

COMMITTEE SUBSTITUTE

for

H. B. 2805

(BY DELEGATE(S) ELDRIDGE, HAMILTON,
RODIGHIERO, CANTERBURY, H. WHITE, WILLIAMS,
TRECOST, PERRY, MOYE AND CAMPBELL)

(Originating in the House Committee on the Judiciary)
[February 23, 2015]

A BILL to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, relating to requiring 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; requiring transfer of juvenile in adult jurisdiction upon reaching 18 if he or she has either been convicted

or is in a pre-trial status; directing the Division of Juvenile Services to notify the circuit court of the age of a juvenile reaching the age of 18; authorizing the circuit court to conduct a hearing as to alternative placement; mandating that the position of victim be taken under consideration by the court in considering disposition or alternative placement; prohibiting 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 18; and requiring the court to conduct a hearing as to placement of a juvenile that has turned 18 and is remanded back to the custody of the Division of Juvenile Services after completion of an adult sentence.

Be it enacted by the Legislature of West Virginia:

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

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
- 2 criminal jurisdiction of the court, shall be detained or confined

3 in any institution in which he or she has contact with or comes
4 within sight or sound of any adult persons incarcerated because
5 they have been convicted of a crime or are awaiting trial on
6 criminal charges or with the security staff (including
7 management) or direct-care staff of a jail or locked facility for
8 adults.

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

23 ~~information relating to the child's rehabilitation since his or her~~
24 ~~conviction under the adult jurisdiction of the court.~~

25 (c) Notwithstanding any provision of this code to the
26 contrary, a child who has been convicted of an offense under the
27 adult jurisdiction of a circuit court, or a child that has been
28 charged with an offense under the adult jurisdiction of the circuit
29 court, shall be transferred from a secure juvenile facility to a
30 correctional facility or regional jail after he or she attains the age
31 of eighteen years.

32 (d) The Division of Juvenile Services shall be responsible for
33 notifying the sentencing court within forty-five days of the
34 child's eighteenth birthday that the child will be turning eighteen
35 years of age. The circuit court having jurisdiction over the
36 criminal matter, on motion of any party or its own, may conduct
37 a hearing to determine whether the child that has been
38 transferred to adult jurisdiction and turned 18 shall remain in the
39 adult correctional facility or regional jail or if another disposition
40 or pre-trial placement available to adult offenders is appropriate
41 and available: *Provided*, That the court may not remand such
42 child having reached the age of 18 to a juvenile facility or

43 placement. In any hearing conducted by the court under this
44 subdivision, the victim, if any, of the offender's convicted or
45 charged crime shall be invited to attend the hearing and the
46 victim's position shall be given due consideration by the court in
47 deciding to continue placement in an adult facility or any other
48 alternative disposition or pre-trial placement. The court may
49 accept the position of the victim from a victim's designee if the
50 victim is deceased, lacks capacity, a minor, or for any other
51 reason deemed 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
2 contrary, any person who is eighteen years of age or older who
3 is convicted as an adult of an offense that he or she committed
4 while in the custody of the Division of Juvenile Services and
5 who is therefor sentenced to a regional jail or state correctional
6 facility for the offense may not be returned to the custody of the
7 division upon the completion of his or her adult sentence, ~~until~~
8 ~~a hearing is held before the court which committed the person to~~
9 ~~the custody of the Division of Juvenile Services at which hearing~~
10 ~~the division may present any objections it may have to return the~~

11 ~~person to its custody. If the division does object and the court~~
12 ~~overrules the division's objections, it shall make specific written~~
13 ~~findings as to its rationale for overruling the objections.~~

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

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

