by the department for juveniles  
2 adjudicated as status offenders shall be consistent with  
3 the provisions of article five-b of this chapter and shall be  
4 designed to develop skills and supports within families  
5 and to resolve problems related to the juveniles or con-  
6 flicts within their families. Services may include, but are  
7 not limited to, referral of juveniles and parents, guardians  
8 or custodians and other family members to services for  
9 psychiatric or other medical care, or psychological,  
10 welfare, legal, educational or other social services, as  
11 appropriate to the needs of the juvenile and his or her  
12 family.

13 (b) If necessary, the department may petition the circuit  
14 court:

15 (1) For a valid court order, as defined in section four,

16 article one of this chapter, to enforce compliance with a  
17 service plan or to restrain actions that interfere with or  
18 defeat a service plan; or

19 (2) For a valid court order to place a juvenile out of  
20 home in a nonsecure or staff-secure setting, and/or to  
21 place a juvenile in custody of the department.

22 (c) In ordering any further disposition under this section,  
23 the court is not limited to the relief sought in the depart-  
24 ment's petition and shall make every effort to place  
25 juveniles in community-based facilities which are the least  
26 restrictive alternatives appropriate to the needs of the  
27 juvenile and the community.

28 (d) The disposition of the juvenile may not be affected by  
29 the fact that the juvenile demanded a trial by jury or made  
30 a plea of denial. Any order providing disposition other  
31 than mandatory referral to the department for services is  
32 subject to appeal to the supreme court of appeals.

33 (e) Following any further disposition by the court, the  
34 court shall inquire of the juvenile whether or not appeal is  
35 desired and the response shall be transcribed; a negative  
36 response may not be construed as a waiver. The evidence  
37 shall be transcribed as soon as practicable and made  
38 available to the juvenile or his or her counsel, if it is  
39 requested for purposes of further proceedings. A judge  
40 may grant a stay of execution pending further proceed-  
41 ings.

**§49-5-12. Prosecuting attorney to represent petitioner.**

1 The prosecuting attorney shall represent the petitioner  
2 in all proceedings under this article before the court,  
3 referee or magistrate having juvenile jurisdiction.

**§49-5-13a. Examination, diagnosis and classification; period of custody.**

1 As a part of the dispositional proceeding for a juvenile  
2 who has been adjudicated delinquent, the court may, upon

3 its own motion or upon request of counsel, order the  
4 juvenile to be delivered into the custody of the director of  
5 the division of juvenile services, who shall cause the  
6 juvenile to be transferred to a juvenile diagnostic center  
7 for a period not to exceed thirty days. During this period,  
8 the juvenile shall undergo examination, diagnosis, classifi-  
9 cation and a complete medical examination and shall at  
10 all times be kept apart from the general juvenile inmate  
11 population in the director's custody. Not later than thirty  
12 days after commitment pursuant to this section, the  
13 juvenile shall be remanded and delivered to the custody of  
14 the director, an appropriate agency or any other person  
15 that the court by its order directs. Within ten days after  
16 the end of the examination, diagnosis and classification,  
17 the director of the division of juvenile services shall make  
18 or cause to be made a report to the court containing the  
19 results, findings, conclusions and recommendations of the  
20 director with respect to that juvenile.

**§49-5-13d. Teen court program.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, any juvenile who is alleged to have committed a  
3 status offense or an act of delinquency which would be a  
4 misdemeanor if committed by an adult, and who is  
5 otherwise subject to the provisions of this article may be  
6 given the option of proceeding in a teen court program as  
7 an alternative to the filing of a formal petition under  
8 section seven of this article or proceeding to a disposition  
9 as provided by section eleven-a or thirteen of this article,  
10 as the case may be. The decision to enter the teen court  
11 program as an alternative procedure shall be made by the  
12 circuit court, juvenile probation officer, the department  
13 and parent, guardian or custodian of the juvenile: *Pro-*  
14 *vided*, That before the option is extended, the circuit court  
15 first finds that the offender is a suitable candidate for the  
16 program. Any juvenile who does not successfully cooper-  
17 ate in and complete the teen court program and any  
18 disposition imposed therein shall be returned to the circuit

19 court for further disposition as provided by section  
20 eleven-a or thirteen of this article, as the case may be.

21 (b) The teen court program shall be administered by the  
22 governor's committee on crime, delinquency and correc-  
23 tion.

24 (c) The following provisions apply to all teen court  
25 programs:

26 (1) The judge for each teen court proceeding shall be an  
27 acting or retired circuit court judge or an active member  
28 of the West Virginia state bar, who serves on a voluntary  
29 basis. Bar members shall be offered continuing legal  
30 education credit for this service.

31 (2) Any juvenile who selects the teen court program as  
32 an alternative disposition shall agree to serve thereafter  
33 on at least two occasions as a teen court juror.

34 (3) Volunteer students from grades seven through twelve  
35 of the schools within the county shall be selected to serve  
36 as defense attorney, prosecuting attorney, court clerk and  
37 bailiff for each proceeding.

38 (4) Disposition in a teen court proceeding shall consist of  
39 requiring the juvenile to perform sixteen to forty hours of  
40 community service, the duration and type of which shall  
41 be determined by the teen court jury from a standard list  
42 of available community service programs provided by the  
43 county juvenile probation system and a standard list of  
44 alternative consequences which are consistent with the  
45 purposes of this article. The performance of the juvenile  
46 shall be monitored by the county juvenile probation  
47 system. The juvenile shall also perform two sessions of  
48 teen court jury service, and, if considered appropriate by  
49 the judge, participate in an education program. Nothing  
50 in this section may be construed so as to deny availability  
51 of the services provided under section eleven-a of this  
52 article to juveniles who are otherwise eligible therefor.

53 (d) The rules for administration, procedure and admis-  
54 sion of evidence shall be determined by the chief circuit  
55 judge, but in no case may the court require a juvenile to  
56 admit the allegation against him or her as a prerequisite  
57 to participation in the teen court program. A copy of  
58 these rules shall be provided to every teen court partici-  
59 pant.

60 (e) Teen court programs operated pursuant to this  
61 section are pilot projects to be utilized from the effective  
62 date of this section until the first day of July, one thou-  
63 sand nine hundred ninety-nine, in the circuit courts in  
64 three of the counties of this state. The supreme court of  
65 appeals is to determine the counties in which the pilot  
66 projects will be utilized based upon its determination of  
67 those counties which have recently experienced the most  
68 significant increases in the commission of criminal and  
69 status offenses by juveniles.

**§49-5-15. Juvenile probation officers; appointment; salary;  
facilities; expenses; duties; powers.**

1 (a) (1) Each circuit court, subject to the approval of the  
2 supreme court of appeals and in accordance with the rules  
3 of the supreme court of appeals, shall appoint one or more  
4 juvenile probation officers and clerical assistants for the  
5 circuit. A probation officer or clerical assistant may not  
6 be related by blood or marriage to the appointing judge.

7 (2) The salary for juvenile probation officers and clerical  
8 assistants shall be determined and fixed by the supreme  
9 court of appeals. All expenses and costs incurred by the  
10 juvenile probation officers and their staff shall be paid by  
11 the supreme court of appeals in accordance with its rules.  
12 The county commission of each county shall provide  
13 adequate office facilities for juvenile probation officers  
14 and their staff. All equipment and supplies required by  
15 juvenile probation officers and their staff shall be pro-  
16 vided by the supreme court of appeals.

17 (3) A juvenile probation officer may not be considered a  
18 law-enforcement official under any provision of this  
19 chapter.

20 (b) The clerk of a court shall notify, if practicable, the  
21 chief probation officer of the county, or his or her  
22 designee, when a juvenile is brought before the court or  
23 judge for proceedings under this article. When notified, or  
24 if the probation officer otherwise obtains knowledge of  
25 such fact, he or she or one of his or her assistants shall:

26 (1) Make investigation of the case; and

27 (2) Furnish information and assistance that the court or  
28 judge may require.

**§49-5-16a. Rules governing juvenile facilities.**

1 The director of the division of juvenile services within  
2 the department of military affairs and public safety shall  
3 propose legislative rules for promulgation in accordance  
4 with the provisions of article three, chapter twenty-nine-a  
5 of this code, outlining policies and procedures governing  
6 the operation of those correctional, detention,  
7 predispositional detention centers and other facilities  
8 wherein juveniles may be housed. These policies and  
9 procedures shall include, but are not limited to, standards  
10 of cleanliness, temperature and lighting; availability of  
11 medical and dental care; provision of food, furnishings,  
12 clothing and toilet articles; supervision; procedures for  
13 enforcing rules of conduct consistent with due process of  
14 law; and visitation privileges. A juvenile in custody or  
15 detention has, at a minimum, the following rights, and the  
16 policies prescribed shall ensure that:

17 (1) A juvenile may not be punished by physical force,  
18 deprivation of nutritious meals, deprivation of family  
19 visits or imposition of solitary confinement;

20 (2) A juvenile shall be afforded an opportunity to  
21 participate in physical exercise each day;

22 (3) Except for sleeping hours, a juvenile in a state  
23 facility may not be locked alone in a room unless that  
24 juvenile is not amenable to reasonable direction and  
25 control;

26 (4) A juvenile shall be provided with his or her own  
27 clothing or individualized clothing which is clean and  
28 supplied by the facility, and shall also be afforded daily  
29 access to showers;

30 (5) A juvenile shall be afforded constant access to  
31 writing materials and may send mail without limitation,  
32 censorship or prior reading, and may receive mail without  
33 prior reading, except that mail may be opened in the  
34 juvenile's presence, without being read, to inspect for  
35 contraband;

36 (6) A juvenile may make and receive regular local phone  
37 calls without charge and long distance calls to his or her  
38 family without charge at least once a week, and receive  
39 visitors daily and on a regular basis;

40 (7) A juvenile shall be afforded immediate access to  
41 medical care as needed;

42 (8) A juvenile in a juvenile detention facility or juvenile  
43 corrections facility shall be provided access to education,  
44 including teaching, educational materials and books;

45 (9) A juvenile shall be afforded reasonable access to an  
46 attorney upon request; and

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

49 Upon admission to a detention facility or juvenile  
50 corrections facility, a juvenile shall be furnished with a  
51 copy of the rights provided him or her by virtue of this  
52 section and as further prescribed by rules proposed and  
53 promulgated pursuant to this section.



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

*Randy Schoner*  
.....  
Chairman Senate Committee

*Mick Santasca*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Barbara B. Baker*  
.....  
Clerk of the Senate

*Bugary B. Gray*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*Paul E. Krueger*  
.....  
Speaker House of Delegates

The within *approved* ..... this the *1<sup>st</sup>* .....  
day of *April* ....., 1998

*Jeff Guarnieri*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 10:55am