

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2805**

4 (By Delegates Eldridge, Hamilton, Rodighiero, Canterbury, H. White,
5 Williams, Trecost, Perry, Moye and Campbell)
6

7 (Originating in the House Committee on the Judiciary)

8 [February 23, 2015]
9

10 A BILL to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as
11 amended, relating to requiring the Division of Juvenile Services to transfer to a correctional
12 facility or regional jail any juvenile in its custody that has been transferred to adult
13 jurisdiction of the circuit court and who reaches his or her eighteenth birthday; requiring
14 transfer of juvenile in adult jurisdiction upon reaching 18 if he or she has either been
15 convicted or is in a pre-trial status; directing the division of juvenile services to notify the
16 circuit court of the age of a juvenile reaching the age of 18; authorizing the circuit court to
17 conduct a hearing as to alternative placement; mandating that the position of victim be taken
18 under consideration by the court in considering disposition or alternative placement;
19 prohibiting juveniles that commit an adult offense while under the custody of the Division
20 of Juvenile Services from returning back to the placement in a juvenile facility if the juvenile
21 has attained the age of 18; and requiring the court to conduct a hearing as to placement of a
22 juvenile that has turned 18 and is remanded back to the custody of the Division of Juvenile
23 Services after completion of an adult sentence.

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

2 That §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, be amended
3 and reenacted to read as follows:

4 **ARTICLE 4. COURT ACTIONS.**

5 **§49-4-720. Prohibition on committing juveniles to adult facilities; copy provided to juvenile.**

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

11 (b) No child who has been convicted of an offense under the adult jurisdiction of the circuit
12 court shall be held in custody in a correctional facility of this state while under the age of eighteen.
13 ~~The Division of Juvenile Services shall be responsible for notifying the sentencing court within~~
14 ~~forty-five days of the child's eighteenth birthday that the child will be turning eighteen years of age.~~
15 ~~Within ten days of the child's eighteenth birthday, the court shall transfer the offender to an adult~~
16 ~~correctional facility or to any other disposition the court deems appropriate for adult offenders.~~
17 ~~Notwithstanding any other provision of this code to the contrary, prior to the transfer the child shall~~
18 ~~be returned to the sentencing court for the purpose of reconsideration and modification of the~~
19 ~~imposed sentence, which shall be based upon a review of all records and relevant information~~
20 ~~relating to the child's rehabilitation since his or her conviction under the adult jurisdiction of the~~
21 ~~court.~~

22 (c) Notwithstanding any provision of this code to the contrary, a child who has been

1 convicted of an offense under the adult jurisdiction of a circuit court, or a child that has been charged
2 with an offense under the adult jurisdiction of the circuit court, shall be transferred from a secure
3 juvenile facility to a correctional facility or regional jail after he or she attains the age of eighteen
4 years.

5 (d) The Division of Juvenile Services shall be responsible for notifying the sentencing court
6 within forty-five days of the child's eighteenth birthday that the child will be turning eighteen years
7 of age. The circuit court having jurisdiction over the criminal matter, on motion of any party or its
8 own, may conduct a hearing to determine whether the child that has been transferred to adult
9 jurisdiction and turned 18 shall remain in the adult correctional facility or regional jail or if another
10 disposition or pre-trial placement available to adult offenders is appropriate and available: *Provided,*
11 That the court may not remand such child having reached the age of 18 to a juvenile facility or
12 placement. In any hearing conducted by the court under this subdivision, the victim, if any, of the
13 offender's convicted or charged crime shall be invited to attend the hearing and the victim's position
14 shall be given due consideration by the court in deciding to continue placement in an adult facility
15 or any other alternative disposition or pre-trial placement. The court may accept the position of the
16 victim from a victim's designee if the victim is deceased, lacks capacity, a minor, or for any other
17 reason deemed appropriate or warranted by the court.

18 **§49-4-722. Conviction for offense while in custody.**

19 (a) Notwithstanding any other provision of law to the contrary, any person who is eighteen
20 years of age or older who is convicted as an adult of an offense that he or she committed while in
21 the custody of the Division of Juvenile Services and who is therefor sentenced to a regional jail or
22 state correctional facility for the offense may not be returned to the custody of the division upon the

1 completion of his or her adult sentence, ~~until a hearing is held before the court which committed the~~
2 ~~person to the custody of the Division of Juvenile Services at which hearing the division may present~~
3 ~~any objections it may have to return the person to its custody. If the division does object and the~~
4 ~~court overrules the division's objections, it shall make specific written findings as to its rationale for~~
5 ~~overruling the objections.~~

6 (b) ~~No person who is eighteen years of age or older who is convicted as an adult of a felony~~
7 ~~crime of violence against the person while in the custody of the Division of Juvenile Services be~~
8 ~~returned to the custody of the Division of Juvenile Services upon completion of his or her adult~~
9 ~~sentence.~~

10 (b) Prior to completion of the adult sentence specified in subsection (a), the circuit court
11 having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine whether
12 the child that has turned 18 shall remain in the regional jail during pendency of the underlying
13 juvenile matter or if another disposition or pre-trial placement is appropriate and available: *Provided,*
14 That the court may not remand such child having reached the age of 18 to a juvenile facility or
15 placement during the pendency of the underlying juvenile matter.