

SB 709 5

FILED

2007 APR -3 AM 11: 07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 709

(SENATORS KESSLER, MCKENZIE AND
GULLS, *original sponsors*)

[Passed March 9, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §49-5-9 of the Code of West Virginia, 1931, as amended, relating to authorizing circuit courts to grant both custodial and noncustodial improvement periods to juvenile respondents in delinquency proceedings.

Be it enacted by the Legislature of West Virginia:

Enr. Com. Sub. for S. B. No. 709] 2

That §49-5-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§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
3 conjunction with a detention hearing with respect to the
4 same charge contained in the petition, the circuit court
5 or referee shall hold a preliminary hearing. In the event
6 that the juvenile is being detained, the hearing shall be
7 held 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
11 shall be released on recognizance unless the hearing has
12 been continued for good cause. If the judge is in
13 another county in the circuit, the hearing may be
14 conducted in that other county. The preliminary
15 hearing may be waived by the juvenile, upon advice of
16 counsel. At the hearing, the court or referee shall:

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

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

26 (3) Determine after hearing if there is probable cause

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

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

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

49 (b) The juvenile may move to be allowed an
50 improvement period for a period not to exceed one year.
51 If the court is satisfied that the best interest of the
52 juvenile is likely to be served by an improvement
53 period, the court may delay the adjudicatory hearing
54 and allow an improvement period upon terms
55 calculated to serve the rehabilitative needs of the
56 juvenile. At the conclusion of the improvement period,
57 the court shall dismiss the proceeding if the terms have
58 been fulfilled; otherwise, the court shall proceed to the

59 adjudicatory stage. A motion for an improvement
60 period may not be construed as an admission or be used
61 as evidence. Improvement periods authorized by this
62 subsection may be, in the court's discretion, either
63 custodial or noncustodial.

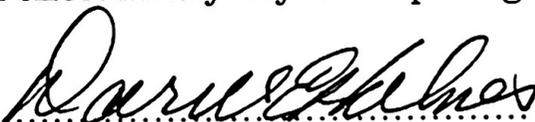
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


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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


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President of the Senate


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Speaker House of Delegates

The within *is approved* this
the *3rd* Day of *April*, 2007.


.....
Governor

PRESENTED TO THE
GOVERNMENT

APR 02 2007

Time 3:48 pm