

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2520**

4 (By Delegates Perry, Boggs and Ellem)

5  
6 (Originating in the House Committee on the Judiciary)

7  
8 [January 21, 2011]

9  
10 A BILL to amend and reenact §25-4-6 of the Code of West Virginia,  
11 1931, as amended, relating to assignment of youthful male  
12 offenders to correctional facilities; specifying circuit court  
13 jurisdiction; modifying age criteria for eligibility for  
14 commitment to youthful offender center; and providing maximum  
15 age for center commitment.

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

17 That §25-4-6 of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted to read as follows:

19 **ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.**

20 **§25-4-6. Assignment of offenders to center; period of center**  
21 **confinement; return to court; sentence or probation;**  
22 **revocation of probation.**

23 ~~The judge of any court with original criminal jurisdiction~~  
24 circuit court may suspend the imposition of sentence of any young

1 adult, as defined in this section, convicted of or pleading guilty  
2 to a felony offense, other than an offense punishable by life  
3 imprisonment, including, but not limited to, felony violations of  
4 the provisions of chapter seventeen-c of this code, who ~~has~~ had  
5 attained his or her eighteenth birthday but ~~has~~ had not reached his  
6 or her ~~twenty-third~~ twenty-fourth birthday ~~at the time of the~~  
7 ~~sentencing by the court~~ at the time the offense was committed for  
8 which the offender is being sentenced and commit the young adult to  
9 the custody of the West Virginia Commissioner of Corrections to be  
10 assigned to a center: Provided, That no person over the age of  
11 twenty-five may be committed pursuant to this section. Young adult  
12 offenders who have previously been committed to a young adult  
13 offender center are not eligible for commitment to this program.  
14 The period of confinement in the center shall be for a period of  
15 not less than six months but not more than two years to  
16 successfully complete the program requirements set by the warden.  
17 The court shall order a presentence investigation to be conducted  
18 and provide the warden with a copy of the presentence investigation  
19 report, along with the commitment order.

20 If, in the opinion of the warden, the young adult offender is  
21 an unfit person to remain in the center, the offender shall be  
22 returned to the committing court to be dealt with further according  
23 to law. The offender is entitled to a hearing before the  
24 committing court to review the warden's determination. The

1 standard for review is whether the warden, considering the  
2 offender's overall record at the center and the offender's  
3 compliance with the center's rules, policies, procedures, programs  
4 and services, abused his or her discretion in determining that the  
5 offender is an unfit person to remain in the center. At the  
6 hearing before the committing court, the state need not offer  
7 independent proof of the offender's disciplinary infractions  
8 contained in the record of the center when opportunity for an  
9 administrative hearing on those infractions was previously made  
10 available at the institution. If the court upholds the warden's  
11 determination, the court may sentence the offender for the crime  
12 for which the offender was convicted. In his or her discretion,  
13 the judge may allow the defendant credit on the sentence for time  
14 the offender spent in the center.

15 A young adult offender shall be returned to the jurisdiction  
16 of the court which originally committed the offender when, in the  
17 opinion of the warden, the young adult offender has satisfactorily  
18 completed the center training program. The offender is then  
19 eligible for probation for the offense the offender was convicted  
20 of or plead guilty to and the judge of the court shall immediately  
21 place the offender on probation. If the court finds there is  
22 reasonable cause to believe that the offender has engaged in new  
23 criminal conduct between his or her release from the center and the  
24 sentencing hearing for the crime for which the offender was ordered

1 to the center, the judge may sentence the offender for the crime  
2 for which the offender was first convicted, with credit for the  
3 time spent at the center. In the event the offender's probation is  
4 subsequently revoked, the judge shall impose the sentence the young  
5 adult offender would have originally received had the offender not  
6 been committed to the center and subsequently placed on probation.  
7 The court shall, however, give the offender credit on his or her  
8 sentence for the time spent in the center.