

S.B. 196 S

FILED

2007 MAR 27 PM 5:02

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 196**

(SENATORS LOVE, HUNTER, WHITE,  
McKENZIE AND SPROUSE, *original sponsors*)

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[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §49-5-8 of the Code of West Virginia, 1931, as amended, relating to the responsibility of placing juveniles into the custody of the Division of Juvenile Services; requiring arresting agency to be responsible for transporting juveniles to Division of Juvenile Services' facilities; and authorizing juvenile facility to refuse admittance to juveniles who are in need of medical attention until written clearance is received from a physician.

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

That §49-5-8 of the Code of West Virginia, 1931, as amended,

be amended and reenacted to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

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

1       (a) In proceedings formally instituted by the filing of  
2 a juvenile petition, the circuit court, a juvenile referee  
3 or a magistrate may issue an order directing that a  
4 juvenile be taken into custody before adjudication only  
5 upon a showing of probable cause to believe that one of  
6 the following conditions exists: (1) The petition shows  
7 that 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  
10 fugitive from a lawful custody or commitment order of  
11 a juvenile court; or (4) the juvenile is alleged to be a  
12 juvenile delinquent with a record of willful failure to  
13 appear at juvenile proceedings and custody is necessary  
14 to assure his or her presence before the court. A  
15 detention hearing pursuant to section eight-a of this  
16 article shall be held by the judge, juvenile referee or  
17 magistrate authorized to conduct such hearings without  
18 unnecessary delay and in no event may any delay  
19 exceed the next day.

20       (b) Absent a court order, a juvenile may be taken into  
21 custody by a law-enforcement official only if one of the  
22 following conditions exists: (1) Grounds exist for the  
23 arrest of an adult in identical circumstances; (2)  
24 emergency conditions exist which, in the judgment of  
25 the officer, pose imminent danger to the health, safety  
26 and welfare of the juvenile; (3) the official has  
27 reasonable grounds to believe that the juvenile has left  
28 the care of his or her parents, guardian or custodian  
29 without the consent of such person and the health,  
30 safety and welfare of the juvenile is endangered; (4) the  
31 juvenile is a fugitive from a lawful custody or  
32 commitment order of a juvenile court; (5) the official has  
33 reasonable grounds to believe the juvenile to have been  
34 driving a motor vehicle with any amount of alcohol in  
35 his or her blood; or (6) the juvenile is the named  
36 respondent in an emergency protective order issued

37 pursuant to section four hundred three, article twenty-  
38 seven, chapter forty-eight of this code and the  
39 individual filing the petition for the emergency  
40 protective order is the juvenile's parent, guardian or  
41 custodian or other person with whom the juvenile  
42 resides.

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

45 (1) Immediately notify the juvenile's parent, guardian,  
46 custodian or, if the parent, guardian or custodian  
47 cannot be located, a close relative;

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

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

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

57 (C) The juvenile has been taken into custody for an  
58 alleged act of delinquency for which secure detention is  
59 permissible.

60 (3) If the juvenile is an alleged status offender or has  
61 been taken into custody pursuant to subdivision (6),  
62 subsection (b) of this section, immediately notify the  
63 Department of Health and Human Resources and, if the  
64 circumstances of either paragraph (A) or (B),  
65 subdivision (2) of this subsection exist and the  
66 requirements therein are met, the official may detain  
67 the juvenile, but only in a nonsecure or staff-secure  
68 facility;

69 (4) Take the juvenile without unnecessary delay before  
70 a juvenile referee or judge of the circuit court for a  
71 detention hearing pursuant to section eight-a of this

72 article: *Provided*, That if no judge or juvenile referee is  
73 then available in the county, the official shall take the  
74 juvenile without unnecessary delay before any  
75 magistrate then available in the county for the sole  
76 purpose of conducting such a detention hearing. In no  
77 event may any delay in presenting the juvenile for a  
78 detention hearing exceed the next day after he or she is  
79 taken into custody.

80 (d) In the event that a juvenile is delivered into the  
81 custody of a sheriff or director of a detention facility,  
82 the sheriff or director shall immediately notify the court  
83 or juvenile referee. The sheriff or director shall  
84 immediately provide to every juvenile who is delivered  
85 into his or her custody a written statement explaining  
86 the juvenile's right to a prompt detention hearing, his or  
87 her right to counsel, including appointed counsel if he  
88 or she cannot afford counsel, and his or her privilege  
89 against self-incrimination. In all cases when a juvenile  
90 is delivered into a sheriff's or detention center director's  
91 custody, that official shall release the juvenile to his or  
92 her parent, guardian or custodian by the end of the next  
93 day unless the juvenile has been placed in detention  
94 after a hearing conducted pursuant to section eight-a of  
95 this article.

96 (e) The law-enforcement agency that takes a juvenile  
97 into custody or places a juvenile under arrest is  
98 responsible for the juvenile's initial transportation to a  
99 juvenile detention center or other Division of Juvenile  
100 Services' residential facility.

101 (f) Notwithstanding any other provision of this code,  
102 a juvenile detention center, or other Division of Juvenile  
103 Services' residential facility, is not required to accept a  
104 juvenile if the juvenile appears to be in need of medical  
105 attention of a degree necessitating treatment by a  
106 physician. If a juvenile is refused pursuant to the  
107 provisions of this subsection, the juvenile detention  
108 center, or other Division of Juvenile Services'  
109 residential facility, may not subsequently accept the  
110 juvenile for detention until the arresting or transporting  
111 officer provides the juvenile detention center, or other

112 Division of Juvenile Services' residential facility, with  
113 a written clearance from a licensed physician reflecting  
114 that the juvenile has been examined and, if necessary,  
115 treated and which states that in the physician's medical  
116 opinion the juvenile can be safely confined in the  
117 juvenile detention center or other Division of Juvenile  
118 Services' residential facility.

Enr. Com. Sub. for S. B. No. 196] 6

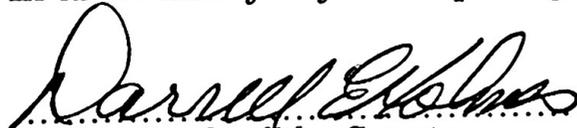
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

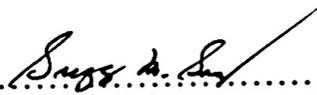
  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

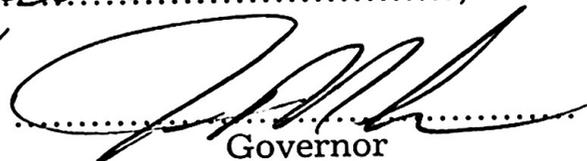
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *27<sup>th</sup>* Day of *March* ....., 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2007

Time 3:50 pm