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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4429

(By Delegates Boggs, Michael and Cann)



Passed March 7, 2002

In Effect Ninety Days from Passage

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H. B. 4429

(BY DELEGATES BOGGS, MICHAEL AND CANN)

[Passed March 7, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section thirteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the division of juvenile services to have access to relevant court records concerning a juvenile offender adjudicated delinquent.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

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

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

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

18 (1) Dismiss the petition;

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

22 (3) Upon a finding that the juvenile is in need of ex-
23 tra-parental supervision: (A) Place the juvenile under the
24 supervision of a probation officer of the court or of the court of
25 the county where the juvenile has his or her usual place of
26 abode or other person while leaving the juvenile in custody of
27 his or her parent or custodian; and (B) prescribe a program of
28 treatment or therapy or limit the juvenile's activities under
29 terms which are reasonable and within the child's ability to
30 perform, including participation in the litter control program
31 established pursuant to section twenty-five, article seven,

32 chapter twenty of this code, or other appropriate programs of
33 community service;

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

50 (5) Upon a finding that the best interests of the juvenile or
51 the welfare of the public require it, and upon an adjudication of
52 delinquency pursuant to subdivision (1), section four, article
53 one of this chapter, the court may commit the juvenile to the
54 custody of the director of the division of juvenile services for
55 placement in a juvenile services facility for the treatment,
56 instruction and rehabilitation of juveniles: *Provided*, That the
57 court maintains discretion to consider alternative sentencing
58 arrangements. Notwithstanding any provision of this code to the
59 contrary, in the event that the court determines that it is in the
60 juvenile's best interests or required by the public welfare to
61 place the juvenile in the custody of the division of juvenile
62 services, the court shall provide the division of juvenile services
63 with access to all relevant court orders and records involving
64 the underlying offense or offenses for which the juvenile was
65 adjudicated delinquent, including sentencing and presentencing

66 reports and evaluations, and provide the division with access to
67 school records, psychological reports and evaluations, medical
68 reports and evaluations or any other such records as may be in
69 the court's possession as would enable the division of juvenile
70 services to better assess and determine the appropriate counsel-
71 ing, education and placement needs for the juvenile offender.
72 Commitments shall not exceed the maximum term for which an
73 adult could have been sentenced for the same offense and any
74 such maximum allowable sentence to be served in a juvenile
75 correctional facility may take into account any time served by
76 the juvenile in a detention center pending adjudication, disposi-
77 tion or transfer. The order shall state that continuation in the
78 home is contrary to the best interests of the juvenile and why;
79 and whether or not the state department made a reasonable
80 effort to prevent the placement or that the emergency situation
81 made such efforts unreasonable or impossible; or

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

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

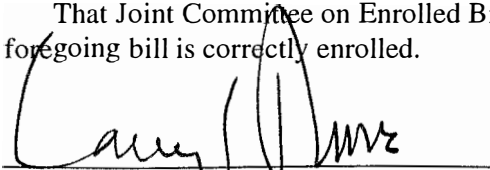
97 (d) Following disposition, the court shall inquire whether
98 the juvenile wishes to appeal and the response shall be tran-

99 scribed; a negative response shall not be construed as a waiver.
100 The evidence shall be transcribed as soon as practicable and
101 made available to the juvenile or his or her counsel, if the same
102 is requested for purposes of further proceedings. A judge may
103 grant a stay of execution pending further proceedings.

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

Enr. Com. Sub. for H. B. 4429] 6

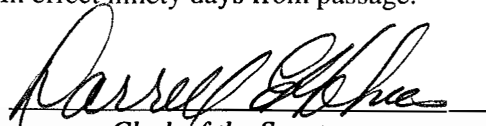
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

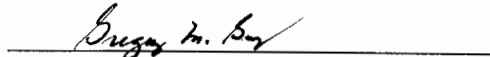

Chairman Senate Committee

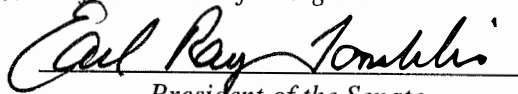

Chairman House Committee

Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within was approved this the 15th
day of March, 2002.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/1/02

Time 4:05pm