

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

**Introduced**

### **House Bill 2174**

**FISCAL  
NOTE**

BY DELEGATE CANESTRARO

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended, relating  
 2 to the placement of juvenile status offenders; providing that a status offender may not be  
 3 placed in a Division of Juvenile Services facility, unless the status offending child has run  
 4 away from placement in a staff secure facility; and providing that the court may then order  
 5 the juvenile placed in a Division of Juvenile Services facility pending further proceeding in  
 6 the matter.

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

#### **ARTICLE 4. COURT ACTIONS.**

**§49-4-712. Intervention and services by the department pursuant to initial disposition for  
 status offenders; enforcement; further disposition; detention; out-of-home  
 placement; department custody; least restrictive alternative; appeal; prohibiting  
 placement of status offenders in a Division of Juvenile Services facility on or after  
 January 1, 2016.**

1 (a) The services provided by the department for juveniles adjudicated as status offenders  
 2 shall be consistent with part 10, §49-2-1001 *et seq.* of this code and shall be designed to develop  
 3 skills and supports within families and to resolve problems related to the juveniles or conflicts  
 4 within their families. Services may include, but are not limited to, referral of juveniles and parents,  
 5 guardians or custodians and other family members to services for psychiatric or other medical  
 6 care, or psychological, welfare, legal, educational, or other social services, as appropriate to the  
 7 needs of the juvenile and his or her family.

8 (b) If the juvenile, or his or her parent, guardian or custodian, fails to comply with the  
 9 services provided in §49-4-712(a) of this code, the department may petition the circuit court:

10 (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance  
 11 with a service plan or to restrain actions that interfere with or defeat a service plan; or

12 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure  
 13 setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile

14 adjudicated as a status offender may not be placed in an out-of-home placement, excluding  
15 placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status  
16 or delinquency offense, or no prior disposition to a preadjudicatory improvement period or  
17 probation for the current matter: *Provided, however,* That if the court finds by clear and convincing  
18 evidence the existence of a significant and likely risk of harm to the juvenile, a family member or  
19 the public and continued placement in the home is contrary to the best interests of the juvenile,  
20 such juvenile may be ordered to an out-of-home placement: *Provided further,* That the court finds  
21 the department has made all reasonable efforts to prevent removal of the juvenile from his or her  
22 home, or that such reasonable efforts are not required due to an emergent situation.

23 (c) In ordering any further disposition under this section, the court is not limited to the relief  
24 sought in the department's petition and shall make reasonable efforts to prevent removal of the  
25 juvenile from his or her home or, as an alternative, to place the juvenile in a community-based  
26 facility which is the least restrictive alternative appropriate to the needs of the juvenile and the  
27 community. The disposition may include reasonable and relevant orders to the parents, guardians  
28 or custodians of the juvenile as is necessary and proper to effectuate the disposition.

29 (d) (1) If the court finds that placement in a residential facility is necessary to provide the  
30 services under §49-4-712(a) of this code, except as prohibited by §49-4-712(b)(2) of this code,  
31 the court shall make findings of fact as to the necessity of this placement, stated on the record or  
32 reduced to writing and filed with the record or incorporated into the order of the court.

33 (2) The findings of fact shall include the factors that indicate:

34 (A) The likely effectiveness of placement in a residential facility for the juvenile; and

35 (B) The community services which were previously attempted.

36 (e) The disposition of the juvenile may not be affected by the fact that the juvenile  
37 demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than  
38 mandatory referral to the department for services is subject to appeal to the Supreme Court of  
39 Appeals.

40 (f) Following any further disposition by the court, the court shall inquire of the juvenile  
41 whether or not appeal is desired and the response shall be transcribed; a negative response may  
42 not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made  
43 available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings.  
44 A judge may grant a stay of execution pending further proceedings.

45 (g) A juvenile adjudicated solely as a status offender on or after January 1, 2016, may not  
46 be placed in a Division of Juvenile Services facility, unless the status offending child has run away  
47 from placement in a staff secure facility at which time the court may order the juvenile placed in a  
48 Division of Juvenile Services facility pending further proceeding in the matter.

NOTE: The purpose of this bill is to provide that a status offender may not be placed in a Division of Juvenile Services facility, unless the status offending child has run away from placement in a staff secure facility. The bill provides that in that event the court may order the juvenile placed in a Division of Juvenile Services facility pending further proceeding in the matter.

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