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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2873

Amores, Givens, Buchanan, Coleman,
(By Delegate Johnson, Smirl and L. White)



Passed April 12, 1997

In Effect Ninety Days From Passage

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WEST VIRGINIA LEGISLATURE

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H. B. 2873

(BY DELEGATES AMORES, GIVENS, BUCHANAN, COLEMAN,
JOHNSON, SMIRL AND L. WHITE)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to repeal section five, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section three, article five-b of said chapter; to amend and reenact sections two and four, article one of said chapter; to amend and reenact sections three, eight, nine, eleven, thirteen and sixteen, article five of said chapter; to further amend said article by adding thereto two new sections, designated sections eight-a and eleven-a; and to amend and reenact sections two, four, five, six and seven, article five-b of said chapter, all relating to decriminalizing status offenses and providing that no juvenile shall be confined in a facility for adult offenders.

Be it enacted by the Legislature of West Virginia:

That section five, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three, article five-b of said chapter be repealed; that sections two and four, article one of said chapter be amended and reenacted; that sections three, eight, nine, eleven, thirteen and sixteen, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections eight-a and eleven-a; and that sections two, four, five, six and seven, article five-b of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-2. “Juvenile” or “Child” defined.

1 As used in this chapter, “juvenile” or “child”
2 means any person under eighteen years of age. Once a
3 juvenile or child is transferred to a court with criminal
4 jurisdiction pursuant to section ten, article five of this
5 chapter, he or she nevertheless remains a juvenile or child
6 for the purposes of the applicability of the provisions of
7 this chapter with the exception of sections one through
8 seventeen of article five of this chapter, unless otherwise
9 stated therein.

§49-1-4. Other definitions.

1 As used in this chapter:

2 (1) “Child welfare agency” means any agency or
3 facility maintained by the state or any county or
4 municipality thereof, or any agency or facility maintained
5 by an individual, firm, corporation, association or
6 organization, public or private, to receive children for care
7 and maintenance or for placement in residential care
8 facilities;

9 (2) “Community based,” when referring to a
10 facility, program, or service means located near the
11 juvenile’s home or family and involving community
12 participation in planning, operation, and evaluation, and
13 which may include, but is not limited to medical,
14 educational, vocational, social and psychological guidance,
15 training, special education, counseling, alcoholism and any
16 treatment, and other rehabilitation services;

17 (3) “Court” means the circuit court of the county
18 with jurisdiction of the case or the judge thereof in
19 vacation unless otherwise specifically provided;

20 (4) “Custodian” means a person who has or shares
21 actual physical possession or care and custody of a child,
22 regardless of whether such person has been granted
23 custody of the child by any contract, agreement or legal
24 proceedings;

25 (5) "Department" or "state department" means the
26 state department of health and human resources;

27 (6) "Division of juvenile services" means the
28 division within the department of military affairs and
29 public safety pursuant to article five-e of this chapter;

30 (7) "Guardian" means a person who has care and
31 custody of a child as a result of any contract, agreement or
32 legal proceeding;

33 (8) "Juvenile delinquent" means a juvenile who has
34 been adjudicated as one who commits an act which would
35 be a crime under state law or a municipal ordinance if
36 committed by an adult;

37 (9) "Nonsecure facility" means any public or
38 private residential facility not characterized by
39 construction fixtures designed to physically restrict the
40 movements and activities of individuals held in lawful
41 custody in such facility and which provides its residents
42 access to the surrounding community with supervision;

43 (10) "Referee" means a juvenile referee appointed
44 pursuant to section one, article five-a of this chapter,
45 except that in any county which does not have a juvenile
46 referee the judge or judges of the circuit court may
47 designate one or more magistrates of the county to
48 perform the functions and duties which may be performed
49 by a referee under this chapter;

50 (11) "Secretary" means the secretary of health and
51 human resources;

52 (12) "Secure facility" means any public or private
53 residential facility which includes construction fixtures
54 designed to physically restrict the movements and
55 activities of juveniles or other individuals held in lawful
56 custody in such facility;

57 (13) "Staff-secure facility" means any public or
58 private residential facility characterized by staff
59 restrictions of the movements and activities of individuals
60 held in lawful custody in such facility and which limits its
61 residents' access to the surrounding community, but is not

62 characterized by construction fixtures designed to
63 physically restrict the movements and activities of
64 residents;

65 (14) "Status offender" means a juvenile who has
66 been adjudicated as one:

67 (A) Who habitually and continually refuses to
68 respond to the lawful supervision by his or her parents,
69 guardian or legal custodian such that the child's behavior
70 substantially endangers the health, safety, or welfare of the
71 juvenile or any other person;

72 (B) Who has left the care of his or her parents,
73 guardian or custodian without the consent of such person
74 or without good cause;

75 (C) Who is habitually absent from school without
76 good cause; or

77 (D) Who violates any West Virginia municipal,
78 county, or state law regarding use of alcoholic beverages
79 by minors;

80 (15) "Valid court order" means a court order given
81 to a juvenile who was brought before the court and made
82 subject to such order, and who received, before the
83 issuance of such order, the full due process rights
84 guaranteed to such juvenile by the constitutions of the
85 United States and the state of West Virginia.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-3. Noncustodial counseling of a child.

1 The court at any time, or the department or other
2 official upon a request from a parent, guardian, or
3 custodian, may, without institution of proceedings under
4 this article, refer a juvenile alleged to be delinquent or a
5 status offender to a counselor at the department or a
6 community mental health center, or other professional
7 counselor in the community. In the event the juvenile
8 refuses to respond to such reference the department may
9 serve a notice by first-class mail or personal service of
10 process upon the juvenile, setting forth the facts and
11 stating that the department will seek a noncustodial order

12 from the court directing the juvenile to submit to
13 counseling. The notice shall set forth the time and place
14 for the hearing on the matter. The court or referee after
15 hearing may direct the juvenile to participate in a
16 noncustodial period of counseling not to exceed six
17 months. Upon recommendation of the department, and
18 with the consent of the juvenile's parent, custodian, or
19 guardian, the court or referee may also allow the
20 participation of such parent, custodian, or guardian in said
21 counseling. No information obtained as the result of such
22 counseling shall be admissible in a subsequent proceeding
23 under this article.

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

1 (a) In proceedings instituted by the filing of a
2 juvenile petition the circuit court may enter an order
3 directing that a juvenile be taken into custody only if one
4 of the following conditions exist: (1) The petition shows
5 that grounds exist for the arrest of an adult in identical
6 circumstances; (2) the health, safety and welfare of the
7 juvenile demand such custody; (3) the juvenile is a
8 fugitive from a lawful custody or commitment order of a
9 juvenile court; or (4) the juvenile is an alleged delinquent
10 and has a record of willful failure to appear at juvenile
11 proceedings, and custody is necessary to assure his or her
12 presence before the court. A detention hearing pursuant
13 to section eight-a of this article shall be held without delay
14 by the judge, juvenile referee or magistrate authorized to
15 conduct such hearing, and in no event shall the delay
16 exceed the next day, and such juvenile shall be released on
17 recognizance to his or her parent, guardian or custodian
18 unless findings are made as specified in subsection (a) of
19 section eight-a of this article.

20 (b) Absent a warrant or court order, a juvenile may
21 be taken into custody by a law-enforcement official only
22 if one of the following conditions exist: (1) Grounds exist
23 for the arrest of an adult in identical circumstances; (2)
24 emergency conditions exist which in the judgment of the
25 officer pose imminent danger to the health, safety and
26 welfare of the juvenile; (3) the official has reasonable
27 grounds to believe that the juvenile has left the care of his

28 or her parents, guardian or custodian without the consent
29 of such person, and the health, safety and welfare of the
30 juvenile is endangered; (4) the juvenile is a fugitive from a
31 lawful custody or commitment order of a juvenile court;
32 or (5) the official has reasonable grounds to believe the
33 juvenile to have been driving a motor vehicle with any
34 amount of alcohol in his or her blood.

35 (c) Upon taking a juvenile into custody, with or
36 without a warrant or court order, the official shall:

37 (1) Immediately notify the juvenile's parent,
38 guardian, custodian or, if the parent, guardian or custodian
39 cannot be located, a close relative;

40 (2) Release the juvenile into the custody of his or her
41 parent, guardian or custodian unless the circumstances
42 warrant otherwise: *Provided*, That an alleged status
43 offender shall not be detained in a secure facility in any
44 case and in a staff-secure facility only if:

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

47 (B) No responsible adult can be found into whose
48 custody the juvenile can be delivered: *Provided*, That each
49 day the juvenile is detained, a written record must be made
50 of all attempts to locate such responsible adult and, after
51 the initial detention, a lawyer shall be appointed to
52 represent the juvenile by the end of the next calendar day;

53 (3) Refer the matter to the prosecuting attorney,
54 department or probation officer for proceedings under
55 this article; and

56 (4) If a juvenile is being held in custody absent a
57 warrant or court order, cause a warrant or order, as the
58 case may be, to be immediately issued authorizing the
59 detention of such juvenile.

60 An alleged status offender detained pursuant to
61 paragraphs (A) and (B) of subdivision (2) herein shall be
62 placed in the custody of the department.

63 (d) If an alleged status offender is taken into custody
64 pursuant to this section, the department shall be

65 immediately notified. Such child shall be placed in the
66 custody of the department and shall not be confined in a
67 secure facility.

68 (e) In the event that a child is delivered into the
69 custody of a sheriff or director of a detention facility, such
70 sheriff or director shall immediately notify the court or
71 referee. Said sheriff or director shall immediately provide
72 to every child who is delivered into his or her custody a
73 written statement explaining the child's right to a prompt
74 detention hearing, his or her right to counsel including
75 appointed counsel if he cannot afford counsel and his or
76 her privilege against self-incrimination. In all cases when
77 a child is delivered into custody, the child shall be released
78 to his or her parent, guardian or custodian by the end of
79 the next day, after being delivered into such custody,
80 unless the child has been placed in detention pursuant to
81 section eight-a of this article.

82 (f) A child in custody must immediately be taken
83 before a referee or judge of the circuit court and in no
84 event shall a delay exceed the next day: *Provided*, That if
85 there be no judge or referee then available in the county,
86 then such child shall be taken immediately before any
87 magistrate in the county for the sole purpose of holding a
88 detention hearing.

§49-5-8a. Detention hearing; counsel.

1 (a) The judge, referee or magistrate shall inform the
2 juvenile of his or her right to remain silent, that any
3 statement may be used against him or her and of his or
4 her right to counsel, and no interrogation shall be made
5 without the presence of a parent or counsel. If the
6 juvenile or his or her parent, guardian or custodian has not
7 retained counsel, counsel shall be appointed as soon as
8 practicable. The referee, judge or magistrate shall hear
9 testimony concerning the circumstances for taking the
10 juvenile into custody and the possible need for detention
11 in accordance with section two, article five-a of this
12 chapter. The sole mandatory issue at the detention
13 hearing shall be whether the juvenile shall be detained
14 pending further court proceedings. The court shall, if
15 advisable, and if the health, safety and welfare of the

16 juvenile will not be endangered thereby, release the
17 juvenile on recognizance to his or her parents, custodians
18 or an appropriate agency; however, if warranted, the court
19 may require bail, except that bail may be denied in any
20 case where bail could be denied if the accused were an
21 adult.

22 (b) The judge of the circuit court or referee may, in
23 conjunction with the detention hearing, conduct a
24 preliminary hearing pursuant to section nine, article five
25 of this chapter: *Provided*, That all parties are prepared to
26 proceed and the juvenile has counsel during such hearing.

§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 or
5 referee shall hold a preliminary hearing. In the event that
6 the juvenile is in custody, such hearing shall be held within
7 ten days of the time the juvenile is taken into custody
8 unless good cause be shown for a continuance. If no
9 preliminary hearing is held within ten days of the time the
10 juvenile is taken into custody, the juvenile shall be released
11 on recognizance unless the hearing has been continued
12 for good cause. If the judge is in another county in the
13 circuit, the hearing may be conducted in such other
14 county. The preliminary hearing may be waived by the
15 juvenile, upon advice of his counsel. At the hearing, the
16 court or referee shall:

17 (1) If the juvenile is not represented by counsel,
18 inform the juvenile and his parents, guardian or custodian
19 or any other person standing in loco parentis to him of the
20 juvenile's right to be represented at all stages of
21 proceedings under this article and the right to have
22 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 juvenile
28 delinquent. If probable cause is not found, the juvenile, if
29 in detention, shall be released and the proceedings
30 dismissed. If probable cause is found, the case shall
31 proceed to adjudication. At the hearing or as soon
32 thereafter as is practicable, the date for the adjudicatory
33 hearing shall be set to give the juvenile, the juvenile's
34 parents and attorney at least ten days' notice, unless notice
35 is waived by all parties.

36 (4) In lieu of placing the child in a detention facility
37 when bond is not provided, the court may place the
38 juvenile in the temporary custody of the department
39 pursuant to section sixteen, article two of this chapter or
40 may place the juvenile, if the juvenile is an alleged
41 delinquent, in the custody of a probation officer.

42 If the juvenile is detained in custody, the detention
43 shall not continue longer than thirty days without
44 commencement of the adjudicatory hearing unless good
45 cause for a continuance be shown by either party or, if a
46 jury trial be demanded, no longer than the next regular
47 term of said court.

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

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

§49-5-11. Adjudication.

1 At the outset of an adjudicatory hearing, the court
2 shall inquire of the juvenile whether he wishes to admit or
3 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
7 of the petition, the court shall consider the admission to be
8 proof of the allegations if the court finds (1) the
9 respondent fully understands all his 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 admission has not set forth
13 facts which constitute a defense to the allegations.

14 (b) If the respondent juvenile denies the allegations,
15 the court shall dispose of all pretrial motions and the court
16 or 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 (e) If the allegations in a petition are not sustained by
28 proof as provided in subsections (c) and (d) of this
29 section, the petition shall be dismissed and the juvenile
30 shall be discharged if he or she is in custody.

31 (f) Findings of fact and conclusions of law addressed
32 to all allegations in the petition shall be stated on the
33 record or reduced to writing and filed with the record or
34 incorporated into the order of the court.

**§49-5-11a. Status Offenders: Intervention and services by
state department; enforcement; detention; out-
of-home placement; state department custody;
least restrictive alternative.**

1 (a) Services for status offenders provided by the
2 department shall be consistent with the provisions of
3 article five-b of this chapter and shall be designed to
4 develop skills and supports within families and to resolve
5 problems related to the juveniles or conflicts within their
6 families. Services may include but are not limited to
7 referral of juveniles and parents, guardians, or custodians
8 and other family members to services for psychiatric or
9 other medical care, or psychological, welfare, legal,
10 educational, or other social services, as appropriate to the
11 needs of the juveniles and the family.

12 (b) If necessary, the department may petition the
13 circuit court:

14 (1) For a valid court order, as defined in section four,
15 article one of this chapter, to enforce compliance with a
16 service plan or to restrain actions that interfere with or
17 defeat a service plan; or

18 (2) For a valid court order to place a juvenile out-of-
19 home in a nonsecure or staff-secure setting, and/or to
20 place a juvenile in custody of the department.

21 (c) The court shall not be limited to the relief sought
22 in the department's petition and shall make every effort to
23 place juveniles in community based facilities which are the
24 least restrictive alternatives appropriate to the needs of the
25 juvenile and the community.

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

1 (a) In aid of disposition of juvenile delinquents, the
2 juvenile probation officer assigned to the court shall, upon
3 request of the court, make an investigation of the
4 environment of the juvenile and the alternative
5 dispositions possible. The court, upon its own motion, or
6 upon request of counsel, may order a psychological
7 examination of the juvenile. The report of such
8 examination and other investigative and social reports
9 shall not be made available to the court until after the
10 adjudicatory hearing. Unless waived, copies of the report
11 shall be provided to counsel for the petitioner and counsel

12 for the juvenile no later than seventy-two hours prior to
13 the dispositional hearing.

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

20 (1) Dismiss the petition;

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

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

37 (4) Upon a finding that a parent or custodian is not
38 willing or able to take custody of the juvenile, that a
39 juvenile is not willing to reside in the custody of his parent
40 or custodian, or that a parent or custodian cannot provide
41 the necessary supervision and care of the juvenile, the
42 court may place the juvenile in temporary foster care or
43 temporarily commit the juvenile to the department, the
44 division of juvenile services or a child welfare agency.
45 The court order shall state that continuation in the home is
46 contrary to the best interest of the juvenile and why; and
47 whether or not the department made a reasonable effort to
48 prevent the placement or that the emergency situation
49 made such efforts unreasonable or impossible. Whenever
50 the court transfers custody of a youth to the division of

51 human services, an appropriate order of financial support
52 by the parents or guardians shall be entered in accordance
53 with section five, article seven of this chapter and
54 guidelines promulgated by the supreme court of appeals;

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

71 (6) After a hearing conducted under the procedures
72 set out in subsections (c) and (d), section four, article five,
73 chapter twenty-seven of this code, commit the juvenile to a
74 mental health facility in accordance with the juvenile's
75 treatment plan; the director may release a juvenile and
76 return him to the court for further disposition. The order
77 shall state that continuation in the home is contrary to the
78 best interests of the juvenile and why; and whether or not
79 the state department made a reasonable effort to prevent
80 the placement or that the emergency situation made such
81 efforts unreasonable or impossible.

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

86 (d) Following disposition, it shall be inquired of the
87 respondent whether or not appeal is desired and the
88 response transcribed; a negative response shall not be
89 construed as a waiver. The evidence shall be transcribed
90 as soon as practicable and made available to the juvenile

91 or his or her counsel, if the same is requested for purposes
92 of further proceedings. A judge may grant a stay of
93 execution pending further proceedings.

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

§49-5-16. Prohibition on committing juveniles to adult facilities.

1 (a) No juvenile, including one who has been
2 transferred to criminal jurisdiction of the court, shall be
3 detained or confined in any institution in which he or she
4 has contact with or comes within sight or sound of any
5 adult persons incarcerated because they have been
6 convicted of a crime or are awaiting trial on criminal
7 charges or with the security staff (including management)
8 or direct-care staff of a jail or locked facility for adults.

9 (b) No child who has been convicted of an offense
10 under the adult jurisdiction of the circuit court shall be
11 held in custody in a penitentiary of this state: *Provided,*
12 That such child may be transferred from a secure juvenile
13 facility to a penitentiary after he shall attain the age of
14 eighteen years if, in the judgment of the court which
15 committed such child, such transfer is appropriate:
16 *Provided, however,* That any other provision of this code
17 to the contrary notwithstanding, prior to such transfer the
18 child shall be returned to the sentencing court for the
19 purpose of reconsideration and modification of the
20 imposed sentence, which shall be based upon a review of
21 all records and relevant information relating to the child's
22 rehabilitation since his conviction under the adult
23 jurisdiction of the court.

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHA-
BILITATION 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 juvenile delinquents and status offenders.
7 It is further the intent of the Legislature that this state,
8 through the department of health and human resources,
9 establish, maintain, and continuously refine and develop, a
10 balanced and comprehensive state program for juveniles
11 who are potentially delinquent or are status offenders or
12 juvenile delinquents in the care or custody of the
13 department.

§49-5B-4. Responsibilities of the department of health and human resources.

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 status offenders, juvenile delinquents and
30 other youth to help 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 encourage status offenders, juvenile
37 delinquents, and other youth to remain in elementary and
38 secondary schools or in alternative learning situations;

39 (6) Expanded use of professional and para-
40 professional personnel and volunteers to work effectively
41 with 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 status offender referred
55 to the department and to each alleged juvenile delinquent
56 referred to the department after being allowed an
57 improvement period by the juvenile court, and for each
58 adjudicated juvenile delinquent who, after adjudication, is
59 referred to the department for investigation or treatment
60 or whose custody is vested in the department. Such
61 individualized program of rehabilitation shall take into
62 account the programs and services to be provided by other
63 public or private agencies or personnel which are available

64 in the community to deal with the circumstances of the
65 particular juvenile. For alleged juvenile delinquents and
66 status offenders, such individualized program of
67 rehabilitation shall be furnished to the juvenile court and
68 shall be available to counsel for the juvenile; it may be
69 modified from time to time at the direction of the
70 department or by order of the juvenile court. The
71 department may develop an individualized program of
72 rehabilitation for any juvenile referred for noncustodial
73 counseling under section five, article three of this chapter,
74 for any juvenile receiving counsel and advice under
75 section three-a, article five of this chapter, or for any other
76 juvenile upon the request of a public or private agency.

77 (c) The department of health and human resources
78 and the division of juvenile services of the department of
79 military affairs and public safety are authorized to enter
80 into cooperative arrangements and agreements with private
81 agencies or with agencies of the state and its political
82 subdivisions to effectuate the purpose of this article.

§49-5B-5. Rehabilitative facilities for status offenders.

1 (a) The department of health and human resources
2 shall, within the limits of state and federal funds
3 appropriated therefor, establish and maintain one or more
4 rehabilitative facilities to be used exclusively for the lawful
5 custody of status offenders. Each such facility shall be a
6 nonsecure facility having as its purpose the rehabilitation
7 of status offenders. Such facility shall have a bed capacity
8 for not more than twenty juveniles, and shall minimize the
9 institutional atmosphere and prepare the juvenile for
10 reintegration into the community.

11 (b) Within the funds available, rehabilitative
12 programs and services shall be provided by or through
13 each such facility and may include, but not be limited to,
14 medical, educational, vocational, social and psychological
15 guidance, training, counseling, alcoholism treatment, drug
16 treatment and other rehabilitative services. The department
17 of health and human resources shall provide to each status
18 offender committed to the facility a program of treatment
19 and services consistent with the individualized program of
20 rehabilitation developed for such juvenile. In the case of

21 any other juvenile residing at the facility, the department
22 shall provide such programs and services as may be
23 proper in the circumstances including, but not limited to,
24 any such programs or services directed to be provided by
25 the court.

26 (c) The board of education of the county in which
27 the facility is located shall provide instruction for juveniles
28 residing at the facility. Residents who can be permitted to
29 do so shall attend local schools, and instruction shall
30 otherwise take place at the facility.

31 (d) Facilities established pursuant to this section shall
32 be structured as community-based facilities.

§49-5B-6. Enforcement of legal custody.

1 The department of health and human resources shall
2 have authority to require any juvenile committed to its
3 legal custody to remain at and to return to the residence to
4 which the juvenile is assigned by the department or by the
5 juvenile court. In aid of such authority, and upon request
6 of a designated employee of the department, any police
7 officer, sheriff, deputy sheriff, or juvenile court probation
8 officer is authorized to take any such juvenile into custody
9 and return such juvenile to his or her place of residence or
10 into the custody of a designated employee of the
11 department.

§49-5B-7. Reporting requirements; cataloguing of services.

1 (a) The department of health and human resources
2 shall from time to time, but not less often than annually,
3 review its programs and services and submit a report to the
4 governor, the Legislature and the supreme court of
5 appeals, analyzing and evaluating the effectiveness of the
6 programs and services being carried out by the
7 department. Such report shall include, but not be limited
8 to, an analysis and evaluation of programs and services
9 continued, established and discontinued during the period
10 covered by the report, and shall further describe programs
11 and services which should be implemented to further the
12 purposes of this article. Such report shall also include, but
13 not be limited to, relevant information concerning the

14 number of juveniles comprising the population of any
15 rehabilitative facility during the period covered by the
16 report, the length of residence, the nature of the problems
17 of each juvenile, the juvenile's response to programs and
18 services and such other information as will enable a user
19 of the report to ascertain the effectiveness of the facility as
20 a rehabilitative facility.

21 (b) The department of health and human resources
22 shall prepare a descriptive catalogue of its juvenile
23 programs and services available in local communities
24 throughout this state and shall distribute copies of the
25 same to every juvenile court in the state and, at the
26 direction of the juvenile court, such catalogue shall be
27 distributed to attorneys practicing before such court.
28 Such catalogue shall also be made available to members of
29 the general public upon request. The catalogue shall
30 contain sufficient information as to particular programs
31 and services so as to enable a user of the catalogue to
32 make inquiries and referrals. The catalogue shall be
33 constructed so as to meaningfully identify and describe
34 programs and services. The requirements of this section
35 are not satisfied by a simple listing of specific agencies or
36 the individuals in charge of programs at a given time. The
37 catalogue shall be updated and republished or
38 supplemented from time to time as may be required to
39 maintain its usefulness as a resource manual.

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
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 5/1/97

Time 3:55 pm