

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4633**

BY DELEGATES ELDRIDGE, AMBLER, SKINNER, P. WHITE,

BUTLER, J. NELSON, PHILLIPS, MARCUM, B. WHITE,

STORCH AND SUMMERS

[Introduced February 20, 2016; Referred

to the Committee on the Judiciary.]

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

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

16 That §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, be  
 17 amended and reenacted, all 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 criminal jurisdiction of the court,  
 2 ~~shall~~ may be detained or confined in any institution in which he or she has contact with or comes  
 3 within sight or sound of any adult persons incarcerated because they have been convicted of a  
 4 crime or are awaiting trial on criminal charges or with the security staff (including management)  
 5 or direct-care staff of a jail or locked facility for adults.

6 (b) No child who has been convicted of an offense under the adult jurisdiction of the circuit

7 court ~~shall~~ may be held in custody in a correctional facility of this state while under the age of  
8 eighteen years. ~~The Division of Juvenile Services shall be responsible for notifying the sentencing~~  
9 ~~court within forty-five days of the child's eighteenth birthday that the child will be turning eighteen~~  
10 ~~years of age. Within ten days of the child's eighteenth birthday, the court shall transfer the offender~~  
11 ~~to an adult correctional facility or to any other disposition the court deems appropriate for adult~~  
12 ~~offenders. Notwithstanding any other provision of this code to the contrary, prior to the transfer~~  
13 ~~the child shall be returned to the sentencing court for the purpose of reconsideration and~~  
14 ~~modification of the imposed sentence, which shall be based upon a review of all records and~~  
15 ~~relevant information relating to the child's rehabilitation since his or her conviction under the adult~~  
16 ~~jurisdiction of the court.~~

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

22 (d) The Division of Juvenile Services shall notify the sentencing court within forty-five days  
23 of the child's eighteenth birthday that the child will be turning eighteen years of age. The circuit  
24 court having jurisdiction over the criminal matter, on motion of any party or its own, may conduct  
25 a hearing to determine whether the child that has been transferred to adult jurisdiction and turned  
26 eighteen years of age shall remain in the adult correctional facility or regional jail or if another  
27 disposition or pretrial placement available to adult offenders is appropriate and available:  
28 Provided, That the court may not remand such child having reached the age of eighteen years to  
29 a juvenile facility or placement. In any hearing conducted by the court under this subdivision, the  
30 victim, if any, of the offender's convicted or charged crime shall be invited to attend the hearing  
31 and the victim's position shall be given due consideration by the court in deciding to continue  
32 placement in an adult facility or any other alternative disposition or pretrial placement. The court

33 may accept the position of the victim from a victim's designee if the victim is deceased, lacks  
 34 capacity, a minor or for any other reason considered 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 contrary, any person who is eighteen  
 2 years of age or older who is convicted as an adult of an offense that he or she committed while  
 3 in the custody of the Division of Juvenile Services and who is therefor sentenced to a regional jail  
 4 or state correctional facility for the offense may not be returned to the custody of the division upon  
 5 the completion of his or her adult sentence ~~until a hearing is held before the court which committed~~  
 6 ~~the person to the custody of the Division of Juvenile Services at which hearing the division may~~  
 7 ~~present any objections it may have to return the person to its custody. If the division does object~~  
 8 ~~and the court overrules the division's objections, it shall make specific written findings as to its~~  
 9 ~~rationale for overruling the objections.~~

10 (b) ~~No person who is eighteen years of age or older who is convicted as an adult of a~~  
 11 ~~felony crime of violence against the person while in the custody of the Division of Juvenile~~  
 12 ~~Services be returned to the custody of the Division of Juvenile Services upon completion of his or~~  
 13 ~~her adult sentence. Prior to completion of the adult sentence specified in subsection (a), the circuit~~  
 14 ~~court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine~~  
 15 ~~whether the child that has turned eighteen years of age shall remain in the regional jail during~~  
 16 ~~pendency of the underlying juvenile matter or if another disposition or pretrial placement is~~  
 17 ~~appropriate and available: *Provided*, That the court may not remand such child having reached~~  
 18 ~~the age of eighteen years to a juvenile facility or placement during the pendency of the underlying~~  
 19 ~~juvenile matter.~~

NOTE: The purpose of this bill is to require 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. The bill requires transfer of juvenile in adult jurisdiction upon reaching eighteen years of age if he or she has either been convicted or is in a pretrial status and directs the Division of

Juvenile Services to notify the circuit court of the age of a juvenile reaching the age of eighteen years of age. The bill authorizes the circuit court to conduct a hearing as to alternative placement and mandates that the position of victim be taken under consideration by the court in determining disposition or alternative placement. The bill prohibits 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 eighteen years. Finally, the bill requires the court to conduct a hearing as to placement of a juvenile that has turned eighteen years of age and is remanded back to the custody of the Division of Juvenile Services after completion of an adult sentence.

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