

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4633**

(BY DELEGATES ELDRIDGE, AMBLER, SKINNER, P. WHITE,  
BUTLER, J. NELSON, PHILLIPS, MARCUM, B. WHITE,  
STORCH AND SUMMERS)

[Originating in the Committee on the Judiciary,  
February 26, 2016.]



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:*

1 That §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, be  
2 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 be held in custody in a correctional facility of this state while under the age of eighteen  
8 years. The Division of Juvenile Services shall be responsible for notifying the sentencing court  
9 within forty-five days of the child's eighteenth birthday that the child will be turning eighteen years  
10 of age. ~~Within ten days of the child's~~ Upon the child reaching his or her eighteenth birthday, the  
11 court shall transfer the offender to an adult correctional facility or to any other disposition the court  
12 deems appropriate for adult offenders. ~~Notwithstanding any other provision of this code to the~~  
13 ~~contrary, prior to the transfer the child shall be returned to the sentencing court for the purpose of~~  
14 ~~reconsideration and modification of the imposed sentence, which shall be based upon a review~~  
15 ~~of all records and relevant information relating to the child's rehabilitation since his or her~~  
16 ~~conviction under the adult jurisdiction of the court.~~ The sentencing court, on motion of any party  
17 or its own, may conduct a hearing to determine whether the child that has been transferred to  
18 adult jurisdiction and turned eighteen years of age shall remain in the adult correctional facility or  
19 regional jail or if another disposition or pretrial placement available to adult offenders is  
20 appropriate and available: *Provided*, That the court may not remand such child having reached  
21 the age of eighteen years to a juvenile facility or placement with other juveniles.

22 (c) In any hearing conducted by the court under this section, the victim, if any, of the  
23 offender's convicted or charged crime shall be invited to attend the hearing and the victim's  
24 position shall be given due consideration by the court in deciding to continue placement in an  
25 adult facility or any other alternative disposition or pretrial placement. The court may accept the  
26 position of the victim from a victim's designee if the victim is deceased, lacks capacity, a minor or  
27 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.~~

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