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LEGISLATIVE

SENATE

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1999

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ENROLLED

SENATE BILL NO. 1002

(By Senators TOUBLIN, MR. PRESIDENT, AND
SPROUSE, BY REQUEST OF THE EXECUTIVE)

—●—

PASSED MARCH 22, 1999

In Effect From Passage

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Senate Bill No. 1002

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed March 22, 1999; in effect from passage.]

AN ACT to repeal article ten, 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 sections thirteen, thirteen-e and fourteen, article five of said chapter; to amend and reenact section six-a, article five-a of said chapter; to amend and reenact section four, article five-b of said chapter; to amend and reenact sections one, three, five and six, article five-e of said chapter; to further amend said article by adding thereto two new sections, designated sections five-a and eight; and to amend and reenact sections one and twenty-nine, article seven of said chapter, all relating to the state's system of child welfare and juvenile justice; stating purpose; defining certain responsibilities and duties of state agencies and courts; providing for proposal of a joint plan to the designated legislative task force for juvenile oversight by the department of health and human resources and the division

of juvenile services regarding a coordinated system of child welfare and juvenile justice and requiring regular reports as to its progress before completion; clarifying provisions relating to juvenile proceedings; requiring certain plans be reported annually; requiring the development of criteria for determining the construction, renovation, expansion or replacement of regional detention facilities; requiring regular reports and annual updates of the plan to the designated legislative oversight committee; authorizing director of the division of juvenile services to seek modification of dispositional order; mandating certain cooperative arrangements or agreements between the division and the department; eliminating obsolete language regarding the Ohio County jail; specifying requirements relating to the medical and other care or treatment of juveniles committed to the division's custody; setting forth arrest authority of juvenile correctional officers; setting forth priority of hiring with regard to juvenile detention and corrections facilities; providing for confidentiality of records; directing the development of certain uniform court orders; and repealing article establishing child placement alternatives corporation.

Be it enacted by the Legislature of West Virginia:

That article ten, 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 sections thirteen, thirteen-e and fourteen, article five of said chapter be amended and reenacted; that section six-a, article five-a of said chapter be amended and reenacted; that section four, article five-b of said chapter be amended and reenacted; that sections one, three, five and six, article five-e of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections five-a and eight; and that sections one and twenty-nine, article seven of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

1 (a) The purpose of this chapter is to provide a coordi-
2 nated system of child welfare and juvenile justice for the
3 children of this state that has goals to:

4 (1) Assure each child care, safety and guidance;

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

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

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

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

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

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

18 (8) Provide for early identification of the problems of
19 children and their families, and respond appropriately
20 with measures and services to prevent abuse and neglect
21 or delinquency;

22 (9) Provide a system for the rehabilitation of status
23 offenders and juvenile delinquents;

24 (10) Provide a system for the secure detention of certain
25 juveniles alleged or adjudicated delinquent;

26 (11) Provide a system for the secure incarceration of
27 juveniles adjudicated delinquent and committed to the
28 custody of the director of the division of juvenile services;
29 and

30 (12) Protect the welfare of the general public.

31 (b) In pursuit of these goals it is the intention of the
32 Legislature to provide for removing the child from the
33 custody of his or her parents only when the child's welfare
34 or the safety and protection of the public cannot be

35 adequately safeguarded without removal; and, when the
36 child has to be removed from his or her family, to secure
37 for the child custody, care and discipline consistent with
38 the child's best interests and other goals herein set out. It
39 is further the intention of the Legislature to require that
40 any reunification, permanency or preplacement preventa-
41 tive services address the safety of the child.

42 (c) The child welfare service of the state shall be admin-
43 istered by the department of health and human resources.
44 The division of juvenile services of the department of
45 military affairs and public safety shall administer the
46 secure predispositional juvenile detention and juvenile
47 correctional facilities of the state. Notwithstanding any
48 other provision of this code to the contrary, the adminis-
49 trative authority of the division of juvenile services over
50 any child in this state extends only to those detained or
51 committed to a secure detention facility or secure correc-
52 tional facility operated and maintained by the division by
53 an order of a court of competent jurisdiction during the
54 period of actual detention or confinement in the facility.

55 (d) The department of health and human resources is
56 designated as the agency to cooperate with the United
57 States department of health and human services and
58 United States department of justice in extending and
59 improving child welfare services, to comply with regula-
60 tions thereof, and to receive and expend federal funds for
61 these services. The division of juvenile services of the
62 department of military affairs and public safety is desig-
63 nated as the agency to cooperate with the United States
64 department of health and human services and United
65 States department of justice in operating, maintaining and
66 improving juvenile correction facilities and centers for the
67 predispositional detention of children, to comply with
68 regulations thereof, and to receive and expend federal
69 funds for these services.

70 (e) The department of health and human resources and
71 the division of juvenile services shall present a joint plan
72 for a coordinated system of child welfare and juvenile
73 justice, including specific provisions for juveniles who
74 have been accused of an act of delinquency through the

75 filing of a formal petition pursuant to section seven, article
76 five of this chapter, to the designated legislative task force
77 for juvenile oversight on or before the first day of September,
78 one thousand nine hundred ninety-nine. The department and division shall report regularly during the interim
79 period to the designated task force before completion of
80 the plan to advise the Legislature as to progress of the
81 plan's development.
82

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the court shall, upon
3 request of the court, make an investigation of the environment of the juvenile and the alternative dispositions
4 possible. The court, upon its own motion, or upon request
5 of counsel, may order a psychological examination of the
6 juvenile. The report of such examination and other
7 investigative and social reports shall not be made available to the court until after the adjudicatory hearing.
8
9 Unless waived, copies of the report shall be provided to
10 counsel for the petitioner and counsel for the juvenile no
11 later than seventy-two hours prior to the dispositional
12 hearing.
13

14 (b) Following the adjudication, the court shall conduct
15 the dispositional proceeding, giving all parties an opportunity to be heard. In disposition the court shall not be
16 limited to the relief sought in the petition and shall, in
17 electing from the following alternatives, consider the best
18 interests of the juvenile and the welfare of the public:
19

20 (1) Dismiss the petition;

21 (2) Refer the juvenile and the juvenile's parent or guardian to a community agency for needed assistance and
22 dismiss the petition;
23

24 (3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the
25 supervision of a probation officer of the court or of the
26 court of the county where the juvenile has his or her usual
27 place of abode or other person while leaving the juvenile
28

29 in custody of his or her parent or custodian; and (B)
30 prescribe a program of treatment or therapy or limit the
31 juvenile's activities under terms which are reasonable and
32 within the child's ability to perform, including participa-
33 tion in the litter control program established pursuant to
34 section twenty-five, article seven, chapter twenty of this
35 code, or other appropriate programs of community service;

36 (4) Upon a finding that a parent or custodian is not
37 willing or able to take custody of the juvenile, that a
38 juvenile is not willing to reside in the custody of his parent
39 or custodian, or that a parent or custodian cannot provide
40 the necessary supervision and care of the juvenile, the
41 court may place the juvenile in temporary foster care or
42 temporarily commit the juvenile to the department or a
43 child welfare agency. The court order shall state that
44 continuation in the home is contrary to the best interest of
45 the juvenile and why; and whether or not the department
46 made a reasonable effort to prevent the placement or that
47 the emergency situation made such efforts unreasonable or
48 impossible. Whenever the court transfers custody of a
49 youth to the department, an appropriate order of financial
50 support by the parents or guardians shall be entered in
51 accordance with section five, article seven of this chapter
52 and guidelines promulgated by the supreme court of
53 appeals;

54 (5) Upon a finding that the best interests of the juvenile
55 or the welfare of the public require it, and upon an adjudi-
56 cation of delinquency pursuant to subdivision (1), section
57 four, article one of this chapter, the court may commit the
58 juvenile to the custody of the director of the division of
59 juvenile services for placement in a juvenile correctional
60 facility for the treatment, instruction and rehabilitation of
61 juveniles: *Provided*, That the court maintains discretion
62 to consider alternative sentencing arrangements. Commit-
63 ments shall not exceed the maximum term for which an
64 adult could have been sentenced for the same offense and
65 any such maximum allowable sentence to be served in a
66 juvenile correctional facility may take into account any
67 time served by the juvenile in a detention center pending
68 adjudication, disposition or transfer. The order shall state
69 that continuation in the home is contrary to the best

70 interests of the juvenile and why; and whether or not the
71 state department made a reasonable effort to prevent the
72 placement or that the emergency situation made such
73 efforts unreasonable or impossible; or

74 (6) After a hearing conducted under the procedures set
75 out in subsections (c) and (d), section four, article five,
76 chapter twenty-seven of this code, commit the juvenile to
77 a mental health facility in accordance with the juvenile's
78 treatment plan; the director of the mental health facility
79 may release a juvenile and return him or her to the court
80 for further disposition. The order shall state that continu-
81 ation in the home is contrary to the best interests of the
82 juvenile and why; and whether or not the state department
83 made a reasonable effort to prevent the placement or that
84 the emergency situation made such efforts unreasonable or
85 impossible.

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

90 (d) Following disposition, the court shall inquire whether
91 the juvenile wishes to appeal and the response shall be
92 transcribed; a negative response shall not be construed as
93 a waiver. The evidence shall be transcribed as soon as
94 practicable and made available to the juvenile or his or her
95 counsel, if the same is requested for purposes of further
96 proceedings. A judge may grant a stay of execution
97 pending further proceedings.

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

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

1 (a) The division of juvenile services shall develop and
2 annually update a comprehensive plan to establish a
3 unified state system for social and rehabilitative program-

4 ming and treatment of juveniles who are detained or
5 incarcerated in predispositional detention centers and in
6 juvenile correction facilities and a comprehensive plan for
7 regional juvenile detention facilities and programs. These
8 plans and updates are to be submitted to the West Virginia
9 Legislature no later than the first day of January each
10 year.

11 (b) The comprehensive plan for regional detention
12 programs and facilities shall be based on the need for
13 secure juvenile detention services in a given county or
14 region. The secretary of the department of health and
15 human resources, the secretary of the department of
16 military affairs and public safety and the executive
17 director of the regional jail and correctional facility
18 authority shall develop and agree to the criteria to be
19 considered in determining the construction, renovation,
20 acquisition or repair of projects proposed after the effec-
21 tive date of this article. These criteria are to be reviewed
22 periodically and included in the annual report required
23 pursuant to this section. The comprehensive plan may
24 propose locating newly constructed detention facilities on
25 or near a planned or existing regional jail facility, with
26 common facilities and administration as permitted by
27 federal law.

§49-5-14. Modification of dispositional orders.

1 (a) A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a depart-
3 ment official, the director of the division of juvenile
4 services or prosecuting attorney; or

5 (2) Upon the request of the child or a child's parent or
6 custodian who alleges a change of circumstances relating
7 to disposition of the child.

8 (b) Upon such a motion or request, the court shall
9 conduct a review proceeding, except that if the last
10 dispositional order was within the previous six months the
11 court may deny a request for review. Notice in writing of
12 a review proceeding shall be given to the child, the child's
13 parent or custodian and all counsel not less than seventy-

14 two hours prior to the proceeding. The court shall review
15 the performance of the child, the child's parent or custo-
16 dian, the child's social worker and other persons providing
17 assistance to the child or child's family. If the motion or
18 request for review of disposition is based upon an alleged
19 violation of a court order, the court may modify the
20 dispositional order to a more restrictive alternative if it
21 finds clear and convincing proof of substantial violation.
22 In the absence of such proof, the court may decline to
23 modify the dispositional order or may modify the order to
24 one of the less restrictive alternatives set forth in section
25 thirteen of this article. No juvenile may be required to
26 seek a modification order as provided in this section in
27 order to exercise his or her right to seek release by habeas
28 corpus.

29 (c) In a hearing for modification of a dispositional order,
30 or in any other dispositional hearing, the court shall
31 consider the best interests of the child and the welfare of
32 the public.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

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

1 (a) The division of juvenile services of the department of
2 military affairs and public safety shall develop a compre-
3 hensive plan to maintain and improve a unified state
4 system of regional predispositional detention centers for
5 juveniles. The plan shall be predicated upon the maximum
6 utilization of existing resources, facilities and procedures
7 and shall take into consideration recommendations from
8 the department of health and human resources, the
9 regional jail and correctional facility authority, the
10 division of corrections, the governor's committee on crime,
11 delinquency and correction, the supreme court of appeals,
12 the state board of education, detention center personnel,
13 juvenile probation officers and judicial and law-enforce-
14 ment officials from throughout the state.

15 The principal purpose of the plan shall be, through
16 statements of policy and program goals, to provide first for
17 the effective and efficient use of existing regional juvenile

18 detention facilities and the prudent allocation of resources
19 for any future expansion or addition.

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

29 (c) The plan shall include, but not be limited to, state-
30 ments of policies and goals in the following areas:

31 (1) Licensing of secure detention centers;

32 (2) Criteria for placing juveniles in detention;

33 (3) Alternatives to secure detention;

34 (4) Allocation of fiscal resources to the costs of secure
35 detention facilities;

36 (5) Information and referral services; and

37 (6) Educational regulations developed and approved by
38 the West Virginia board of education.

39 (d) The president of the Senate and the speaker of the
40 House of Delegates shall designate a committee or task
41 force thereof, to act in a continuing capacity as an over-
42 sight committee, which shall assist the director of the
43 division of juvenile services in the development, periodic
44 review and update of the state plan for the
45 predispositional detention centers for juveniles. To this
46 end, the director shall make regular reports to the desig-
47 nated legislative oversight body during the interim period
48 and immediately before any regular session of the Legisla-
49 ture, which reports shall include any recommendations for
50 legislative enactment, together with drafts of any proposed
51 legislation necessary to effectuate those recommendations.

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION
ACT.**

§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.

1 (a) The department of health and human resources and
2 the division of juvenile services of the department of
3 military affairs and public safety are empowered to jointly
4 establish, and shall establish, subject to the limits of funds
5 available or otherwise appropriated therefor, programs
6 and services designed to prevent juvenile delinquency, to
7 divert juveniles from the juvenile justice system, to provide
8 community-based alternatives to juvenile detention and
9 correctional facilities and to encourage a diversity of
10 alternatives within the child welfare and juvenile justice
11 system. The development, maintenance and expansion of
12 programs and services may include, but not be limited to,
13 the following:

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

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

26 (3) Youth service bureaus and other community-based
27 programs to divert youth from the juvenile court or to
28 support, counsel, or provide work and recreational oppor-
29 tunities for status offenders, juvenile delinquents and
30 other youth to help prevent delinquency;

31 (4) Projects designed to develop and implement pro-
32 grams stressing advocacy activities aimed at improving
33 services for and protecting rights of youth affected by the
34 juvenile justice system;

35 (5) Educational programs or supportive services designed
36 to encourage status offenders, juvenile delinquents, and
37 other youth to remain in elementary and secondary schools
38 or in alternative learning situations;

39 (6) Expanded use of professional and paraprofessional
40 personnel and volunteers to work effectively with youth;

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

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

51 (b) The department of health and human resources shall
52 establish, within the funds available, an individualized
53 program of rehabilitation for each status offender referred
54 to the department and to each alleged juvenile delinquent
55 referred to the department after being allowed an im-
56 provement period by the juvenile court, and for each
57 adjudicated juvenile delinquent who, after adjudication,
58 is referred to the department for investigation or treat-
59 ment or whose custody is vested in the department. Such
60 individualized program of rehabilitation shall take into
61 account the programs and services to be provided by other
62 public or private agencies or personnel which are available
63 in the community to deal with the circumstances of the
64 particular juvenile. For alleged juvenile delinquents and
65 status offenders, such individualized program of rehabili-
66 tation shall be furnished to the juvenile court and shall be
67 available to counsel for the juvenile; it may be modified
68 from time to time at the direction of the department or by
69 order of the juvenile court. The department may develop
70 an individualized program of rehabilitation for any
71 juvenile referred for noncustodial counseling under section
72 five, article three of this chapter, for any juvenile receiving
73 counsel and advice under section three-a, article five of

74 this chapter, or for any other juvenile upon the request of
75 a public or private agency.

76 (c) The department of health and human resources and
77 the division of juvenile services are authorized and di-
78 rected to enter into cooperative arrangements and agree-
79 ments with each other and with private agencies or with
80 agencies of the state and its political subdivisions to fulfill
81 their respective duties under this article and chapter.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-1. Policy.

1 It is the policy of the state to provide a coordinated
2 continuum of care for its children who have been charged
3 with an offense which would be a crime if committed by
4 an adult, whether they are taken into custody and securely
5 detained or released pending adjudication by the court. It
6 is further the policy of the state to ensure the safe and
7 efficient custody of a securely detained child through the
8 entire juvenile justice process, and this can best be accom-
9 plished by the state by providing for cooperation and
10 coordination between the agencies of government which
11 are charged with responsibilities for the children of the
12 state. Accordingly, whenever any juvenile is ordered by
13 the court to be transferred from the custody of one of these
14 agencies into the custody of the other, the department of
15 health and human resources and the division of juvenile
16 services shall cooperate with each other to the maximum
17 extent necessary in order to ease the child's transition and
18 to reduce unnecessary cost, duplication and delay.

**§49-5E-3. Transfer of functions; duties and powers; employ-
ment of comprehensive strategy.**

1 The division of juvenile services shall assume the follow-
2 ing duties previously performed by the department of
3 health and human resources as to juveniles in detention
4 facilities or juvenile corrections facilities:

5 (1) Cooperating with the United States department of
6 justice in operating, maintaining and improving juvenile
7 correction facilities and predispositional detention centers,
8 complying with regulations thereof, and receiving and

9 expending federal funds for the services, as set forth in
10 section one, article one of this chapter;

11 (2) Providing care for children needing secure detention
12 pending disposition by a court having juvenile jurisdiction
13 or temporary care following such court action, as set forth
14 in section sixteen, article two of this chapter;

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

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

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

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

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

40 (8) In cooperation with the department of health and
41 human resources establishing programs and services
42 within available funds, designed to prevent juvenile
43 delinquency, to divert juveniles from the juvenile justice
44 system, to provide community-based alternatives to
45 juvenile detention and correctional facilities and to
46 encourage a diversity of alternatives within the juvenile

47 justice system, as set forth in section four, article five-b of
48 this chapter.

49 Working in collaboration with the department of health
50 and human resources, the division of juvenile services shall
51 employ a comprehensive strategy for the social and
52 rehabilitative programming and treatment of juveniles,
53 consistent with the principles adopted by the office of
54 juvenile justice and delinquency prevention of the office of
55 justice programs of the United States department of
56 justice.

**§49-5E-5. Rules for specialized training for juvenile corrections
officers and detention center employees.**

1 The division of juvenile services shall propose legislative
2 rules to be promulgated by the Legislature according to
3 the provisions of chapter twenty-nine-a of this code, to
4 require juvenile corrections officers and detention center
5 employees to complete specialized training and certifica-
6 tion. The training programs shall meet the standards of
7 those offered or endorsed by the office of juvenile justice
8 and delinquency prevention of the office of justice pro-
9 grams of the United States department of justice.

**§49-5E-5a. Juvenile detention and corrections facilities;
employees; priority of hiring.**

1 (a) Notwithstanding any provision of this code to the
2 contrary, the division, when employing any persons to
3 complete the approved staffing plan of any of its juvenile
4 detention or corrections facilities shall employ any person
5 otherwise qualified who applies for a position at the
6 juvenile detention or corrections facility who was also
7 employed in good standing at a county or local jail facility,
8 at the time of its closing, that was closed due to the
9 completion of a regional jail.

10 (b) All persons employed at a juvenile detention or
11 corrections facility shall be employed at a salary and with
12 benefits consistent with the approved plan of compensa-
13 tion of the division of personnel, created under section
14 five, article six, chapter twenty-nine of this code; all such
15 employees shall also be covered by the policies and

16 procedures of the education and state employees grievance
17 board, created under section five, article six-a, chapter
18 twenty-nine of this code and the classified-exempt service
19 protection policies of the division of personnel.

**§49-5E-6. Medical and other treatment of juveniles in custody
of the division; coordination of care and claims
processing and administration by the depart-
ment; authorization of certain cooperative agree-
ments.**

1 (a) Notwithstanding any other provision of law to the
2 contrary, the director, or his or her designee, is hereby
3 authorized to consent to the medical or other treatment of
4 any juvenile in the legal or physical custody of the director
5 or the division.

6 (b) In providing or arranging for the necessary medical
7 and other care and treatment of juveniles committed to the
8 division's custody, the director shall utilize service provid-
9 ers who provide the same or similar services to juveniles
10 under existing contracts with the department of health
11 and human resources. In order to obtain the most advan-
12 tageous reimbursement rates, to capitalize on an economy
13 of scale and to avoid duplicative systems and procedures,
14 the department shall administer and process all claims for
15 medical or other treatment of juveniles committed to the
16 division's custody.

17 (c) For purposes of implementing the mandates of this
18 section, the director is hereby authorized and directed to
19 enter into any necessary agreements with the department
20 of health and human resources. Any such agreement shall
21 specify, at a minimum, for the direct and incidental costs
22 associated with such care and treatment to be paid by the
23 division of juvenile services.

**§49-5E-8. Arrest authority of juvenile correctional and deten-
tion officers.**

1 (a) Persons employed by the division of juvenile services
2 as juvenile correctional officers or detention officers are
3 authorized and empowered to arrest persons already in the

4 custody of the division of juvenile services for violations of
5 law that occur in the officer's presence, including escape.

6 (b) Nothing in this section shall be construed as to make
7 a juvenile correctional or detention officer employed by
8 the division of juvenile services a law-enforcement officer
9 as defined in section one, article twenty-nine, chapter
10 thirty of this code.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

1 (a) Except as otherwise provided in this chapter or by
2 order of the court, all records and information concerning
3 a child or juvenile which are maintained by the division of
4 juvenile services, the department of health and human
5 resources, a child agency or facility, court or law-enforce-
6 ment agency shall be kept confidential and shall not be
7 released or disclosed to anyone, including any federal or
8 state agency.

9 (b) Notwithstanding the provisions of subsection (a) of
10 this section or any other provision of this code to the
11 contrary, records concerning a child or juvenile, except
12 adoption records, juvenile court records and records
13 disclosing the identity of a person making a complaint of
14 child abuse or neglect shall be made available:

15 (1) Where otherwise authorized by this chapter;

16 (2) To:

17 (A) The child;

18 (B) A parent whose parental rights have not been
19 terminated; or

20 (C) The attorney of the child or parent;

21 (3) With the written consent of the child or of someone
22 authorized to act on the child's behalf; or

23 (4) Pursuant to a subpoena or order of a court of record;
24 however, a subpoena for such records may be quashed by
25 a court for good cause.

26 (c) In addition to those persons or entities to whom
27 information may be disclosed under subsection (b) of this
28 section, information related to child abuse or neglect
29 proceedings, except information relating to the identity of
30 the person reporting or making a complaint of child abuse
31 or neglect, shall be made available, upon request, to:

32 (1) Federal, state or local government entities, or any
33 agent of such entities, including law-enforcement agencies
34 and prosecuting attorneys, having a need for such infor-
35 mation in order to carry out its responsibilities under law
36 to protect children from abuse and neglect;

37 (2) The child fatality review team;

38 (3) Child abuse citizen review panels;

39 (4) Multidisciplinary investigative and treatment teams;
40 or

41 (5) A grand jury, circuit court or family law master, upon
42 a finding that information in the records is necessary for
43 the determination of an issue before the grand jury, circuit
44 court or family law master.

45 (d) In the event of a child fatality or near fatality due to
46 child abuse and neglect, information relating to such
47 fatality or near fatality shall be made public by the
48 department of health and human resources and to the
49 entities described in subsection (c) of this section, all under
50 the circumstances described in that subsection: *Provided*,
51 That information released by the department of health and
52 human resources pursuant to this subsection shall not
53 include the identity of a person reporting or making a
54 complaint of child abuse or neglect. For purposes of this
55 subsection, "near fatality" means any medical condition of
56 the child which is certified by the attending physician to
57 be life-threatening.

58 (e) Except in juvenile proceedings which are transferred
59 to criminal proceedings, law-enforcement records and files
60 concerning a child or juvenile shall be kept separate from
61 the records and files of adults and not included within the
62 court files. Law-enforcement records and files concerning
63 a child or juvenile shall only be open to inspection pursu-

64 ant to the provisions of sections seventeen and eighteen,
65 article five of this chapter.

66 (f) Any person who willfully violates the provisions of
67 this section is guilty of a misdemeanor and, upon conviction
68 thereof, shall be fined not more than one thousand
69 dollars, or confined in the county or regional jail for not
70 more than six months, or be both fined and confined. A
71 person convicted of violating the provisions of this section
72 shall also be liable for damages in the amount of three
73 hundred dollars or actual damages, whichever is greater.

74 (g) Notwithstanding the provisions of this section, or any
75 other provision of this code to the contrary, the name and
76 identity of any juvenile adjudicated or convicted of a
77 violent or felonious crime shall be made available to the
78 public.

**§49-7-29. General provisions to read uniform court orders
regarding custody; promulgation of rules.**

1 The supreme court shall, in consultation with the
2 department of health and human resources and the
3 division of juvenile services, develop and cause to be
4 implemented, as soon as practicable but no later than the
5 first day of September, one thousand nine hundred ninety-
6 nine, forms for court orders which are consistent with the
7 provision of chapter forty-nine of this code, including
8 provisions for authorizing disclosure and transfer of
9 juvenile records between agencies while requiring maintenance
10 of confidentiality, as well as the provisions of Title
11 142 U.S.C. Section 620, et seq., and Title 42 U.S.C. Section
12 670, et seq., relating to the promulgation of uniform court
13 orders for placement of minor children and the regulations
14 promulgated thereunder, for use in the magistrate and
15 circuit courts of the state.

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



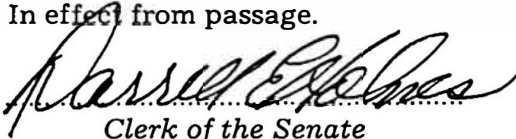
Chairman Senate Committee



Chairman House Committee

Originating in the Senate.

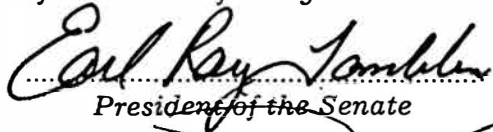
In effect from passage.



Clerk of the Senate



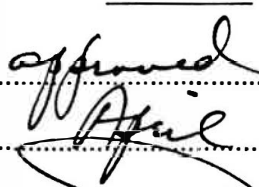
Clerk of the House of Delegates



President of the Senate



Speaker House of Delegates

The within  this the 6th

Day of , 1999



Governor

PRESENTED TO THE

GOVERNOR

Date. 5/1/99

Time 10:40 am