

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

House Bill 2483

BY DELEGATES ELDRIDGE, BUTLER, ROHRBACH,

R. MILLER, SOBONYA AND IAQUINTA

[Judiciary.]

1 A BILL to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as
2 amended, all relating to requiring the Division of Juvenile Services to transfer to a
3 correctional facility or regional jail any juvenile in its custody that has been transferred to
4 adult jurisdiction of the circuit court and who turns eighteen years of age; requiring transfer
5 of juvenile in adult jurisdiction upon reaching eighteen years of age if he or she has either
6 been convicted or is in a pretrial status; directing the Division of Juvenile Services to notify
7 the circuit court one hundred eighty days or as soon as practical of a juvenile reaching
8 eighteen years of age; requiring the circuit court to set and conduct a hearing prior to the
9 transfer to an adult correctional facility; providing for transfer to an adult facility in the event
10 a hearing is not held; mandating that the position of victim be taken under consideration
11 by the court in considering disposition or alternative placement; prohibiting juveniles that
12 commit an adult offense while under the custody of the Division of Juvenile Services from
13 returning back to the placement in a juvenile facility if the juvenile has attained the age of
14 eighteen years; requiring the court to conduct a hearing prior to the completion of the adult
15 sentence; and prohibiting a court from remanding a child who has reached eighteen years
16 of age and completed serving an adult sentence to a juvenile facility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-720. Prohibition on committing juveniles to adult facilities. ~~copy provided to juvenile~~

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

6 (b) No child who has been convicted or is awaiting trial of an offense under the adult
7 jurisdiction of the circuit court ~~shall~~ may be held in custody in a an adult correctional facility of this

8 state while under the age of eighteen years. The Division of Juvenile Services shall ~~be responsible~~
9 ~~for notifying~~ notify the sentencing court and copy the county prosecuting attorney of the
10 sentencing court within ~~forty-five~~ one hundred eighty days or as soon as practical ~~days of the~~
11 ~~child's eighteenth birthday~~ that the child will be turning eighteen years of age. The court shall,
12 upon receipt of the notice, set the matter for a hearing. ~~Within ten days of the child's eighteenth~~
13 ~~birthday, the court shall transfer the offender to~~ No later than the child reaching eighteen years
14 of age, the court shall hold a hearing and enter an order transferring the offender to an adult
15 correctional facility, a facility for youthful offenders, if applicable, or to any other disposition the
16 court ~~deems~~ considers appropriate for adult offenders. Provided, That in the event a hearing is
17 not held or an order is not entered by the sentencing court prior to the child reaching eighteen
18 years of age, that said child shall be transferred to an adult correctional facility on the day that he
19 or she reaches eighteen years of age. ~~Notwithstanding any other provision of this code to the~~
20 ~~contrary, prior to the transfer the child shall be returned to the sentencing court for the purpose of~~
21 ~~reconsideration and modification of the imposed sentence, which shall be based upon a review~~
22 ~~of all records and relevant information relating to the child's rehabilitation since his or her~~
23 ~~conviction under the adult jurisdiction of the court.~~ Provided, however, That the court may not
24 remand a child having reached the age of eighteen years to a juvenile facility or placement with
25 other juveniles.

26 (c) In any hearing conducted by the court under this section, the victim, if any, of the
27 offender's convicted or charged crime shall be invited to attend the hearing and the victim's
28 position shall be given due consideration by the court in deciding to continue placement in an
29 adult facility or any other alternative disposition or pretrial placement. The court may accept the
30 position of the victim from a victim's designee if the victim is deceased, lacks capacity, a minor or
31 for any other reason considered appropriate or warranted by the court.

§49-4-722. Conviction for offense while in custody.

1 (a) Notwithstanding any other provision of law to the contrary, any person who is eighteen
2 years of age or older who is convicted as an adult of an offense that he or she committed while

3 in the custody of the Division of Juvenile Services and who is therefore sentenced to a regional
4 jail or state correctional facility for the offense may not be returned to the custody of the division
5 upon the completion of his or her adult sentence. ~~until a hearing is held before the court which~~
6 ~~committed the person to the custody of the Division of Juvenile Services at which hearing the~~
7 ~~division may present any objections it may have to return the person to its custody. If the division~~
8 ~~does object and the court overrules the division's objections, it shall make specific written findings~~
9 ~~as to its rationale for overruling the objections.~~

10 (b) ~~No person who is eighteen years of age or older who is convicted as an adult of a~~
11 ~~felony crime of violence against the person while in the custody of the Division of Juvenile~~
12 ~~Services be returned to the custody of the Division of Juvenile Services upon completion of his or~~
13 ~~her adult sentence. Prior to completion of the adult sentence specified in subsection (a), the circuit~~
14 ~~court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine~~
15 ~~whether the child that has turned eighteen years of age shall remain in the regional jail during~~
16 ~~pendency of the underlying juvenile matter or if another disposition or pretrial placement is~~
17 ~~appropriate and available: *Provided*, That the court may not remand a child having reached the~~
18 ~~age of eighteen years to a juvenile facility or placement during the pendency of the underlying~~
19 ~~juvenile matter.~~

NOTE: The purpose of this bill is to require the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday. The bill requires transfer of juvenile in adult jurisdiction upon reaching eighteen years of age if he or she has either been convicted or is in a pretrial status and directs the Division of Juvenile Services to notify the circuit court of the age of a juvenile reaching the age of eighteen years of age. The bill authorizes the circuit court to conduct a hearing as to alternative placement and mandates that the position of victim be taken under consideration by the court in determining disposition or alternative placement. The bill prohibits juveniles that commit an adult offense while under the custody of the Division of Juvenile Services from returning back to the placement in a juvenile facility if the juvenile has attained the age of eighteen years. Finally, the bill requires the court to conduct a hearing as to placement of a juvenile that has turned eighteen years of age and is remanded back to the custody of the Division of Juvenile Services after completion of an adult sentence.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.