

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 562**

BY SENATOR TRUMP

[Passed April 10, 2021; in effect 90 days from  
passage (July 9, 2021)]



1 AN ACT to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended; and  
2 to amend said code by adding thereto nine new sections, designated §49-4-727, §49-4-  
3 728, §49-4-729, §49-4-730, §49-4-731, §49-4-732, §49-4-733, §49-4-734, and §49-4-735,  
4 all relating to juvenile competency proceedings generally; creating a process to raise and  
5 resolve questions of a competency in juvenile delinquency matters; prohibiting a juvenile  
6 found to be incompetent to stand trial to be placed in Bureau of Juvenile Services facility;  
7 defining terms; creating a rebuttable presumption that juveniles 14 years of age and older  
8 are competent to proceed; creating a rebuttable presumption that juveniles under 14 years  
9 of age are incompetent to proceed; providing all proceedings stayed until competency  
10 resolved; requiring the appointment of a guardian ad litem when the issue of a juvenile's  
11 competency is raised or a rebuttable presumption of incompetency exists; establishing  
12 qualifications for qualified forensic evaluators; requiring written competency evaluation  
13 report; requesting the Supreme Court to establish a training program for guardians ad  
14 litem; establishing time frames for jurisdiction and competency attainment services;  
15 establishing procedures for competency hearings; and providing disposition alternatives  
16 for incompetent juveniles and staying transfer to criminal jurisdiction.

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

#### **ARTICLE 4. COURT ACTIONS.**

**§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders or juvenile found incompetent to stand trial; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders or a juvenile found incompetent to stand trial in a Bureau of Juvenile Services facility.**

1 (a) Services provided by the department to juveniles adjudicated as status offenders shall  
2 be consistent with §49-2-1001 *et seq.* of this code. Services provided by the department for  
3 juveniles adjudicated as status offenders pursuant to §49-4-711 of this code and juveniles found

4 to be incompetent to proceed and in need of services pursuant to §49-4-734(b)(2) of this code  
5 shall be designed to develop skills and supports within families and to resolve problems related  
6 to the juveniles or conflicts within their families. Services may include, but are not limited to,  
7 referral of juveniles and parents, guardians, or custodians and other family members to services  
8 for psychiatric or other medical care, or psychological, welfare, legal, educational, or other social  
9 services, as appropriate to the needs of the juvenile and his or her family.

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

12 (1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance  
13 with a service plan or to restrain actions that interfere with or defeat a service plan; or

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

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

30 guardians, or custodians of the juvenile that are necessary and proper to effectuate the  
31 disposition.

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

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

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

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

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

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

49 (g) A juvenile adjudicated solely as a status offender or a juvenile found to be incompetent  
50 to proceed may not be placed in a Bureau of Juvenile Services facility.

**§49-4-727. Juvenile competency proceedings.**

1 (a) Subject to the provisions of subsection (c) of this section, a juvenile's attorney, the  
2 prosecuting attorney, or the court may raise the issue of his or her competency to participate in  
3 the proceeding any time during proceedings under this article. Once competency is raised, all  
4 proceedings unrelated to competency shall be stayed until the issue of competency is resolved.

5 A juvenile presumed incompetent under subsection (c) of this section shall not be adjudicated  
6 unless the presumption of incompetency has been rebutted as provided in subsections (b) and  
7 (c) of this section.

8 (b) In any delinquency proceeding pursuant to this article, a juvenile 14 years or older is  
9 presumed to be competent. A juvenile has the burden of proof to rebut this presumption by  
10 showing incompetency by a preponderance of the evidence.

11 (c) In any delinquency proceeding pursuant to this article, if the juvenile is under 14 years  
12 of age, there exists a rebuttable presumption that he or she is incompetent to proceed beyond  
13 the stage of the proceeding resolving the issue of competency, unless judicially determined to be  
14 competent pursuant to the procedures set forth in §49-4-728 through §49-4-734 of this code. The  
15 state has the burden of proof to rebut this presumption by showing competency by a  
16 preponderance of the evidence.

17 (d) Regardless of the age of the juvenile, the court may dismiss the petition without  
18 ordering a competency evaluation or competency hearing if the prosecuting attorney, the  
19 juvenile's attorney, and the guardian ad litem, if previously appointed, agree that there is  
20 compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided,*  
21 That a court may not order services authorized by §49-4-733 of this code without a competency  
22 evaluation.

23 (e) If and when the issue of a juvenile's competency is raised under subsection (a) of this  
24 section or, a rebuttable presumption of incompetency exists under subsection (c) of this section,  
25 the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is  
26 requested to establish a training program for persons acting as guardians ad litem in juvenile  
27 competency matters.

**§49-4-728. Definitions for juvenile competency proceedings.**

1 As used in §49-4-727 through §49-4-734 of this code:

2           “Competent” and “competency” refer to whether or not a juvenile has sufficient present  
3 ability to consult with his or her lawyer with a reasonable degree of rational understanding and  
4 has a rational as well as factual understanding of the proceedings against him or her. A juvenile  
5 is incompetent if, due to developmental disability, intellectual disability, or mental illness, the  
6 juvenile is presently incapable of understanding the nature and objective of proceedings against  
7 him or her or of assisting in his or her defense.

8           “Competency attainment services” means services provided to a juvenile to assist the  
9 juvenile in attaining competency.

10          “Department” means the Department of Health and Human Resources.

11          “Developmental disability” means a severe and chronic disability that is attributable to a  
12 mental or physical impairment, including, but not limited to, neurological conditions that lead to  
13 impairment of general intellectual functioning or adaptive behavior.

14          “Developmental immaturity” means a condition based on a juvenile’s chronological age  
15 and significant lack of developmental skills when the juvenile has no significant mental illness or  
16 intellectual disability.

17          “Intellectual disability” means a disability characterized by significant limitations both in  
18 intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical  
19 domains.

20          “Mental illness” means a manifestation in a person of significantly impaired capacity to  
21 maintain acceptable levels of functioning in the areas of intellect, emotion, and physical well-  
22 being.

23          “Proceeding” means any delinquency proceeding under this article.

24          “Qualified forensic evaluator” means a licensed psychologist or psychiatrist with the  
25 necessary education, training, and experience to perform juvenile competency evaluations, and  
26 who has been approved to render opinions for the court pursuant to the requirements of §49-4-  
27 729 of this code.

**§49-4-729. Motion for determination of competency, time frames, order for evaluation.**

1 (a) When the prosecuting attorney, the juvenile's attorney, or the guardian ad litem  
2 has reasonable basis to believe that:

3 (1) A juvenile age 14 or older is incompetent to proceed in the delinquency action, that  
4 party shall file a motion for a determination of competency. The motion shall state any known  
5 facts to the movant of in support thereof. If the court raises the issue sua sponte, it shall, by  
6 written order, set forth the basis for ordering a competency evaluation.

7 (2) A juvenile under the age of 14 is competent to proceed in the delinquency action,  
8 the prosecuting attorney shall file a motion for determination of competency. The motion shall  
9 state the basis to believe the juvenile is competent to proceed despite the presumption of  
10 incompetency due to age and shall state any known facts to the prosecuting attorney in  
11 support of the motion. If the court raises the issue sua sponte, the court by written order shall  
12 set forth the factual basis supporting the finding that the juvenile is competent to proceed.

13 (b) Within 10 judicial days after a motion is made, the court shall make one of the following  
14 determinations regardless of which presumption applies:

15 (1) Find that there is compelling evidence that the juvenile is not competent to participate  
16 in the proceedings and dismiss the case pursuant to §49-4-727(d) of this code;

17 (2) Without conducting a hearing, find that there exists a reasonable basis to conduct a  
18 competency evaluation; or

19 (3) Schedule a hearing to determine whether there exists a reasonable basis to conduct  
20 a competency evaluation. The hearing shall be held within 30 judicial days. The court's  
21 determination shall be announced no later than three judicial days after the conclusion of the  
22 hearing.

23 (c) If the court determines there is a reasonable basis to order a competency evaluation  
24 pursuant to §49-4-731 of this code, or if the prosecutor and the juvenile's attorney agree to the



25 evaluation, the court shall order a competency evaluation. If the court orders a competency  
26 evaluation, the court shall order that the competency evaluation be conducted in the least  
27 restrictive environment, taking into account the public safety and the best interests of the juvenile.

28 (1) Notwithstanding any other provisions of this code, the court shall provide in its order  
29 that the qualified forensic evaluator shall have access to all relevant confidential and public  
30 records related to the juvenile, including competency evaluations and reports conducted in prior  
31 delinquent proceedings. The court shall provide to the qualified forensic evaluator a copy of the  
32 petition and the names and contact information for the judge, prosecutor, juvenile's attorney, and  
33 parents or legal guardians.

34 (2) Within five judicial days after the court orders an evaluation, the prosecutor shall deliver  
35 to the evaluator copies of relevant police reports and other background information relevant to  
36 the juvenile that are in the prosecutor's possession.

37 (3) Within five judicial days after the court orders an evaluation, the juvenile's attorney  
38 shall deliver to the qualified forensic evaluator copies of police reports and other records including,  
39 but not limited to, educational, medical, psychological, and neurological records that are relevant  
40 to the evaluation and that are in the attorney's possession. Upon good cause shown, the court  
41 may extend the time frame to deliver these documents noting that time is of the essence.

**§49-4-730. Juvenile competency qualified forensic evaluator; qualifications.**

1 An evaluation ordered by the court shall be conducted by a qualified forensic evaluator.

2 (1) A qualified forensic evaluator shall have education and training in the following areas:

3 (A) Forensic evaluation procedures for juveniles, including accepted criteria used in  
4 evaluating competency;

5 (B) Evaluation, diagnosis, and treatment of children and adolescents with developmental  
6 disability, developmental immaturity, intellectual disability, or mental illness;

7 (C) Clinical understanding of child and adolescent development; and

8 (D) Familiarity with competency standards in this state.

9           (2) The department shall establish procedures for ensuring the training and qualifications  
10 of qualified forensic evaluators. Annually, the department shall provide a list of qualified forensic  
11 evaluators to the Administrative Office of the Supreme Court of Appeals of West Virginia.

**§49-4-731. Juvenile competency evaluation.**

1           (a) The qualified forensic evaluator shall file with the court a written competency evaluation  
2 report within 30 days after the date of entry of the order requiring the juvenile to be evaluated and  
3 appointing the qualified forensic evaluator. For good cause shown, the court may extend the time  
4 for filing for a period not to exceed an additional 30 days. The report shall include the evaluator's  
5 opinion as to whether or not a juvenile, due to developmental disability, intellectual disability, or  
6 mental illness, has sufficient present ability to consult with his or her lawyer with a reasonable  
7 degree of rational understanding and whether the juvenile has a rational as well as factual  
8 understanding of the proceedings against him or her. The report shall not include the evaluator's  
9 opinion as to whether the juvenile committed the alleged offense or recite or reference any self-  
10 incriminating or inculpatory statements as reported by the juvenile. A self-incrimination or  
11 inculpatory statement made by a juvenile during an evaluation or hearing conducted pursuant to  
12 this article shall not be admissible on the issue of responsibility or guilt in subsequent court  
13 proceedings, including adjudication and disposition or transfer hearings.

14           (b) A competency evaluation report shall include:

15           (1) A statement of the procedures used, including psychometric tests administered,  
16 records reviewed, and the identity of persons interviewed;

17           (2) Pertinent background information, including a history of educational performance,  
18 psychiatric or psychological history, developmental and family history;

19           (3) Results of the mental status examination;

20           (4) A diagnosis, if one has been made, which shall address any psychological or  
21 psychiatric conditions or cognitive deficiencies determined to exist; and

22 (5) An opinion as to the juvenile's developmental maturity or developmental immaturity as  
23 it would affect his or her ability to proceed.

24 (c) If the qualified forensic evaluator determines that the juvenile is not competent to  
25 participate in the proceedings, the competency evaluation report shall address the following  
26 questions:

27 (1) Whether the juvenile has a developmental disability, intellectual disability, or mental  
28 illness;

29 (2) Whether the juvenile has sufficient present ability to consult with his or her lawyer with  
30 a reasonable degree of rational understanding;

31 (3) Whether a juvenile has a rational as well as factual understanding of the proceedings  
32 against him or her; and

33 (4) Whether the juvenile can attain competency in the foreseeable future if provided with  
34 a course of treatment, therapy, or training.

35 (d) If the qualified forensic evaluator determines that the juvenile is incompetent, but that  
36 there is a reasonable probability that he or she can attain competency within the periods set forth  
37 in §49-4-733(c)(3) of this code, the report shall include the following recommendations:

38 (1) A recommendation as to the treatment or therapy; and

39 (2) The least restrictive setting for juvenile competency attainment services consistent with  
40 the juvenile's ability to attain competency and the safety of both the juvenile and the public.

41 (e) The court shall provide a copy of each competency evaluation report it receives to the  
42 prosecutor, the juvenile's attorney, and guardian ad litem and may provide a copy upon request  
43 to the juvenile's parents or legal guardian.

44 (f) The department shall pay qualified forensic evaluators for all matters related to  
45 conducting a court-ordered competency evaluation. The department shall develop and implement  
46 a process for prompt payment of qualified forensic evaluators including a rate schedule. The

47 amount of payment for court-ordered evaluations shall reasonably compensate qualified forensic  
48 evaluators for the work performed in a particular case.

**§49-4-732. Hearing to determine juvenile’s competency to participate in the proceedings.**

1 (a) Not more than 15 judicial days after receiving the evaluator’s report, the court shall  
2 conduct a hearing to determine the juvenile’s competency to participate in the proceedings. The  
3 court may continue the hearing for good cause shown.

4 (b) The competency evaluation report is admissible as evidence in the competency  
5 proceedings. The qualified forensic evaluator may be called as a witness and is subject to cross  
6 examination by all parties. If authorized by the court, hearings held pursuant to this section may  
7 be conducted by or participated in using teleconference or video conference technology. If the  
8 court contacts the qualified forensic evaluator to obtain clarification of the report contents, the  
9 court shall promptly inform all parties and allow each party to participate in each contact.

10 (c) In determining the competency of the juvenile to participate in the proceedings, the  
11 court shall consider the content of all competency evaluation reports admitted as evidence. The  
12 court may consider additional evidence introduced at the hearing by the prosecuting attorney, the  
13 juvenile’s attorney, or guardian ad litem.

14 (d) (1) Except as otherwise provided, the court shall make a written determination as to  
15 the juvenile’s competency based on a preponderance of the evidence within 10 judicial days after  
16 completion of the hearing. The applicable burden of proof shall be as set forth in §49-4-727 of  
17 this code.

18 (2) The court shall not find a juvenile competent to proceed solely because the juvenile is  
19 receiving or has received in-patient treatment or is receiving or has received psychotropic or other  
20 medication, even if the juvenile might become incompetent to proceed without that medication.

**§49-4-733. Procedure after determination of juvenile’s competency to participate in the proceedings.**

1 (a) After a hearing pursuant to §49-4-732 of this code, if the court determines by a  
2 preponderance of the evidence that the juvenile is competent to proceed despite any presumption  
3 that may have applied, the delinquency proceedings shall resume as provided by law.

4 (b) If the court determines by a preponderance of the evidence that a juvenile is  
5 incompetent to proceed, but is likely to attain competency within a reasonable time with services,  
6 the court shall stay the proceedings and order the juvenile to receive services designated to assist  
7 the juvenile in attaining competency, based upon the recommendations in the competency  
8 evaluation report, unless the court makes specific findings that the recommended services are  
9 not justified. The court shall order the juvenile’s parent or legal guardian to contact a court-  
10 designated provider by a specified date to arrange for services.

11 (1) The competency attainment services provided to a juvenile shall be based on the  
12 recommendations contained in the qualified forensic evaluator’s report described in §49-4-731(d)  
13 of this code, and are subject to the conditions and time periods required pursuant to this section  
14 measured from the date the court approves the plan.

15 (2) The court shall order that the competency attainment services ordered are provided in  
16 the least restrictive environment, taking into account the public safety and the best interests of  
17 the juvenile. If the juvenile has been released on temporary orders and refuses or fails to  
18 cooperate with the service provider, the court may modify the orders to require a more appropriate  
19 setting for further services. A juvenile may not be placed in a Bureau of Juvenile Services facility  
20 to receive competency attainment services. Additionally, a juvenile presumed incompetent under  
21 §49-4-727(c) of this code shall not be placed in a Bureau of Juvenile Services facility, except in  
22 compliance with §49-4-705 and §49-4-706 of this code, and corresponding Rules of Juvenile  
23 Procedure as adopted by the Supreme Court of Appeals of West Virginia.

24 (3) A juvenile shall not be required to participate in competency attainment services for  
25 longer than is necessary to attain competency or after the court determines that there is no  
26 reasonable likelihood that competency can be attained. The following maximum time limits apply  
27 to the participation of a juvenile:

28 (A) A juvenile charged with an act which would constitute a misdemeanor or nonviolent  
29 felony if committed by an adult shall not be required to participate in competency attainment  
30 services beyond his or her 19th birthday and there shall be a rebuttable presumption that  
31 competency is not attainable if the juvenile has not attained competency after 90 days of services.

32 (B) A juvenile charged with an act which would constitute a felony crime of violence if  
33 committed by an adult shall not be required to participate in competency attainment services  
34 beyond his or her 21st birthday and there shall be a rebuttable presumption that competency is  
35 not attainable if the juvenile has not attained competency after 180 days of services.

36 (4) Not later than 10 judicial days after the court orders competency attainment services,  
37 the department shall identify the appropriate entity and location to provide those services.

38 (5) Within 10 judicial days after the department identifies the appropriate entity and  
39 location, the provider responsible for the juvenile's competency attainment services shall  
40 commence. The court shall deliver to that provider:

41 (A) The name and address of the juvenile's counsel;

42 (B) A copy of the juvenile's petition;

43 (C) A copy of the competency evaluation report;

44 (D) The name, address, and phone number of the juvenile's parents or legal guardian;

45 (E) The name of the department's caseworker, if any; and

46 (F) Any other relevant documents or reports concerning the juvenile's health that have  
47 come to the attention of the court.

48 (c) The court shall order and conduct review hearings no less often than every 90 days as  
49 determined appropriate by the court. The multidisciplinary team shall meet prior to any review

50 hearing and provide a written status report to the court prior to the hearing. Unless sooner ordered  
51 by the court, the qualified forensic evaluator shall submit a report to the court prior to any review  
52 hearing, and upon completion or termination of services, and shall include the following:

53 (1) The services provided to the juvenile, including medication, education, and counseling;

54 (2) The likelihood that the competency of the juvenile to proceed will be restored within  
55 the applicable period of time set forth in subdivision (3), subsection (b) of this section; and

56 (3) The progress made toward the goals and objectives for the restoration of competency  
57 identified in the recommendations from the competency evaluation adopted by the court.

58 (d) The provider responsible for the juvenile's competency attainment services shall report  
59 to the court within three judicial days if he or she determines that:

60 (1) The juvenile is failing to cooperate, and the lack of cooperation is significantly impeding  
61 or precluding the attainment of competency; or

62 (2) The current setting is no longer the least restrictive setting that is consistent with the  
63 juvenile's ability to attain competency taking into account public safety and the best interests of  
64 the juvenile. The provider shall include in the report an assessment of the danger the juvenile  
65 poses to himself, herself or others and an assessment of the appropriateness of the placement.

66 (e) The provider responsible for the juvenile's competency attainment services shall  
67 request a subsequent evaluation when the provider has reason to believe:

68 (1) The juvenile has achieved the goals of the plan and would be able to understand the  
69 nature and objectives of the proceedings against him or her, to assist in his or her defense, and  
70 to understand and appreciate the consequences that may be imposed or result from the  
71 proceedings with or without reasonable accommodations; and

72 (2) The juvenile will not achieve the goals of the plan within the applicable period of time  
73 pursuant to subdivision (3), subsection (b) of this section.

74 (f) The evaluator shall assess the observation of the provider and provide a written report  
75 to the court within 10 days of receiving a report from the provider pursuant to subsection (e) of  
76 this section.

77 (g) The court shall provide copies of any report made by the provider to the prosecuting  
78 attorney, the juvenile's attorney, the juvenile's case worker, and the juvenile's guardian ad litem,  
79 if any. The court shall provide copies of any reports made by the provider to the juvenile's parents  
80 or legal guardians, unless the court finds that doing so is not in the best interest of the juvenile.

81 (h) Within 15 judicial days after receiving an evaluator's report, the court may hold a  
82 hearing to determine if new, additional, or further orders are necessary.

83 (i) If the court determines that the juvenile is not making progress toward competency or  
84 is so uncooperative that attainment services cannot be effective, the court may order a change in  
85 setting or services that would help the juvenile attain competency within the relevant period of  
86 time as set forth in subdivision (3), subsection (b) of this section.

**§49-4-734. Disposition alternatives for incompetent juveniles.**

1 (a) If the court determines that the juvenile has attained competency, the court shall  
2 proceed with the delinquent juvenile's proceeding in accordance with this article.

3 (b) After a hearing pursuant to §49-4-732 of this code, if the court determines by the  
4 preponderance of the evidence that the juvenile is incompetent to proceed and cannot attain  
5 competency within the period of time set forth in §49-4-733(b)(3) of this code, the court may  
6 dismiss the petition without prejudice, or may take the following actions or any combination thereof  
7 the court determines to be in the juvenile's best interest and the interest of protecting the public:

8 (1) Refer the matter to the department and request a determination on whether a child  
9 abuse or neglect petition, pursuant to §49-4-601 *et seq.* of this code, should be filed;

10 (2) Refer the juvenile to the department for services pursuant to §49-4-712 of this code.  
11 Services may include, but are not limited to, referral of the juvenile and his or her parents,  
12 guardians, or custodians and other family members to services for psychiatric or other medical



13 care, or psychological, welfare, legal, education, or other social services, as appropriate to the  
14 needs of the juvenile and his or her family;

15 (3) Place the juvenile in the custody of his or her parents or other suitable person or private  
16 or public institution or agency under terms and conditions as determined to be in the best interests  
17 of the juvenile and the public, which conditions may include the provision of out-patient services  
18 by any suitable public or private agency; or

19 (4) Upon motion by the prosecuting attorney, stay the proceeding for no more than 20  
20 days to allow the prosecuting attorney to initiate proceedings for civil commitment pursuant to  
21 §27-5-1 *et seq.* of this code if the juvenile has attained majority.

22 (c) A circuit court may, sua sponte or upon a motion by any party direct that a dangerous  
23 assessment be performed prior to directing the resolutions set forth in subsection (b) of this  
24 section.

**§49-4-735. Stay of transfer to criminal jurisdiction.**

1 If a juvenile is presumed incompetent under §49-4-727(c) of this code, or if the issue of  
2 the juvenile's competency to participate in the proceedings is raised at any time during the  
3 proceedings for a juvenile presumed competent under §49-4-727(b) of this code, the procedures  
4 outlined in §49-4-727 through §49-4-734 of this code shall be used to determine the juvenile's  
5 competency and if appropriate, restore the juvenile's competency regardless of whether the case  
6 is to proceed under the court's juvenile jurisdiction or transfer to adult criminal jurisdiction pursuant  
7 to §49-4-710 of this code and corresponding Rules of Juvenile Procedure adopted by the  
8 Supreme Court of Appeals of West Virginia.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, Senate Committee*

.....  
*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

.....  
*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2021.

.....  
*Governor*