

FILED

2010 APR -2 PM 4:09

SB 669

# WEST VIRGINIA LEGISLATURE

OFFICE OF THE SECRETARY OF STATE  
SECRETARY OF STATE

## SEVENTY-NINTH LEGISLATURE

### REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 669

(SENATORS KESSLER, FOSTER, PREZIOSO  
AND PLYMALE, *original sponsors*)

[Passed March 13, 2010; in effect from passage.]

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U.S. GOVERNMENT  
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 669**

(Senators Kessler, Foster, Prezioso and Plymale, *original sponsors*)

[Passed March 13, 2010; in effect from passage.]

AN ACT to amend and reenact §49-5-11 and §49-5-13d of the Code of West Virginia, 1931, as amended, all relating to juvenile proceedings; providing circuit court judges the option to refer truant juveniles to be supervised by his or her probation office in judicial circuits that operate a truancy program; allowing municipalities to operate teen courts; clarifying jurisdiction and procedures for teen courts; authorizing the establishment additional mandatory municipal court fees to support a municipal teen court; and providing for supervision of juveniles referred by teen courts.

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

That §49-5-11 and §49-5-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§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: *Provided*, That in a  
32    judicial circuit operating its own truancy program, a  
33    circuit judge may in lieu of referring truant juveniles to  
34    the department, order that the juveniles be supervised by  
35    his or her probation office.

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

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

**§49-5-13d. Teen court program.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, in any county or municipality that chooses to  
3 institute a teen court program in accordance with the  
4 provisions of this section, any juvenile who is alleged to  
5 have committed a status offense or an act of delinquency  
6 which would be a misdemeanor if committed by an adult  
7 or in the case of a violation of a municipal ordinance, an  
8 offense over which municipal courts have concurrent  
9 jurisdiction, and who is otherwise subject to the provisions  
10 of this article may be given the option of proceeding in the  
11 teen court program as an alternative to the filing of a  
12 formal petition under section seven of this article or  
13 proceeding to a disposition as provided by section eleven-a  
14 or thirteen of this article, as the case may be. The decision  
15 to extend the option to enter the teen court program as an  
16 alternative procedure shall be made by the circuit or  
17 municipal court if the court finds that the offender is a  
18 suitable candidate for the program. No juvenile may enter  
19 the teen court program unless he or she and his or her  
20 parent or guardian consent. Any juvenile who does not  
21 successfully cooperate in and complete the teen court  
22 program and any disposition imposed therein shall be  
23 returned to the circuit court for further disposition as  
24 provided by section eleven-a or thirteen of this article, as  
25 the case may be or return to a municipal court for further  
26 disposition for cases originating in circuit court consistent  
27 with any applicable ordinance.

28 (b) The following provisions apply to all teen court  
29 programs:

30 (1) The judge for each teen court proceeding shall be an  
31 acting or retired circuit court judge or an active member  
32 of the West Virginia State Bar, who serves on a voluntary  
33 basis.

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

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

41 (4) Disposition in a teen court proceeding shall consist of  
42 requiring the juvenile to perform sixteen to forty hours of  
43 community service, the duration and type of which shall  
44 be determined by the teen court jury from a standard list  
45 of available community service programs provided by the  
46 county juvenile probation system and a standard list of  
47 alternative consequences that are consistent with the  
48 purposes of this article. The performance of the juvenile  
49 shall be monitored by the county juvenile probation  
50 system for cases originating in the circuit court's jurisdic-  
51 tion, or municipal teen court coordinator or other designee  
52 for cases originating in the municipal court's jurisdiction.  
53 The juvenile shall also perform at least two sessions of  
54 teen court jury service and, if considered appropriate by  
55 the circuit court judge or teen court judge, participate in  
56 an education program. Nothing in this section may be  
57 construed so as to deny availability of the services pro-  
58 vided under section eleven-a of this article to juveniles  
59 who are otherwise eligible for such service.

60 (c) The rules for administration, procedure and admis-  
61 sion of evidence shall be determined by the chief circuit

62 judge or teen court judge, but in no case may the court  
63 require a juvenile to admit the allegation against him or  
64 her as a prerequisite to participation in the teen court  
65 program. A copy of these rules shall be provided to every  
66 teen court participant.

67 (d) Each county or municipality that operates, or wishes  
68 to operate, a teen court program as provided in this section  
69 is hereby authorized to adopt a mandatory fee of up to five  
70 dollars to be assessed as provided in this subsection.  
71 Municipal courts may assess a fee pursuant to the provi-  
72 sions of this section upon authorization by the city council  
73 of the municipality. Assessments collected by the clerk of  
74 the court pursuant to this subsection shall be deposited  
75 into an account specifically for the operation and adminis-  
76 tration of a teen court program. The clerk of the court of  
77 conviction shall collect the fees established in this subsec-  
78 tion and shall remit the fees to the teen court program.

79 Any mandatory fee established by a county commission  
80 or city council in accordance with the provisions of this  
81 subsection shall be paid by the defendant on a judgment  
82 of guilty or a plea of nolo contendere for each violation  
83 committed in the county or municipality of any felony,  
84 misdemeanor or any local ordinance, including traffic  
85 violations and moving violations but excluding municipal  
86 parking ordinances. Municipalities operating teen courts  
87 are authorized to use fees assessed in municipal court  
88 pursuant to this subsection for operation of a teen court in  
89 their municipality.

Enr. Com. Sub. for S. B. No. 669] 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 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 re approved this the 2d  
Day of April, 2010.

Governor

PRESENTED TO THE  
GOVERNOR

APR 01 2010

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