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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2680

(By Delegate Givens, Staton, Kominar, Mahan,
Underwood, Riggand Smirl)



Passed April 12, 1997

In Effect July 1, 1997 Passage

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OFFICE OF CLERK OF COURTS
STATE OF WEST VIRGINIA

ENROLLED

H. B. 2680

(BY DELEGATES GIVENS, STATON, KOMINAR,
MAHAN, UNDERWOOD, RIGGS AND SMIRL)

[Passed April 12, 1997; in effect July 1, 1997.]

AN ACT to repeal section sixteen-b, article five, 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 section sixteen, article two of said chapter; to amend and reenact sections thirteen and sixteen-a, article five of said chapter; to further amend said article five by adding thereto a new section, designated section thirteen-e; to amend and reenact sections six and six-a, article five-a of said chapter; to amend and reenact sections two and four, article five-b of said chapter be amended and reenacted; that article five-c of said chapter be amended and reenacted; to further amend said chapter by adding thereto a new article, designated article five-e; to amend and reenact section eight, article six of said chapter; to amend article seven of said chapter by adding thereto three new sections, designated sections thirty, thirty-one and thirty-two; and to further amend said chapter by adding thereto a new article, designated article nine, all relating to reforming and reorganizing the system of child welfare throughout the state; setting forth purposes and defining certain terms; transferring certain functions to the division of juvenile services within the department of military affairs and public safety; providing for disposition in juvenile proceedings; establishing a comprehensive plan for juveniles; requiring juvenile facility rules; authorizing

assignment of personnel by division of juvenile services; providing for state plan predispositional detention of juveniles; stating purpose and intent of juvenile offender rehabilitation act; setting forth the responsibilities of the department of health and human resources and the division of juvenile services with regard to juveniles; providing for the creation of oversight committees; prescribing the powers and duties of committees; providing for the appointment of members, time and place of meetings, assistance of other agencies, and reimbursement for expenses; creating the division of juvenile services within the department of military affairs and public safety; prescribing duties and responsibilities of the division of juvenile services; transferring fiscal responsibility for the Kanawha home for children to the division of juvenile services; providing for a study to establish a facility for housing juveniles who have been transferred to adult criminal jurisdiction; requiring legislative rules for specialized training for juvenile corrections officers and detention center employees; establishing a procedure for summary review of certain facilities or services, in lieu of certificate of need review; establishing a special account in the state treasury known as the child assessment and in-state placement fund, providing for a juvenile justice database; creating a child placement alternatives corporation; giving management and control of corporation to board of directors; prescribing the powers of the corporation; providing for a structured risk assessment and classification for children placed in out-of-state facilities; and requiring statistical and analytical reports.

Be it enacted by the Legislature of West Virginia:

That section sixteen-b, article five, 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 section sixteen, article two of said chapter be amended and reenacted; that sections thirteen and sixteen-a, article five of said chapter be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section thirteen-e; that sections six and six-a, article five-a of said chapter be amended and reenacted; that sections two and four, article five-b of said chapter be amended and reenacted; that article five-c of said

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

- 1 (a) The purpose of this chapter is to provide a system
2 of child welfare for the children of this state that has goals
3 to:
- 4 (1) Assure each child care and guidance;
- 5 (2) Serve the mental and physical welfare of the
6 child;
- 7 (3) Preserve and strengthen the child's family ties;
- 8 (4) Recognize the fundamental rights of children and
9 parents;
- 10 (5) Adopt procedures and establish programs that are
11 family-focused rather than focused on specific family
12 members, except where the best interests of the child or
13 the safety of the community are at risk;
- 14 (6) Involve the child and his or her family or
15 caregiver in the planning and delivery of programs and
16 services;
- 17 (7) Provide services that are community-based, in the
18 least restrictive settings that are consonant with the needs
19 and potentials of the child and his or her family;
- 20 (8) Provide for early identification of the problems
21 of children and their families, and respond appropriately
22 with measures and services to prevent abuse and neglect
23 or delinquency;

24 (9) Provide a system for the rehabilitation or
25 detention of juvenile delinquents; and

26 (10) Protect the welfare of the general public.

27 In pursuit of these goals it is the intention of the
28 Legislature to provide for removing the child from the
29 custody of parents only when the child's welfare or the
30 safety and protection of the public cannot be adequately
31 safeguarded without removal; and, when the child has to
32 be removed from his or her family, to secure for the child
33 custody, care and discipline consistent with the child's best
34 interests and other goals herein set out.

35 (b) The child welfare service of the state shall be
36 administered by the state department of health and human
37 resources and the division of juvenile services of the
38 department of military affairs and public safety.

39 The state department of health and human resources
40 is designated as the agency to cooperate with the United
41 States department of health and human services and
42 United States department of justice in extending and
43 improving child welfare services, to comply with
44 regulations thereof, and to receive and expend federal
45 funds for these services. The division of juvenile services
46 of the department of military affairs and public safety is
47 designated as the agency to cooperate with the United
48 States department of health and human services and
49 United States department of justice in operating,
50 maintaining and improving juvenile correction facilities
51 and centers for the predispositional detention of children,
52 to comply with regulations thereof, and to receive and
53 expend federal funds for these services

**ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION
AND CARE OF CHILDREN.**

§49-2-16. State responsibility for child care.

1 The division of juvenile services of the department of
2 military affairs and public safety is hereby authorized and
3 empowered to operate and maintain centers for juveniles
4 needing detention pending disposition by a court having

5 juvenile jurisdiction or temporary care following such
6 court action.

7 The state department of health and human resources
8 is hereby authorized and empowered to provide care,
9 support and protective services for children who are
10 handicapped by dependency, neglect, single parent status,
11 mental or physical disability, or who for other reasons are
12 in need of public service. Such department is also hereby
13 authorized and empowered in its discretion to accept
14 children for care from their parent or parents, guardian,
15 custodian or relatives and to accept the custody of
16 children committed to its care by courts. The department
17 of human services or any county office of such
18 department is also hereby authorized and empowered in
19 its discretion to accept temporary custody of children for
20 care from any law-enforcement officer in an emergency
21 situation.

22 Within ninety days of the date of the signatures to
23 a voluntary placement agreement, after receipt of physical
24 custody, the state department of health and human
25 resources shall file with the court a petition for review of
26 the placement, stating the child's situation and the
27 circumstance that gives rise to the voluntary placement. If
28 the department intends to extend the voluntary placement
29 agreement, the department shall file with the court a copy
30 of the child's case plan. The court shall appoint an
31 attorney for the child, who shall also receive a copy of the
32 case plan. The court shall schedule a hearing and shall
33 give notice of the time and place and right to be present at
34 such hearing to: The child's attorney; the child, if twelve
35 years of age or older; the child's parents or guardians; the
36 child's foster parents; and any other such persons as the
37 court may in its discretion direct. The child's presence at
38 such hearing may be waived by the child's attorney at the
39 request of the child or if the child would suffer emotional
40 harm. At the conclusion of the proceedings, but no later
41 than ninety days after the date of the signatures to the
42 voluntary placement agreement, the court shall enter an
43 order determining whether or not continuation of the
44 voluntary placement is in the best interests of the child;
45 specifying under what conditions the child's placement

46 shall continue; and specifying whether or not the
47 department has made reasonable efforts to reunify the
48 family and/or provide a plan for the permanent placement
49 of the child.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition; appeal.

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

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

19 (1) Dismiss the petition;

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

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

33 pursuant to section twenty-five, article seven, chapter
34 twenty of this code, or other appropriate programs of
35 community service;

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

54 (5) Upon a finding that the best interests of the child
55 or the welfare of the public require it, and upon an
56 adjudication of delinquency pursuant to subdivision (1),
57 section four, article one of this chapter, the court may
58 commit the child to an industrial home, correctional
59 institution for children, or other appropriate facility for
60 the treatment, instruction and rehabilitation of juveniles:
61 *Provided*, That the court maintains discretion to consider
62 alternative sentencing arrangements. Commitments shall
63 not exceed the maximum term for which an adult could
64 have been sentenced for the same offense. The order shall
65 state that continuation in the home is contrary to the best
66 interests of the child and why; and whether or not the state
67 department made a reasonable effort to prevent the
68 placement or that the emergency situation made such
69 efforts unreasonable or impossible;

70 (6) Upon an adjudication of delinquency pursuant to
71 subdivision (3) or (4), section four, article one of this
72 chapter, and upon a finding that the child is so totally

73 unmanageable, ungovernable and antisocial that the child
74 is amenable to no treatment or restraint short of
75 incarceration, commit the child to a rehabilitative facility
76 devoted exclusively to the custody and rehabilitation of
77 children adjudicated delinquent pursuant to said
78 subdivision. Commitments shall not exceed the maximum
79 period of one year with discretion as to discharge to rest
80 with the director of the institution, who may release the
81 child and return him or her to the court for further
82 disposition. The order shall state that continuation in the
83 home is contrary to the best interests of the child and why;
84 and whether or not the state department made a reasonable
85 effort to prevent the placement or that the emergency
86 situation made such efforts unreasonable or impossible; or

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

98 (c) The disposition of the child shall not be affected
99 by the fact that the child demanded a trial by jury or made
100 a plea of denial. Any dispositional order is subject to
101 appeal to the supreme court of appeals.

102 (d) Following disposition, it shall be inquired of the
103 respondent whether or not appeal is desired and the
104 response transcribed; a negative response shall not be
105 construed as a waiver. The evidence shall be transcribed
106 as soon as practicable and made available to the child or
107 his or her counsel, if the same is requested for purposes of
108 further proceedings. A judge may grant a stay of
109 execution pending further proceedings.

110 (e) Notwithstanding any other provision of this code
111 to the contrary, if a child charged with delinquency under
112 this chapter is transferred to adult jurisdiction and there

113 tried and convicted, the court may make its disposition in
114 accordance with this section in lieu of sentencing such
115 person as an adult.

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

1 The division of juvenile services within the
2 department of military affairs and public safety shall
3 develop a comprehensive plan to establish a unified state
4 system for social and rehabilitative programming and
5 treatment of juveniles in predispositional detention centers
6 and in juvenile correction facilities and a comprehensive
7 plan for regional juvenile detention facilities and
8 programs. These plans are to be submitted to the West
9 Virginia Legislature no later than the first day of January,
10 one thousand nine hundred ninety-eight.

11 The comprehensive plan for regional detention
12 programs and facilities shall be based on a needs
13 assessment of juvenile detention services and may locate
14 all newly constructed detention facilities on or near a
15 regional jail facility, with common facilities and
16 administration as permitted by federal law.

§49-5-16a. Rules and regulations governing juvenile facilities.

1 The director of the division of juvenile services
2 within the department of military affairs and public safety
3 shall prescribe written rules and regulations subject to the
4 provisions of chapter twenty-nine-a of this code, outlining
5 policies and procedures governing the operation of those
6 correctional, detention, predispositional detention centers
7 and other facilities wherein juveniles may be housed. Said
8 policies and procedures shall include, but shall not be
9 limited to, standards of cleanliness, temperature and
10 lighting; availability of medical and dental care; provision
11 of food, furnishings, clothing and toilet articles;
12 supervision; procedures for enforcing rules of conduct
13 consistent with due process of law, and visitation
14 privileges. On and after January one, one thousand nine
15 hundred seventy-nine, a child in custody or detention shall
16 have, at a minimum, the following rights, and the policies
17 prescribed shall ensure that:

18 (1) A child shall not be punished by physical force,
19 deprivation of nutritious meals, deprivation of family visits
20 or solitary confinement;

21 (2) A child shall have the opportunity to participate
22 in physical exercise each day;

23 (3) Except for sleeping hours a child in a state
24 facility shall not be locked alone in a room unless such
25 child is out of control;

26 (4) A child shall be provided his own clothing or
27 individualized clothing which is clean, supplied by the
28 facility, and daily access to showers;

29 (5) A child shall have constant access to writing
30 materials and may send mail without limitation, censorship
31 or prior reading, and may receive mail without prior
32 reading, except that mail may be opened in the child's
33 presence, without being read, to inspect for contraband;

34 (6) A child may make and receive regular local
35 phone calls without charge and long distance calls to his
36 family without charge at least once a week, and receive
37 visitors daily and on a regular basis;

38 (7) A child shall have immediate access to medical
39 care as needed;

40 (8) A child in a juvenile detention facility or state
41 institution shall be provided access to education including
42 teaching, educational materials and books;

43 (9) A child shall have reasonable access to an
44 attorney upon request; and

45 (10) A child shall be afforded a grievance procedure,
46 including an appeal mechanism.

47 Upon admission to a jail, detention facility or
48 institution, a child shall be furnished with a copy of the
49 rights provided him by virtue of this section and as further
50 prescribed by rules promulgated pursuant to this section.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-6. Assistance of division of juvenile services of the department of military affairs and public safety.

1 The division of juvenile services of the department of
2 military affairs and public safety is authorized to assign
3 the necessary personnel and provide adequate space for
4 the support and operation of any facility operated by the
5 division of juvenile services of the department of military
6 affairs and public safety providing for the detention of
7 children as provided in this article, subject to and not
8 inconsistent with the appropriation and availability of
9 funds.

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

1 (a) The division of juvenile services of the
2 department of military affairs and public safety shall
3 develop a comprehensive plan to maintain and improve a
4 unified state system of regional predispositional detention
5 centers for juveniles. The plan shall consider
6 recommendations from the division of corrections, the
7 governor's committee on crime, delinquency and
8 correction, the state board of education, detention center
9 personnel, juvenile probation officers and judicial and
10 law-enforcement officials from throughout the state.

11 The principal purpose of the plan shall be, through
12 statements of policy and program goals, to provide for the
13 effective and efficient use of regional juvenile detention
14 facilities.

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

24 (c) The plan shall include, but not be limited to,
25 statements of policies and goals in the following areas:

- 26 (1) Licensing of secure detention centers;
 - 27 (2) Criteria for placing juveniles in detention;
 - 28 (3) Alternatives to secure detention;
 - 29 (4) Allocation of fiscal resources to the costs of
 - 30 secure detention facilities;
 - 31 (5) Information and referral services; and
 - 32 (6) Educational regulations developed and approved
 - 33 by the West Virginia board of education.
- 34 (d) The legislature shall designate a committee or
- 35 task force thereof, to act in a continuing capacity as an
- 36 oversight committee, and shall assist the director of the
- 37 division of juvenile services within the department of
- 38 military affairs and public safety in the periodic review
- 39 and update of the state plan for the predispositional
- 40 detention centers for juveniles.

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

§49-5B-2. Purpose and intent.

1 It is the purpose and intent of the Legislature to

2 provide for the creation of all reasonable means and

3 methods that can be established by a humane and

4 enlightened state, solicitous of the welfare of its children,

5 for the prevention of delinquency and for the care and

6 rehabilitation of delinquent children. It is further the

7 intent of the Legislature that this state, through the

8 department of health and human resources and the

9 division of juvenile services of the department of military

10 affairs and public safety, establish, maintain, and

11 continuously refine and develop, a balanced and

12 comprehensive state program for children who are

13 potentially delinquent or are delinquent.

**§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
2 and the division of juvenile services of the department of
3 military affairs and public safety are empowered to
4 establish, and shall establish, subject to the limits of funds
5 available or otherwise appropriated therefor, programs and
6 services designed to prevent juvenile delinquency, to divert
7 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 juvenile justice system. The
11 development, maintenance and expansion of programs
12 and services may include, but not be limited to, the
13 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 home;

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

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

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

39 (6) Expanded use of professional and parapro-
40 fessional personnel and volunteers to work effectively with
41 youth;

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

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

52 (b) The department of health and human resources
53 shall establish, within the funds available, an individualized
54 program of rehabilitation for each accused juvenile
55 offender referred to the department after being allowed an
56 improvement period by the juvenile court, and for each
57 adjudicated juvenile offender who, after adjudication, is
58 referred to the department for investigation or treatment
59 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 child. Such individualized program of
65 rehabilitation shall be furnished to the juvenile court and
66 shall be available to counsel for the child; it may be
67 modified from time to time at the direction of the
68 department or by order of the juvenile court. The
69 department may develop an individualized program of
70 rehabilitation for any child referred for noncustodial
71 counseling under section five, article three of this chapter,
72 for any child receiving counsel and advice under section
73 three-a, article five of this chapter, or for any other child
74 upon the request of a public or private agency.

75 (c) The department of health and human resources
76 and the division of juvenile services of the department of
77 military affairs and public safety are authorized to enter
78 into cooperative arrangements and agreements with private

79 agencies or with agencies of the state and its political
80 subdivisions to effectuate the purpose of this article.

ARTICLE 5C. COMMITTEES ON JUVENILE LAW.

§49-5C-1. Creation of committees.

1 The Legislature shall create such committees and
2 forums as may be necessary to oversee matters related to
3 juvenile law, placement, housing, detention and
4 correctional facilities. The Legislature shall delegate or
5 contract such responsibilities and duties to other
6 governmental bodies as needed.

§49-5C-2. Powers and duties.

1 The powers and duties of the committees shall
2 include, but not be limited to, the following:

3 (a) Studying the status and effectiveness of the laws
4 relating to juvenile proceedings, the juvenile referee
5 system, and the West Virginia juvenile offender
6 rehabilitation act, and making recommendations as to any
7 changes needed in the system and the ways and means to
8 effect such changes;

9 (b) Making further and more specific recom-
10 mendations within the scope of the study as to the
11 detention of juvenile offenders, considering both short
12 and long term detention;

13 (c) Considering existing juvenile detention facilities
14 and making recommendations, with particular attention to
15 financing, as to the need for updating present facilities
16 and/or creating new facilities and the location of each;

17 (d) Filing a report to each regular session of the
18 legislature which will include drafts of legislation
19 necessary to effectuate any recommendations;

20 (e) Maintaining reference materials concerning
21 juvenile offenders including, without limitation,
22 information as to laws and systems in other states;

23 (f) Visiting, inspecting, and interviewing residents of
24 juvenile institutions, detention facilities, and places wherein

25 West Virginia juveniles may be held involuntarily and
26 making public reports of such reviews;

27 (g) Overseeing the maintenance and improvement of
28 the system of predispositional detention of juveniles.

§49-5C-3. Appointment of members.

1 The committees may include qualified members of
2 the general public as well as members of the Senate and
3 the House of Delegates. An effort shall be made to
4 include representatives of more than one political party on
5 each committee.

§49-5C-4. Time and place of meetings.

1 The committees shall hold meetings at such times
2 and places as they may designate.

§49-5C-5. Assistance of other agencies.

1 The committees may request information from any
2 state officer or agency in order to assist in carrying out the
3 terms of this article, and such officer or agency is
4 authorized and directed to promptly furnish any data
5 requested.

§49-5C-6. Expenses; reimbursement.

1 The members of the committees and their assistants
2 shall be reimbursed for all expenses actually and
3 necessarily incurred in the performance of their duties
4 hereunder by the joint committee on government and
5 finance from the joint expenses fund.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-1. Policy.

1 It is the policy of the state to provide a continuum of
2 care for its children who have been charged with an
3 offense which would be a crime if committed by an adult
4 and taken into custody. It is further the policy of the state
5 to ensure the safe and efficient custody of a detained child
6 through the entire juvenile justice process, and that this
7 can best be accomplished by the state by and through a

8 single division within the department of military affairs
9 and public safety.

**§49-5E-2. Division created; transfer of functions; employment
of comprehensive strategy.**

1 There is hereby created the division of juvenile
2 services within the department of military affairs and
3 public safety. The director shall be appointed by the
4 governor with the advice and consent of the Senate, and
5 shall be responsible for the control and supervision of
6 each of its offices. The director may appoint deputy
7 directors and assign them duties as may be necessary for
8 the efficient management and operation of the division.

9 The division of juvenile services shall consist of two
10 subdivisions:

11 (1) The office of juvenile detention, which shall
12 assume responsibility for operating and maintaining
13 centers for the predispositional detention of juveniles,
14 including juveniles who have been transferred to adult
15 criminal jurisdiction under section ten, article five, of this
16 chapter and juveniles who are awaiting transfer to a
17 juvenile corrections facility; and

18 (2) The office of juvenile corrections, which shall
19 assume responsibility for operating and maintaining
20 juvenile corrections facilities.

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

1 The division of juvenile services shall assume the
2 following duties performed by the department of health
3 and human resources as to juveniles in detention facilities
4 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 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 detention of children committed
18 to the care of the division of juvenile services, as set forth
19 in section six, article five-a of this chapter;

20 (4) Proposing rules which outline policies and
21 procedures governing the operation of correctional,
22 detention and other facilities in its division wherein
23 juveniles may be housed, as set forth in section sixteen-a,
24 article 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
30 and improve a unified state system of predispositional
31 detention centers for juveniles, as set forth in section six-a,
32 article five-a of this chapter;

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

39 (8) In cooperation with the department of health and
40 human resources, establishing programs and services,
41 within available funds, designed to prevent juvenile
42 delinquency, to divert juveniles from the juvenile justice
43 system, to provide community-based alternatives to
44 juvenile detention and correctional facilities and to
45 encourage a diversity of alternatives within the juvenile
46 justice system, as set forth in section four, article five-b of
47 this chapter;

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

**§49-5E-4. Transfer of fiscal responsibility of Kanawha home
for children.**

1 (a) “Kanawha home for children” means the county
2 home for the detention of juvenile delinquents or children
3 charged with delinquency as established by the county
4 commission of Kanawha County pursuant to the
5 provisions of a local bill, House Bill No. 141, enacted by
6 the Legislature on the fourteenth day of February, one
7 thousand nine hundred fifty-five, as set forth in the Acts
8 of the West Virginia Legislature, Regular Session, 1955,
9 ch. 185.

10 (b) After the effective date of this section, the
11 division of juvenile services shall assume all fiscal
12 responsibility for operating, maintaining, administering
13 and managing the Kanawha home for children.

**§49-5E-5. Adult transfer facility; rules for specialized training
for juvenile corrections officers and detention
center employees.**

1 (a) On or before the first day of December, one
2 thousand nine hundred ninety-seven, the division of
3 juvenile services shall conduct a study of the
4 appropriateness and cost of renovating the Ohio county
5 jail or other facilities to house juveniles who have been
6 transferred to adult criminal jurisdiction and/or who are
7 awaiting post-sentencing transfer to a correctional facility.

8 (b) The division of juvenile services shall propose
9 legislative rules to be promulgated by the Legislature
10 according to the provisions of chapter twenty-nine-a of
11 this code, to require juvenile corrections officers and
12 detention center employees to complete specialized

13 training and certification. The training programs shall
14 meet the standards of those offered or endorsed by the
15 office of juvenile justice and delinquency prevention of
16 the office of justice programs of the United States
17 department of justice.

**ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR
ABUSE.**

§49-6-8. Foster care review; annual reports to the court.

1 (a) If, twelve months after receipt (by the state
2 department or its authorized agent) of physical custody of
3 a child either by a court ordered placement or by a
4 voluntary agreement, the state department has not placed a
5 child in permanent foster care or an adoptive home or
6 placed the child with a natural parent, the state department
7 shall file with the court a petition for review of the case.
8 The department shall also file with the court a report
9 detailing the efforts that have been made to place the child
10 in a permanent home and copies of the child's case plan
11 including the permanency plan as defined in section five,
12 article six of this chapter. Copies of the report shall be
13 sent to the child's attorney and be made available to the
14 child's parent(s) or guardian. "Permanent foster care"
15 shall mean a written arrangement with an adult or adults
16 following a six-month trial period whereby the state
17 department places the care, custody and control of a child
18 until the child's emancipation with such adult or adults.
19 The court shall schedule a hearing in chambers, giving
20 notice and the right to be present to: The child's attorney;
21 the child, if twelve years of age or older; the child's
22 parents; the child's guardians; the child's foster parents;
23 and such other persons as the court may in its discretion
24 direct. The child's presence may be waived by the child's
25 attorney at the request of the child or if the child would
26 suffer emotional harm. The purpose of the hearing is to
27 review the child's case, to determine whether and under
28 what conditions the child's commitment to the department
29 shall continue, and to determine what efforts are necessary
30 to provide the child with a permanent home. At the
31 conclusion of the hearing the court shall in accordance
32 with the best interests of the child enter an appropriate

33 order of disposition. The court order shall state (1)
34 whether or not the department made reasonable effort to
35 prevent out-of-home placement or that the specific
36 situation made such effort unreasonable, (2) the
37 permanency plan for the child, and (3) services required
38 to meet the child's needs. The court shall possess
39 continuing jurisdiction over cases reviewed under this
40 section for so long as a child remains in temporary foster
41 care, or, when a child is returned to his or her natural
42 parents subject to conditions imposed by the court, for so
43 long as the conditions are effective.

44 (b) The state department shall file a supplementary
45 petition for review with the court within twelve months and
46 every twelve months thereafter for every child that remains
47 in the physical or legal custody of the state department
48 until the child is placed in an adoptive home or permanent
49 foster care or returned to his or her parents.

50 (c) The state department shall annually report to the
51 court the current status of the placements of children in
52 permanent care and custody of the state department who
53 have not been adopted.

54 (d) The state department shall file a report with the
55 court in any case where any child in the temporary or
56 permanent custody of the state receives more than three
57 placements in one year no later than thirty days after the
58 third placement. This report shall be provided to all
59 parties and their counsel. Upon motion by any party, the
60 court shall review these placements and determine what
61 efforts are necessary to provide the child with a stable
62 foster or temporary home: *Provided*, That no report shall
63 be provided to any parent or parent's attorney whose
64 parental rights have been terminated pursuant to this
65 article.

66 (e) The state department shall notify, in writing, the
67 court, the child, if over the age of twelve, the child's
68 attorney, the parents and the parents' attorney forty-eight
69 hours prior to the move if this is a planned move, or within
70 forty-eight hours of the next business day after the move
71 if this is an emergency move, except where such
72 notification would endanger the child or the foster family.

73 This notice shall not be required in any case where the
74 child is in imminent danger in the child's current
75 placement. The location of the child need not be
76 disclosed, but the purpose of the move should be. This
77 requirement is not waived by placement of the child in a
78 home or other residence maintained by a private provider.
79 No notice shall be provided pursuant to this provision to
80 any parent or parent's attorney whose parental rights have
81 been terminated pursuant to this article.

82 (f) Nothing in this article precludes any party from
83 petitioning the court for review of the child's case at any
84 time. The court shall grant such petition upon a showing
85 that there is a change in circumstance or needs of the child
86 that warrants court review.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-30. Certificate of need not required.

1 (a) A certificate of need, as provided for in article
2 two-d, chapter sixteen of this code, is not required by an
3 entity proposing behavioral health care facilities or
4 behavioral health care services for children who are placed
5 out of their home, or who are at imminent risk of being
6 placed out of their home, if a summary review is
7 performed in accordance with the provisions of this
8 section.

9 (b) A summary review of proposed health care
10 facilities or health care services for children who are
11 placed out of their home, or who are at imminent risk of
12 being placed out of their home, is initiated when the
13 proposal is recommended to the health care cost review
14 authority by the secretary of the department of health and
15 human resources, and the secretary has made the
16 following findings:

17 (1) That the proposed facility or service is consistent
18 with the state health plan;

19 (2) That the proposed facility or service is consistent
20 with the department's programmatic and fiscal plan for
21 behavioral health services for children with mental health
22 and addiction disorders;

23 (3) That the proposed facility or service contributes
24 to providing services that are child and family driven, with
25 priority given to keeping children in their own homes;

26 (4) That the proposed facility or service will
27 contribute to reducing the number of child placements in
28 out-of-state facilities by making placements available in
29 in-state facilities;

30 (5) That the proposed facility or service contributes
31 to reducing the number of child placements in in-state or
32 out-of-state facilities by returning children to their
33 families, placing them in foster care programs, or making
34 available school-based and out-patient services; and

35 (6) If applicable, that the proposed services will be
36 community-based, locally accessible, and provided in an
37 appropriate setting consistent with the unique needs and
38 potential of each child and his or her family.

39 (c) The secretary's findings required by subsection
40 (b) of this section shall be filed with the secretary's
41 recommendation and appropriate documentation. If the
42 secretary's findings are supported by the accompanying
43 documentation, the proposal shall not require a certificate
44 of need.

45 (d) Any entity that does not qualify for summary
46 review shall be subject to certificate of need review.

§49-7-31. Special account.

1 (a) There is hereby established a special account in
2 the department of health and human resources in the state
3 treasury to be known as the "Child Assessment and In-
4 state Placement Fund." Any funds provided for the
5 purposes of this article by line-item appropriation of the
6 Legislature in any fiscal year shall be deposited in the
7 special account and used to carry out the purposes of this
8 article. Balances remaining in the special account at the
9 end of the fiscal year shall not expire or revert to the
10 general revenue: *Provided*, That balances remaining in the
11 account may be redesignated for other purposes by
12 appropriation of the Legislature. The secretary of the
13 department of health and human resources may order the

14 transfer of moneys in the special account to other
15 accounts within the department of health and human
16 resources, to the limited extent that children who are the
17 subject of this article are financially and medically eligible
18 for other programs or services of the division of health
19 and human resources, including programs funded, in
20 whole or in part, by federal funds.

21 (b) Any moneys saved by the department of health
22 and human resources by virtue of returning children from
23 out-of-state placements after implementing the structured
24 risk assessment and classification system provided for in
25 section four, article nine of this chapter shall be deposited
26 in the child assessment and in-state placement fund and
27 used solely for the purpose of developing and
28 implementing programs that will reduce the numbers of
29 children in long-term placements outside of their homes.

§49-7-32. Juvenile justice database.

1 The criminal justice and highway safety division of
2 the department of military affairs and public safety is
3 responsible for collecting, compiling and disseminating
4 information in the juvenile justice database heretofore
5 maintained by the facilities review panel of the juvenile
6 justice committee. Accordingly, and notwithstanding any
7 other provision of this code to the contrary, the division
8 shall be granted access to confidential juvenile records for
9 the limited purpose of continuing maintenance of the
10 juvenile justice database: *Provided*, That the divisions shall
11 keep such records confidential and not publish any
12 information that would identify any individual juvenile.

ARTICLE 9. CHILD PLACEMENT ALTERNATIVES.

§49-9-1. Creation of child placement alternatives corporation; composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

1 (a) There is created as a governmental instru-
2 mentality of the state of West Virginia, a public body
3 corporate to be known as the West Virginia child
4 placement alternatives corporation.

5 (b) The child placement alternatives corporation is
6 created and established to serve a public corporate
7 purpose and to act for the public benefit and as a
8 governmental instrumentality of the state of West Virginia,
9 to act on behalf of the state and its people in serving the
10 needs of children who are placed out of their homes or
11 who are at risk of out-of-home placement, as well as
12 serving families, providers and policy-makers.

13 (c) The child placement alternatives corporation shall
14 be governed by a board of directors, consisting of nine
15 members, three of whom shall be the secretary of the
16 department of health and human resources, the director of
17 the division of juvenile services within the department of
18 military affairs and public safety, and the chairman of the
19 department of behavioral medicine and psychiatry of the
20 Robert C. Byrd health sciences center at West Virginia
21 university, or their designated representatives as public
22 directors, and six citizen members chosen from the
23 general public residing in the state, no more than two of
24 whom shall be from each congressional district, and not
25 more than three of whom shall be from any political
26 party.

27 (d) Upon organization of the child placement
28 alternatives corporation, the governor shall appoint, by
29 and with the advice and consent of the Senate, the six
30 private directors to take office and to exercise all powers
31 thereof immediately, with three appointed for terms of two
32 years, and with three appointed for terms of four years,
33 respectively, as the governor shall designate; at the
34 expiration of the initial terms and for all succeeding terms,
35 the governor shall appoint a successor to the office of
36 private director for a term of four years in each case.

37 (e) In cases of any vacancy in the office of a private
38 director, such vacancy shall be filled by appointment by
39 the governor for the unexpired term.

40 (f) The governor may remove any private director
41 whom he may appoint in case of incompetency, neglect of
42 duty, gross immorality, or malfeasance in office; and he
43 may declare his or her office vacant and may appoint a

44 person for such vacancy as provided in other cases of
45 vacancy.

46 (g) The chairman of the board of directors shall be
47 designated by the governor from among the directors.

48 (h) Five members of the board of directors shall
49 constitute a quorum. No vacancy in the membership of
50 the board shall impair the right of a quorum to exercise all
51 the rights and perform all the duties of the board of
52 directors.

53 (i) No action shall be taken by the board of directors
54 except upon the affirmative vote of a majority of the
55 directors present and voting.

56 (j) The directors, including the chairman, vice
57 chairman and the treasurer of the board of directors, and
58 the secretary of the board of directors, shall receive no
59 compensation for their services but shall be entitled to
60 their reasonable and necessary expenses actually incurred
61 in discharging their duties under this article.

**§49-9-2. Management and control of child placement
alternatives corporation vested in board; officers.**

1 (a) The management and control of the child
2 placement alternatives corporation shall be vested solely in
3 the board of directors in accordance with the provisions of
4 this article.

5 (b) The chairman shall be the chief executive officer
6 of the corporation, and, in his absence, the vice chairman
7 shall act as chief executive officer.

8 (c) The board of directors may appoint a chief
9 administrative officer and may fix his title, duties and
10 compensation.

11 (d) The board of directors of the corporation shall
12 annually elect from its membership a treasurer, and shall
13 annually elect a secretary, who need not be a member of
14 the board, to keep a record of the proceedings of the
15 corporation.

16 (e) The treasurer of the corporation shall be
17 custodian of all funds of the child placement alternatives
18 corporation, and shall be bonded in such amount as the
19 other members of the board of directors may designate.

§49-9-3. Corporate powers.

1 The child placement alternatives corporation is
2 hereby granted, has and may exercise all powers necessary
3 or appropriate to carry out and effectuate its corporate
4 purposes, including, but not limited to, the following:

5 (1) To act as an information broker or gatekeeper
6 serving children, families, providers and policy-makers,
7 functioning as the single entity responsible for
8 recommending appropriate placements for children out of
9 their homes and alternatives to such placements;

10 (2) To provide one or more diagnostic and
11 evaluation centers to accept referrals and conduct
12 evaluations, including psychiatric, psychological,
13 educational, pediatric and adaptive functioning, as a
14 complement to existing community-based programs and
15 services;

16 (3) To identify the services and availability of
17 services, as gatekeeper, for level assignment and
18 placement;

19 (4) To assist the juvenile justice system, mental health
20 providers and social service agencies in the identification
21 of facilities and services appropriate to the needs of
22 individual children, providing access to placement
23 information through one telephone call and a twenty-four
24 hour response time;

25 (5) To accept appropriations, gifts, grants, bequests
26 and devises and to utilize or dispose of the same to carry
27 out its corporate purposes;

28 (6) To make and execute contracts, releases,
29 compromises, compositions and other instruments
30 necessary or convenient for the exercise of its powers, or
31 to carry out its corporate purposes;

32 (7) To collect reasonable fees and charges in
33 connection with providing services as prescribed by this
34 article, and in connection with providing professional,
35 consultative and project assistance services;

36 (8) To sue and be sued;

37 (9) To have a seal and alter the same at will;

38 (10) To make, and from time to time, amend and
39 repeal bylaws and rules and regulations not inconsistent
40 with the provisions of this article;

41 (11) To appoint such officers, employees and
42 consultants as it deems advisable and to fix their
43 compensation and prescribe their duties;

44 (12) To acquire, hold and dispose of real and
45 personal property for its corporate purposes;

46 (13) To enter into agreements or other transactions
47 with any federal or state agency, any person and any
48 domestic or foreign partnership, corporation, association
49 or organization; and

50 (14) To make and publish such rules and regulations
51 as are necessary to effectuate its corporate purposes.

**§49-9-4. Out-of-state placements; needs assessment; screen-
ings; referral for assessment, placement and
services; limitations.**

1 (a) On or before first day of October, one thousand
2 nine hundred ninety-seven, the corporation shall develop
3 and implement a structured risk assessment and
4 classification system for West Virginia children currently
5 placed in out-of-state facilities. The risk assessment
6 system shall be designed to identify:

7 (1) Those children who require long-term placement
8 in a facility with special features not available within this
9 state;

10 (2) Those children who require long-term placement
11 in a facility that is or may become available within this
12 state;

13 (3) Those children who require short-term care in a
14 facility of not more than three months followed by
15 movement to a less restrictive setting;

16 (4) Those children who could be placed directly in a
17 community-based setting with appropriate support and
18 services.

19 (b) The corporation shall cause an initial screening,
20 based on the risk assessment and classification system, to
21 preliminarily identify those children who require long-
22 term placement in a facility with special features not
23 available within this state and those children for whom
24 appropriate in-state placements may be found. After the
25 initial screening, the corporation may conduct further
26 screenings under this subsection at intervals established by
27 the corporation.

28 (c) The corporation shall develop and implement a
29 plan for (1) reviewing and assessing the needs of those
30 children for whom appropriate in-state placements may be
31 found and (2) developing and implementing specific in-
32 state alternatives for placement of each child, including
33 recommended support services. Based on the initial
34 screening, any or all of the children for whom appropriate
35 in-state placements may be found may be provided with
36 further review and assessment, appropriate in-state
37 placement, and services under. The corporation shall
38 consider:

39 (1) Services through community-based programs to
40 assist in the prevention of the need for more costly
41 residential care;

42 (2) The resources and programming available
43 through family resource networks and multidisciplinary
44 teams;

45 (3) The recommendations of legislative and
46 executive committees, commissions and task forces
47 established to study issues affecting juvenile placement;

48 (4) The comprehensive strategy and assessment and
49 classification models endorsed by the office of juvenile

50 justice and delinquency prevention of the United States
51 department of justice; and

52 (5) Individual concerns to be addressed by service
53 and care providers.

54 (d) The corporation may issue requests for proposals
55 to implement the provisions of this section, and may solicit
56 alternate proposals to meet a defined need. The
57 corporation may further accept bids from any person,
58 firm, agency or corporation, and may enter into contracts
59 or agreements with public or private agencies, licensed
60 health care providers, or other qualified persons for the
61 following functions or combinations of the following
62 functions, according to standards established by the
63 corporation:

64 (1) Conducting needs assessments for children
65 currently in out-of-state facilities for whom appropriate
66 in-state alternatives may be found and, if the corporation
67 determines that evaluation of family resources and needs
68 is necessary, the child's family;

69 (2) Recommending a service plan that best meets the
70 individual needs of the child and may include support
71 services for his or her family;

72 (3) Obtaining appropriate care, treatment or place-
73 ment and appropriate community-based service.

§49-9-5. Statistical and analytical reports.

1 Beginning with the last quarter of the calendar year
2 one thousand nine hundred ninety-seven, the corporation,
3 in cooperation with the secretary of health and human
4 resources shall prepare a quarterly statistical and analytical
5 report regarding the numbers of children returned to the
6 state since the inception of the program and during the
7 quarter, and the effectiveness of the program established
8 in this article. Copies of the quarterly statistical and
9 analytical reports shall be furnished to the governor and to
10 the joint committee on government and finance.

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

Way Spoonover
Chairman Senate Committee

Nick Santasio
Chairman House Committee

Originating in the House.

Takes effect July 1, 1997.

Daniel E. Holmes
Clerk of the Senate

Bregory W. Gray
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *7th*
day of *May*, 1997.

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 8/1/97

Time 3:45 pm