

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2593

BY DELEGATES CANESTRARO, ISNER, LOVEJOY AND

MARCUM

[Introduced February 21, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended, relating
 2 to the placement of juvenile status offenders; providing that a status offender may not be
 3 placed in a Division of Juvenile Services facility, unless the status offending child has run
 4 away from placement in a staff secure facility; and providing that the court may then order
 5 the juvenile placed in a Division of Juvenile Services facility pending further proceeding in
 6 the matter.

Be it enacted by the Legislature of West Virginia:

1 That §49-4-712 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 4. COURT ACTIONS.

**§49-4-712. Intervention and services by the department pursuant to initial disposition for
 status offenders; enforcement; further disposition; detention; out-of-home
 placement; department custody; least restrictive alternative; appeal; prohibiting
 placement of status offenders in a Division of Juvenile Services facility on or after
 January 1, 2016.**

1 (a) The services provided by the department for juveniles adjudicated as status offenders
 2 shall be consistent with part ten, article two of this chapter and shall be designed to develop skills
 3 and supports within families and to resolve problems related to the juveniles or conflicts within
 4 their families. Services may include, but are not limited to, referral of juveniles and parents,
 5 guardians or custodians and other family members to services for psychiatric or other medical
 6 care, or psychological, welfare, legal, educational or other social services, as appropriate to the
 7 needs of the juvenile and his or her family.

8 (b) If the juvenile, or his or her parent, guardian or custodian, fails to comply with the
 9 services provided in subsection (a) of this section, the department may petition the circuit court:

10 (1) For a valid court order, as defined in section two hundred seven, article one of this
 11 chapter, to enforce compliance with a service plan or to restrain actions that interfere with or

12 defeat a service plan; or

13 (2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure
14 setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile
15 adjudicated as a status offender may not be placed in an out-of-home placement, excluding
16 placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status
17 or delinquency offense, or no prior disposition to a preadjudicatory improvement period or
18 probation for the current matter: *Provided, however*, That if the court finds by clear and convincing
19 evidence the existence of a significant and likely risk of harm to the juvenile, a family member or
20 the public and continued placement in the home is contrary to the best interests of the juvenile,
21 such juvenile may be ordered to an out-of-home placement: *Provided further*, That the court finds
22 the department has made all reasonable efforts to prevent removal of the juvenile from his or her
23 home, or that such reasonable efforts are not required due to an emergent situation.

24 (c) In ordering any further disposition under this section, the court is not limited to the relief
25 sought in the department's petition and shall make reasonable efforts to prevent removal of the
26 juvenile from his or her home or, as an alternative, to place the juvenile in a community-based
27 facility which is the least restrictive alternative appropriate to the needs of the juvenile and the
28 community. The disposition may include reasonable and relevant orders to the parents, guardians
29 or custodians of the juvenile as is necessary and proper to effectuate the disposition.

30 (d) (1) If the court finds that placement in a residential facility is necessary to provide the
31 services under subsection (a) of this section, except as prohibited by subdivision (2), subsection
32 (b) of this section, the court shall make findings of fact as to the necessity of this placement, stated
33 on the record or reduced to writing and filed with the record or incorporated into the order of the
34 court.

35 (2) The findings of fact shall include the factors that indicate:

36 (A) The likely effectiveness of placement in a residential facility for the juvenile; and

37 (B) The community services which were previously attempted.

38 (e) The disposition of the juvenile may not be affected by the fact that the juvenile
39 demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than
40 mandatory referral to the department for services is subject to appeal to the Supreme Court of
41 Appeals.

42 (f) Following any further disposition by the court, the court shall inquire of the juvenile
43 whether or not appeal is desired and the response shall be transcribed; a negative response may
44 not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made
45 available to the juvenile or his or her counsel, if it is requested for purposes of further proceedings.
46 A judge may grant a stay of execution pending further proceedings.

47 (g) A juvenile adjudicated solely as a status offender on or after January 1, 2016, may not
48 be placed in a Division of Juvenile Services facility, unless the status offending child has run away
49 from placement in a staff secure facility at which time the court may order the juvenile placed in a
50 Division of Juvenile Services facility pending further proceeding in the matter.

NOTE: The purpose of this bill is to provide that a status offender may not be placed in a Division of Juvenile Services facility, unless the status offending child has run away from placement in a staff secure facility. The bill provides that in that event the court may order the juvenile placed in a Division of Juvenile Services facility pending further proceeding in the matter.

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