

1 **Senate Bill No. 92**

2 (By Senators Laird, Barnes, Green, Yost, Foster and Plymale)

3 _____
4 [Introduced January 14, 2011; referred to the Committee on the
5 Judiciary.]

**Interim
Bill**

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10 A BILL to amend and reenact §25-4-6 of the Code of West Virginia,
11 1931, as amended, relating to assignment of offenders to
12 center; period of center confinement; return to court;
13 sentence or probation; and revocation of probation.

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

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

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

18 **§25-4-6. Assignment of offenders to center; period of center**
19 **confinement; return to court; sentence or probation;**
20 **revocation of probation.**

21 The judge of any court with original criminal jurisdiction may
22 suspend the imposition of sentence of any young adult, as defined
23 in this section, convicted of or pleading guilty to a felony
24 offense, other than an offense punishable by life imprisonment,

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

NOTE: The purpose of this bill is to amend current law so that this section applies to someone who has not reached their twenty-third birthday at the time of the indictment or information upon which the imposition of sentence is being suspended pursuant to this section and committed to the custody of the Division of Corrections to be assigned to a center. This bill further provides that no one over the age of twenty-five may be committed to a center pursuant to this section regardless of his or her age at the time of indictment or information.

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

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority.