

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 711

SENATOR TRUMP, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on February 21, 2020]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §49-4-726, relating to directing the Secretaries of the Department of Health
3 and Human Resources, the Department of Military Affairs and Public Safety, and
4 requesting that the Juvenile Justice Commission of the Supreme Court of Appeals to
5 collaborate and undertake an investigation of numerous issues related to juvenile justice,
6 juvenile competency, and procedures for dealing with juveniles found incompetent to
7 assist counsel in proceedings against them; and are determined to be nonrestorable;
8 requiring certain recommendations and proposed legislation; and requiring the report and
9 proposed legislation be supplied to the President of the Senate and the Speaker of the
10 House of Delegates on or before July 31, 2020.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-726. Study of juvenile competency issues; requiring and requesting report and proposed legislation; submission to Legislature.

1 (a) The Secretary of the Department of Health and Human Resources and the Secretary
2 of the Department of Military Affairs and Public Safety are directed, and the Juvenile Justice
3 Commission of the Supreme Court of Appeals is requested to undertake a collaborative
4 investigation and evaluation of issues regarding juvenile competency. They shall:

5 (1) Develop appropriate procedures for determining what actions should be taken when a
6 juvenile is determined to lack substantial capacity to understand the proceedings against him or
7 her brought under §49-4-704 of this code;

8 (2) Recommend appropriate processes for juveniles to receive restorative services when
9 found to be incompetent; and

10 (3) Recommend appropriate disposition alternatives for juveniles found to be incompetent

11 and not restorable, including a recommendation as to the location and operation of an appropriate
12 facility to house juveniles determined to be incompetent, nonrestorable, and in need of out-of-
13 home placement.

14 (b) The secretaries shall issue a joint report of their findings and recommendations,
15 together with draft legislation necessary to effectuate the recommendations, on or before July 31,
16 2020, to the President of the Senate and the Speaker of the House of Delegates.

17 (c) The report shall:

18 (1) Include models from other states considered to be best practices;

19 (2) Include an estimate of the number of juveniles that may be affected by this procedure
20 and data of trends by other states;

21 (3) Include an estimate of the cost of providing restorative services and a recommendation
22 of which agency should pay for the services; and

23 (4) Ensure that any recommended legislation provides that all services be provided in the
24 least restrictive placement for the juvenile and recommend a facility for the housing and treatment
25 of juveniles determined to be incompetent, nonrestorable, and in need of out-of-home placement
26 which can appropriately provide the juvenile with necessary services.

27 (d) It is the intent of the Legislature in enacting this section to acknowledge the importance
28 of ensuring the constitutionality of juvenile proceedings under §49-4-704 of this code.