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Facilities Review Panel v. Coe: The West Virginia Supreme Court of Appeals Adopts an Objective Approach to Deciding Pretrial Detention of Accused Juveniles

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FACILITIES REVIEW PANEL v. COE: THE WEST VIRGINIA SUPREME COURT OF APPEALS ADOPTS AN OBJECTIVE APPROACH TO DECIDING PRETRIAL DETENTION OF ACCUSED JUVENILES

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I. INTRODUCTION

Secure detention¹ of accused children prior to a finding of guilt represents one of the most serious and controversial practices in juve-

1. “Detention” is “[t]he temporary holding of a juvenile pending adjudication for specific delinquent or status offenses; or for conditions such as dependency, neglect, or abuse. A juvenile who has already been adjudicated and is awaiting disposition or a transfer to a placement facility is also detained.” JUVENILE JUSTICE BULLETIN (Dept. of Justice/Office of Juvenile Justice and Delinquency Prevention), Oct. 1988 at 7-8.

   A “secure detention” facility is one “which is designed and operated to ensure that all entrances and exits from such facility are under exclusive control of the staff of such facility . . . or which relies on locked rooms and buildings, fences, or physical restraints in order to control the behavior of its residents.” W. VA. CODE § 49-5B-3(7) (1986).
nile justice administration. The basic philosophy underlying the American juvenile justice system is that children are different from adults—physically, mentally, emotionally, and intellectually—and should be treated differently. Children are viewed as naïve and impressionable and in need of special nurturance and understanding. However, despite this perception of immaturity and innocence, and a preference for a more benign and benevolent treatment of children, the practice of incarcerating accused youths in jails and jail-like facilities persists. Despite the controversy, the United States Supreme Court has held preventive pretrial detention of juveniles constitutional and

2. For an in-depth discussion of this controversy see ROSEMARY C. SARRI, UNDER LOCK AND KEY: JUVENILES IN JAILS AND DETENTION (1974); see also ALBERT R. ROBERTS, JUVENILE JUSTICE: POLICIES, PROGRAMS, AND SERVICES (1989); COMMUNITY RESEARCH FORUM, PROHIBITING SECURE JUVENILE DETENTION: ASSESSING THE EFFECTIVENESS OF NATIONAL STANDARDS DETENTION CRITERIA (1980) [hereinafter PROHIBITING SECURE DETENTION].

3. This view led to the creation of a separate court system for juvenile offenders in Cook County, Illinois in 1899, marking the beginning of the juvenile justice system of today. See generally GENNARO F. VITO & DEBORAH G. WILSON, THE AMERICAN JUVENILE JUSTICE SYSTEM (1985). The juvenile court system was envisioned as protective rather than punitive, and juvenile court proceedings were considered civil proceedings rather than criminal trials. SAMUEL M. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM § 1.2.


5. Each year in the United States approximately 500,000 youths are detained in secure preadjudicatory detention facilities. ROBERTS, supra note 2, at 144. In addition to the youths held in secure juvenile detention facilities, it is estimated that another 500,000 are confined in adult jails nationwide. SARRI, supra note 2, at 64.

6. The United States Supreme Court upheld the constitutionality of a New York statute authorizing preventive pretrial detention of accused juveniles following a finding of probable cause to detain. Schall v. Martin, 467 U.S. 253 (1984). The relevant language of the statute at issue states:

The court shall not direct detention unless it finds and states the facts and reasons for so finding that unless the respondent is detained: (a) there is a substantial probability that he will not appear in court on the return date; or (b) there is a serious risk that he may before the return date commit an act which if committed by an adult would constitute a crime.

N.Y. FAM. CT. ACT § 320.5 (McKinney 1982).

Preventive detention is "the confinement of an accused person prior to trial based upon a prediction that the person would pose a danger to himself or others if released pending trial" (emphasis added). James W. Brown et al, PREVENTIVE DETENTION AFTER SCHALL V. MARTIN 2 (Juvenile Justice Project of the Criminal Justice Section of the American Bar Association, Practice Paper No. 2, 1985). In upholding the New York statute, the Supreme Court concluded that the requirement of a prompt probable cause hearing, the right
such detention remains a relatively common occurrence. Paradoxically, studies indicate that more children are confined before they have been adjudged guilty or delinquent than are incarcerated after a finding of guilt.  

Detention can have a significant and traumatic impact on a child. Being coercively removed from the home and family unit and confined in an institutional setting deprives the accused child of his freedom and skews the child's perception of justice and may have other overwhelmingly negative physical, psychological and legal consequences as well. For these reasons, critics question the practice of locking up to counsel at the detention hearing, and the strictly limited time (seventeen day maximum) a child could be held in preadjudicatory detention provided sufficient procedural safeguards for accused youths. Id. at 8, 9. Pretrial detention under Schall presumes an environment where due process protections are in place and where conditions of confinement meet a fairly high standard. Id. at 11.

7. In 1986, one study revealed that 81% of admissions to juvenile facilities nationwide were for detention purposes while only 18% were for formal commitments (1% were voluntary commitments). JUVENILE JUSTICE BULLETIN (Dept. of Justice/Office of Juvenile Justice and Delinquency Prevention), Oct. 1988 at 2. In 1987, 98% of juveniles detained for juvenile offenses were held in institutional settings. Once adjudicated, only 79% were committed to institutional settings. Id. at 4.

"[S]tatistics introduced in the district court in Schall indicated that 70% of those detained prior to trial were either acquitted, had their cases dismissed prior to trial, or were released after trial, even if they were ultimately convicted." Id. at 4. Of 409,218 juveniles in pretrial detention in 1965, only 242,275 were either incarcerated after disposition or placed on probation. INSTITUTE OF JUDICIAL ADMINISTRATION & AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO INTERIM STATUS: THE RELEASE, CONTROL, AND DETENTION OF ACCUSED JUVENILE OFFENDERS BETWEEN ARREST AND DISPOSITION 2 n.5 (1980) [hereinafter INTERIM STATUS STANDARDS]; see also Elyce Z. Ferster et al., Juvenile Detention: Protection, Prevention, or Punishment?, 38 FORDHAM L. REV. 161 (1969) (survey of jurisdictions revealed that only a small percentage of youths detained before adjudication were ultimately removed from the community following disposition: Massachusetts, 25.9 percent; Illinois, 22 percent; Ohio, 19.5 percent; and Texas, 9.7 percent).

8. Sarri, supra note 2, at 14.

9. Assaults, murders, rapes, and suicides have been reported, although these appear to be more prevalent when juveniles are housed in adult jails. See, e.g., PAUL MONES, Too Many Rights or Not Enough? A Study of the Juvenile Related Decisions of the West Virginia Supreme Court of Appeals, 393, 395 (1984) (juvenile beaten to death by adult prisoner while confined to Wood County, West Virginia, Correctional Facility in 1982); When Children Go to Jail, NEWSWEEK, May 27, 1985, at 87 (describing horror stories of rapes and murders of juveniles held in adult jails.)
accused juveniles and suggest that detention be limited to only the most compelling cases.  

Generally, the goals of preadjudicatory detention are threefold: (1) To protect the child; (2) to protect society; and (3) to ensure the presence of the child at future court proceedings. Some commentators maintain, however, that it is difficult, if not impossible, to subjectively predict which juveniles need protection, pose a risk to society, or are likely to abscond before trial. When the governing standards permit broad discretion to detain, the potential exists for different decision-makers to reach vastly different conclusions occasioned by personal perceptions, biases, and attitudes. Because of the potential hazards inherent in secure detention, as well as the imprecise predictability involved, experts suggest that, to justify detention, authorities need objective, definitive criteria.

Recently, the West Virginia Supreme Court of Appeals, in Facilities Review Panel v. Coe addressed the need for such objective

Research indicates that a child’s self-esteem may be destroyed when subjected to the harshness of secure detention practices, both in jails and in special juvenile detention facilities. PROHIBITING SECURE DETENTION, supra note 2 at 1, (citing PETROW & PETROW, How A Pretrial Facility Can Destroy the Self-Esteem of the Juvenile, INTERNATIONAL JOURNAL OF OFFENDER THERAPY AND COMPARATIVE CRIMINOLOGY 18 (1974), 227-32). Also, detention with other delinquents may “intensify” [the youth’s] hostility toward society.” Id at 1 (quoting S. NORMAN, THINK TWICE BEFORE YOU BUILD OR ENLARGE A DETENTION CENTER, New York: National Council on Crime and Delinquency).

Additionally, secure confinement may have adverse legal affects by limiting the juveniles ability to participate in preparing an effective defense, and may even predispose the youth to harsher dispositional treatment. State ex rel M.C.H. v. Kinder, 317 S.E.2d 150, 156 n.15 (W. Va. 1984). See also ROBERTS, supra note 2, at 155; INTERIM STATUS STANDARDS, supra note 7, at 2, n.4.

10. FRANCIS B. McCARTHY & JAMES G. CARR, JUVENILE LAW AND ITS PROCESSES 328 (1980); see also ROBERTS, supra note 2; SARRI, supra note 2.

11. ROBERTS, supra note 2, at 149; GITO & WILSON, supra note 3, at 68. Other justifications cited for detention include: uncooperative parents, adverse home conditions with no responsible parent willing to assume supervision and control of the child, or a child who is not amenable to parental control. Id.

12. See, e.g., ROBERTS, supra note 2, at 150.

13. See generally SARRI, supra note 2; PROHIBITING SECURE DETENTION, supra note 2.

14. ROBERTS, supra note 2; see also PROHIBITING SECURE DETENTION, supra note 2, at 2.

preadjudicatory detention standards. Alleging inappropriate and inconsistent utilization of secure detention and overcrowding of certain facilities, the Facilities Review Panel (Panel)\textsuperscript{16} petitioned the court to adopt objective criteria to insure uniformity and consistency in the decision making process and prevent overuse of secure commitment.\textsuperscript{17} Additionally, the Panel requested mandatory rotation of judges hearing juvenile cases as a further means of assuring appropriate utilization of detention centers.\textsuperscript{18}

Ultimately, the court adopted objective detention standards as proposed by the Panel, as well as procedural protective measures to prevent overcrowding.\textsuperscript{19} The court reasoned that these standards are consistent with existing West Virginia law and reflect the legislative and judicial preference for release over detention.\textsuperscript{20} Further, the court determined that, with adherence to the standards and guidelines set forth, rotation of judges would be unnecessary.\textsuperscript{21}

The \textit{Facilities Review} decision significantly alters the detention process in the West Virginia counties where children are regularly detained. This Comment discusses the court's decision in \textit{Facilities Review} to enable the reader to understand the new standards and their implications for the administration of juvenile justice in West Virginia.

\section*{II. STANDARDIZATION ATTEMPTS: EFFORTS AT REFORMING THE PROCESS}

The problem of preadjudicatory detention is characterized by the large number of youths detained, the harshly restrictive and often over-
crowded conditions of confinement, the high costs of detention, and the potential for detrimental after-effects. These difficulties are compounded by the use of overly broad and discretionary guidelines in making the decision to detain or release. As a basis for reform in this area, various organizations and some jurisdictions have made efforts to more stringently limit the circumstances under which detention would be appropriate through the development of strict objective criteria.

A. Efforts to Create a Uniform Framework

In 1973, in response to critics’ assertions of a need for reform and uniformity in the juvenile justice process, the Juvenile Justice Standards Project (Project) began. The Institute of Judicial Administration (IJA) and the American Bar Association (ABA) combined efforts to develop a series of standards which could serve as a paradigm for courts, legislatures, and others seeking consistency in juvenile justice administration. Among the models promulgated were standards specific to pretrial detention. These standards demonstrate a strong preference for mandatory release or non-secure placement except in specifically identifiable circumstances. These criteria limit permissible detention to specific types of offenses and demonstrated behaviors.

22. INTERIM STATUS STANDARDS, supra note 7, Introduction at 1.
23. See supra notes 11-14 and accompanying text.
24. INTERIM STATUS STANDARDS, supra note 7, Preface at v.
25. IJA is a private nonprofit research and educational organization located at New York University School of Law. Id. at v-vi.
26. The Project culminated in the publication of twenty-three volumes collectively called “Juvenile Justice Standards.” Seventeen of these volumes were approved and adopted by the ABA House of Delegates in 1979. Id. at vii.
27. Id., § 6.6. at 78.
28. These guidelines provide for the mandatory release of the accused juvenile unless the juvenile:
   1. is charged with a crime of violence which in the case of an adult would be punishable by a sentence of one year or more, and which if proven is likely to result in a commitment to a security institution, and one or more of the following additional factors is present:
      a. the crime charged is a class one juvenile offense;
      b. the juvenile is an escapee from an institution or other placement facility to which he or she was sentenced under a previous adjudication or criminal con-
The Joint Commission on Juvenile Justice Standards, the supervising body for the Project, viewed these standards as a proper balance between the interests of the child and the community's need for safety.\textsuperscript{29}

Similarly, with the Juvenile Justice and Delinquency Prevention Act of 1974,\textsuperscript{30} Congress encouraged the development of objective standards for the overall administration of juvenile justice nationwide. Two of the major goals of the Act were to reduce the use of secure detention and to provide alternatives to the use of secure detention.\textsuperscript{31} However, as the disparity among and within states in the number of juveniles detained reflects, the uniformity Congress envisioned has yet to be achieved.\textsuperscript{32}

\begin{itemize}
\item the juvenile has a demonstrable recent record of wilful failure to appear
\item at juvenile proceedings, on the basis of which the official finds that no measure short of detention can be imposed to reasonably ensure appearance; or
\item has been verified to be a fugitive from another jurisdiction, an official of whom has formally requested that the juvenile be placed in detention.
\end{itemize}

\textit{Id.} The guidelines further encourage release despite paragraph one. The relevant language of the standard states: "A juvenile who is excluded from mandatory release . . . is not, \textit{pro tanto}, to be automatically detained. No category of alleged conduct in and of itself may justify a failure to exercise discretion to release." \textit{Id.}

\textsuperscript{29} \textit{Id.}, Commentary at 79.
\textsuperscript{31} \textit{Id.}

\textsuperscript{32} A 1975 study of detentions affirmed the disparity in the use of detention among states: For a one year period, California detained 139,423 juveniles; Florida, Washington, Texas, and Ohio each detained approximately 20,000 juveniles. These five states accounted for one-half of all detentions nationwide although the number of juveniles living in these states comprised less than one-fifth of the national juvenile population. When ranked by the number of detentions per 100,000 youthful population within the states, the distribution ranged from a low of zero per 100,000 to 4,500 per 100,000. These statistics did not include juveniles housed in adult jails. \textsc{John E. Poulin et al., Reports of the National Juvenile Justice Assessment Centers: Juveniles in Detention Centers and Jails} 5 (1980).

\textsuperscript{32} A 1977 study of detention in New Jersey revealed that in one rural county the detention rate was five times higher than that of another nearby rural county. This disparity existed even though both counties were operating under the same state statute. Pennsylvania statistics revealed a similar intrastate inconsistency. \textsc{Preventing Secure Detention, supra} note 2, at 2.
In 1976, also acting on the premise that pretrial detention practices were largely inappropriate and overly discretionary, the National Advisory Committee on Standards for the Administration of Juvenile Justice formulated a model of objective criteria to guide the decision-making process.\(^{33}\) Permissible situations for detention proposed by this committee paralleled those of the IJA/ABA Project, with criteria designed to place less reliance on the judge’s subjective judgment by providing specifically identifiable instances in which detention would be appropriate.\(^{34}\)

**B. Local Jurisdictional Efforts: Impressive Results**

Concerned with the issue of appropriateness and potential overuse of secure detention, some states and local jurisdictions have moved from broad general guidelines to more measurable and verifiable criteria.\(^{35}\) Although no studies were found addressing the effectiveness of these objective standards on any statewide basis, studies in local jurisdictions indicate that, overall, such standards have resulted in fewer detentions and less overcrowding of facilities in those jurisdictions while not adversely affecting public safety or court integrity. For illustration, two of the projects will be discussed.

In Colorado, the Division of Youth Services (DYS) developed a proposal to address the issues of overcrowding of its juvenile detention facilities and inappropriate use of secure detention.\(^{36}\) The proposal was intended to reduce the number of inappropriate detentions through the use of intake screening units and various non-secure detention alternatives as well as using formalized written criteria\(^{37}\) as a basis for determining the need for and appropriateness of detention.\(^{38}\)

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33. *Id.*
34. *Id.*
37. The criteria clearly identified those for whom detention was mandatory and those for whom detention was not appropriate, yet maintained judicial discretion in a third group. *Id.* at 3, 4, 5.
38. *Id.* at 1.
goal of the program was to promote appropriate use of secure detention and reduce the number of youths detained without creating new dangers to the community or disrupting the court process.\footnote{39}

In a pilot project, DYS introduced the program at the Arapahoe Youth Center in Arapahoe County. This secure facility had a capacity for fifteen youths, but was continually overcrowded. This overcrowding resulted in the facility having to transfer juveniles to accommodate twenty or more youths per day.\footnote{40} After implementation of the project, the average daily detention population and the average length of stay for juveniles were reduced significantly. The average daily population was reduced from eighteen to eleven detainees\footnote{41} while the average length of stay was decreased from seven days to five.\footnote{42} Furthermore, no increase in the rate of recidivism or failure to appear in court occurred.\footnote{43} Additionally, the project resulted in a thirty-eight percent reduction in the amount of money expended to hold juveniles in secure detention.\footnote{44} Clearly, these statistics demonstrate the effectiveness of objective measures for determining the appropriateness of secure detention and the use of less restrictive alternatives. Moreover, these statistics demonstrate an absence of any adverse impact on the community or the integrity of the judicial proceedings.

Similar results were achieved in Jefferson County, Kentucky, when strict objective criteria very much like those promulgated by the IJA/ABA project were utilized as the determinative standards for de-
tention. 45 Studies in that jurisdiction revealed a fifty-six percent re-
duction in the detention rate without a significant change in the rate at
which these juveniles were rearrested after release and only a marginal
increase in the failure to appear rate. 46 This slight increase in the
number of youths failing to show up for later court appearances was
felt to be controllable with an increased use of monitored home deten-
tion programs such as electronic monitoring. 47

III. STATEMENT OF THE CASE

A. Background

Facilities Review initially came before the West Virginia Supreme
Court of Appeals in 1989 on a petition for a writ of mandamus
brought by the Panel and Taunja Willis-Miller, the Secretary of the
West Virginia Department of Health and Human Resources
(DHHR), 48 alleging overuse of secure detention in Wood County,
West Virginia, and inconsistency in detention practices statewide. 49
The petitioners contended that assignment of Wood County juvenile

45. COMMUNITY RESEARCH CENTER, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN,
A COMMUNITY RESPONSE TO CRISIS: THE EFFECTIVE USE OF DETENTION AND ALTERNATIVES TO DETENTION IN JEFFERSON COUNTY, KENTUCKY (1983).

46. In Mar. 1979, before the standards were in use, 205 youths were held in excess
of twelve hours; in Sept. 1979, after implementation, a total of 89 youths were detained
for more than twelve hours. Even though less than half as many youths were detained using
the objective criteria, the total rearrest rate increased only 0.4% (from 9.6% before to 10%
after), and the rearrest rate for felony charges actually fell by 0.8% (from 4.7% before to
3.9% after). Likewise, the program saw only a 4% increase in the rate of youths failing to
appear in court (an increase from 4.7% before use of the criteria to 8.7% after implemen-
tation). Id. at 4, 5, 6.

47. Id. at 6.

48. The Department of Health and Human Resources (DHHR), formerly the Depart-
ment of Human Services, has the responsibility for licensing all juvenile detention facilities
in West Virginia, and is charged with providing for the "care . . . for children needing
detention pending disposition by a court . . . or temporary care following [ ] court action."
W. VA. CODE § 49-5-16b (1986). Of the six detention facilities in the state, four are direct-
ly operated and funded by the DHHR. Petitioners’ Note of Argument at 2, Facilities Review

cases to only one judge, Respondent Judge Arthur Gustke of West Virginia's Fourth Judicial Circuit, resulted in excessive commitment of accused youths to preadjudicatory detention, creating serious overcrowding of the West Central Regional Juvenile Detention Center (WCRJDC) in Wood County.\(^5\)\(^0\) The overcrowding of the WCRJDC created a dilemma for the DHHR, in that the dangers of overcrowding could subject the DHHR to liability, yet refusing to accept youths into the facility following court ordered commitment could place the agency in the position of being in contempt of court.\(^5\)\(^1\) To alleviate this condition, the petitioners asked the court to order mandatory rotation of judges by the Respondent Circuit Clerk, Juanita Coe, among the three circuit judges presiding in Wood County.\(^5\)\(^2\) They also asked the court to require that circuit courts develop and utilize less restrictive alternatives to secure detention.\(^5\)\(^3\)

The petitioners requested that the court adopt the juvenile detention criteria developed by the IJA/ABA Juvenile Justice Standards Project.\(^5\)\(^4\) The petitioners asserted that the lack of standardized guidelines

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50. WCRJDC, a secure regional detention facility licensed and operated by DHHR, is licensed to house a maximum of ten children from several counties. At the time of this petition, the facility often housed twenty or more children. The average daily population from Jan. to May 1989 was approximately fifty percent over capacity. Petitioners' Note of Argument at 2-6, Facilities Review Panel v. Coe, 420 S.E.2d 532 (W. Va. 1992) (No. 19123). Because of overcrowding, children often had to sleep on floors and were confined in unhealthy living environments. Report of Special Master at 18, Facilities Review Panel v. Coe, 420 S.E.2d 352 (W. Va. 1992) (No. 19123). The court noted that another reason for the overcrowding was a delay in scheduling of juvenile court hearings which led to prolonged stays of detainees. Facilities Review Panel v. Coe, No. 19123, slip op. at 3 n.1 (W. Va. Nov. 17, 1989) (interim order appointing special master to investigate the need for standardized juvenile detention guidelines and to make a statewide review of juvenile detention centers).

51. Id. at 4.


53. Id. at 15. The petitioners asked the court to require the Respondent Judge Gustke to cooperate with the DHHR in establishing guidelines for an in-home detention program, to utilize electronic monitoring equipment in lieu of secure detention, and to refrain from committing additional children to the WCRJDC when the maximum capacity of ten children had been reached. Id.

54. Id. Specifically, the petitioners sought to have the court adopt § 6.6 of the INTERIM STATUS STANDARDS, supra note 7, at 78. Id.
in West Virginia results in arbitrary and inconsistent use of pretrial detention. They posited that standardization of criteria would reduce the use and misuse of detention by requiring all circuit judges to base their decisions on the same objective factors.\footnote{55. According to the statistics for Aug. 1, 1988 through Jan. 31, 1989 submitted by the petitioners, the detention rate among counties varied considerably. For example, Wood County accounted for one fourth of all detainees statewide. The Wood County detention rate was 12.273 detentions per 1,000 juvenile cases compared with a rate of 7.204 per 1,000 in Cabell County, and only 4.292 per 1,000 for Kanawha County. Eight counties had a zero detention rate, and eighteen counties detained less than one juvenile per 1,000 cases. The raw data for all fifty-five counties is tabulated below:}

<table>
<thead>
<tr>
<th>County</th>
<th>Total Commitments</th>
<th>Rate per 1000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wood</td>
<td>175</td>
<td>12.273</td>
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<tr>
<td>Cabell</td>
<td>108</td>
<td>7.204</td>
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<tr>
<td>Roane</td>
<td>13</td>
<td>5.939</td>
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<tr>
<td>Kanawha</td>
<td>131</td>
<td>4.292</td>
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<td>Jackson</td>
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<td>2.634</td>
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<td>2.634</td>
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<tr>
<td>Wetzel</td>
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<td>0.264</td>
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<tr>
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<tr>
<td>Logan</td>
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<td>0.230</td>
</tr>
<tr>
<td>Mineral</td>
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<td>0.210</td>
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<tr>
<td>Wyoming</td>
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<tr>
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<tr>
<td>Monroe</td>
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<td>Tucker</td>
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</tr>
</tbody>
</table>

Petitioner's Note of Argument at 3, Facilities Review Panel v. Coe, 420 S.E.2d 536 (W. Va. 1992) (No. 19123) (based on the period Aug. 1, 1988 to Jan. 31, 1989; the rate column reflects the number of commitments to secure detention per 1,000 youthful population) (quoting JUVENILE JUSTICE COMMITTEE, ASPECTS OF JUVENILE DELINQUENCY IN WEST VIRGINIA COUNTIES: PETITIONS, SECURE DETENTION, AND DETENTION RATE 5 (1989)).

\footnote{56. See id. at 15, 36}
Despite the petitioners' "enlightening" arguments, the court declined to "overhaul" the system without further investigation and understanding of the problem.\(^{57}\) Therefore, the court delayed ruling on the petition pending an in-depth review. To this end, the court appointed as Special Master Judge Larry Starcher, Chief Judge of the Seventeenth Judicial Circuit, to study and report to the court the actual extent of the problems in juvenile detention practices in West Virginia, and the need for standardized detention guidelines for effectuating a resolution to such problems.\(^{58}\) In performing his investigation, the court asked Judge Starcher to review the situation at WCRJDC and other detention centers, to examine relevant statistics and practices statewide and to report on the current state of the law in West Virginia. The court further requested that he investigate the dangers of overcrowding in detention facilities and the resulting effects of overcrowding on the services normally offered to detainees. Additionally, the court directed Judge Starcher to investigate the need for case rotation within the circuits.\(^{59}\)

### B. Report of the Special Master

The Special Master's Report (Report) was submitted to the court on September 4, 1990. The report first presented an overview of the law in West Virginia. This overview showed that certain regulations and requirements did exist in the state sufficient to constitute "detention criteria" to guide the decision-making process.\(^{60}\) The report further emphasized the legislative and judicial preference for release of accused juveniles.\(^{61}\)

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58. Id. at 7.
59. Id.
61. Id.
Secondly, the report presented a statistical analysis of detention practices in West Virginia. The findings set forth by the Special Master demonstrated support for the petitioners' assertions of inconsistency in detention practices. Similarly, the report documented over-commitment to certain detention centers beyond their licensed maximum capacities. The Special Master attributed part of the overcrowding problem to delays in the dispositional process following adjudication, citing the absence in the current law of time limits beyond the adjudicatory stage as sanctioning lengthy stays in detention centers between trial and disposition or placement.

62. For example, from Aug. 1, 1988 to July 31, 1989, Wood County had a commitment rate of 22.947 per 1,000 youths by population. For the same period, Cabell County detained 15.085 per 1,000 youths by population, while Kanawha County detained only 10.043 per 1,000. Id. at 16. Furthermore, the charges on which youths were detained was reported to vary greatly throughout the state, from less serious misdemeanors to capital felonies. Additionally, since the facilities are not all operated by the same agency, there was no uniform reporting system and no standardized contingency plans to deal with overcrowding. Id. at 17.

63. The Report gave the following figures:

<table>
<thead>
<tr>
<th>Facility by Location</th>
<th>Licensed Capacity</th>
<th>Average Daily Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dunbar</td>
<td>17</td>
<td>16</td>
</tr>
<tr>
<td>Martinsburg</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Ona</td>
<td>5</td>
<td>not reported</td>
</tr>
<tr>
<td>Parkersburg</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Princeton</td>
<td>15</td>
<td>11</td>
</tr>
<tr>
<td>Wheeling</td>
<td>14</td>
<td>9</td>
</tr>
</tbody>
</table>

Id. at 11. The Parkersburg facility is the WCRJDC whose overcrowding was the impetus for this case. In 1989, the daily population of this facility exceeded its maximum capacity on 232 days. In comparison, the Princeton facility was beyond maximum capacity on 16 days; Wheeling, 3 days; and Dunbar and Martinsburg were not over their maximum capacity at any time during the year (data for Ona facility was not reported). Id. at 12. Although the Parkersburg WVRJDC legally has space only for 6 youths, it was given a waiver in 1987 to expand the capacity to the licensed capacity of 10. Id. at 11.

64. Id. at 18.
presented for the court some of the problems and dangers created by overcrowding of detention facilities.65

Professionals interviewed in the Special Master's investigation differed on the appropriate solution to the detention problems. However, the majority of persons surveyed felt that "there should be more of an emphasis on releasing versus detaining at the detention hearing"66 and that it would "be better to inappropriately release than inappropriately detain a youth."67

As solutions to the problems of inconsistency and overcrowding, the Special Master propounded two options. The first suggested that the current state of the law need not be altered, but that existing licensing standards should be enforced to avoid overcrowding.68 To this end, the report proposed requiring verification of available space before ordering or transporting a youth to a facility, extending to facility personnel the authority to refuse to accept any youth beyond capacity, implementing reporting procedures and developing and utilizing less restrictive alternatives to detention.69 The second option recommended that the court adopt objective detention standards such as those proposed by the petitioners, along with the protective measures contained in option one to deal with overcrowding.70 The Special Master concluded that mandatory rotation of judges would be unnecessary with the adherence to the standards set forth in either option.71

IV. PRIOR LAW

Preadjudicatory detention in West Virginia is governed by both statutory and case law. Chapter 49 of the West Virginia Code and

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65. As problems encountered when facilities are overcrowded, the Report listed the following: Lack of bed space, less activities and services per child, less counseling and supervision, an unhealthy living environment, increased stress and tension, morale problems, disciplinary problems, lack of privacy for inmates, safety factors, and others. Id. at 18.
66. Id. at 21.
67. Id.
68. Id. at 22, 23.
69. Id.
70. Id. at 23, 24.
71. Id. at 27.
State ex rel. M.C.H. v. Kinder\textsuperscript{72} provide the requirements and limitations that constitute the framework of the detention guidelines in West Virginia. Although detention is permissible, the existing law reflects a legislative and judicial preference for release rather than detention pending an adjudication of guilt. However, the language of these governing standards is rather vague, and, as demonstrated by the statistics submitted in the Special Master’s report, permits inconsistent interpretation and discretionary application.\textsuperscript{73} The following provides an overview of the state of the law in West Virginia prior to the court’s decision in Facilities Review.

A. Statutory Provisions

West Virginia statutes provide the core of the existing law governing the detention of children in West Virginia. A “child,” for purposes of juvenile court jurisdiction and for whom the statutory provisions apply, means any person under eighteen years of age or any person subject to the juvenile jurisdiction of a court.\textsuperscript{74} A child sixteen years of age or older, who commits an offense that would be a crime if committed by an adult, and who is adjudged delinquent for the act, continues under the juvenile court’s jurisdiction until he or she reaches age twenty.\textsuperscript{75} Therefore, youths aged eighteen to twenty may remain under the jurisdiction of the juvenile courts and may be held in juvenile detention facilities.

The purpose of the legislation embodied in Chapter 49 of the West Virginia Code is “to provide a comprehensive system of child welfare throughout the State which will assure to each child such care and guidance, preferably in his or her home, and will serve the spiritual, emotional, mental and physical welfare of the child.”\textsuperscript{76} In further manifesting a preference for release rather than detention of children, the code states that “it is the intention of the legislature to provide for

\textsuperscript{72} 317 S.E.2d 150 (W. Va. 1984).
\textsuperscript{73} See supra note 62.
\textsuperscript{74} W. VA. CODE § 49-5-2 (1986).
\textsuperscript{75} Id.
\textsuperscript{76} W. VA. CODE § 49-1-1 (1986) (emphasis added).
removing the child from the custody of parents only when the child’s welfare or the safety and protection of the public cannot be adequately safeguarded without removal.”77 It also establishes that, at the detention hearing, “[t]he Court shall, if advisable, and if the health, safety and welfare of the child will not be endangered thereby, release the child on recognizance to his parents, custodians or the appropriate agency.”78

After a youth is arrested or taken into custody, the juvenile justice process generally takes place in five stages: a detention hearing, at which the decision to detain or release is made; a preliminary hearing for the purpose of determining probable cause; an adjudicatory hearing analogous to a trial in an adult court setting, at which time guilt or innocence is determined (however, a juvenile is deemed to have been “adjudicated delinquent” rather than found guilty); a dispositional hearing, at which sentencing takes place; and placement or implementation of the sentence.79 During the intervening times, authorities may hold a child in detention. In West Virginia, the legislature has set limits on the permissible length of time a child may remain in custody while awaiting a detention, preliminary, or adjudicatory hearing. When a child is arrested or taken into custody, the code mandates that he receive a prompt hearing for the purpose of determining the need for detention. The youth must be taken immediately before a judge or referee, and “shall be forthwith afforded a hearing to ascertain if such child shall be further detained.”80 A hearing must be held before a judge, magistrate, or juvenile referee “without delay,”81 and any delay must not exceed the next judicial day.82 Unless waived by the juvenile on advice of counsel, a preliminary hearing must be held within ten days of the time a child is taken into custody, and if not, the court must release the child on recognizance (a hearing may be continued, however, for good cause).83 If the child is further detained, the court

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77. Id.
78. W. VA. CODE § 49-5-8(d) (1986) (emphasis added).
79. See generally GITTO & WILSON, supra note 3.
81. W. VA. CODE § 49-5-8(a) (1986).
82. Id.
83. W. VA. CODE § 49-5-9(a) (1986).
must commence an adjudicatory hearing within thirty days, or if a jury trial is demanded, this hearing must begin no later than the next regular term of the court.\textsuperscript{84} Thus, authorities may legally hold a child in secure detention for up to forty days before the child has even been found to have committed the act charged or been adjudged delinquent. However, the code provides no limitations on the length of time a juvenile may remain in detention following adjudication while awaiting disposition or placement.

The code provides that, at the detention hearing, "[u]nless the circumstances of the case otherwise require taking into account the welfare of the child as well as the interest of society, such child shall be released forthwith into the custody of his parent or parents, relative, custodian, or other responsible adult or agency."\textsuperscript{85} The code also permits release on bail in appropriate situations.\textsuperscript{86} Furthermore, the child is entitled to legal representation at the detention hearing and at every stage of the juvenile proceedings against him.\textsuperscript{87}

In addition to urging prompt release of children, the code places limitations and restrictions on where and with whom courts may order juveniles detained. Juveniles charged with status offenses\textsuperscript{88} such as truancy or incorrigibility may not be detained in a detention or other facility with persons detained for criminal offenses or for delinquency involving behavior that would constitute a crime if committed by an adult.\textsuperscript{89} When detention is deemed necessary, under West Virginia law, the judge or referee must avoid the incarceration of a child under eighteen in any jail.\textsuperscript{90} Nevertheless, a child over fourteen years of age whom the court has committed to an industrial home or correctional institution may remain in a juvenile department of an adult jail while

\textsuperscript{84} W. VA. CODE § 49-5-9(d) (1986).
\textsuperscript{85} W. VA. CODE § 49-5A-2 (1986).
\textsuperscript{86} W. VA. CODE § 49-5-8(d) (1986).
\textsuperscript{87} W. VA. CODE § 49-5-1(c) (1986).
\textsuperscript{88} A "status offender" is a "juvenile who has been charged with delinquency or adjudicated a delinquent for conduct which would not be a crime if committed by an adult." W. VA. CODE § 49-5B-3(3) (1986).
\textsuperscript{89} W. VA. CODE § 49-5-16(a) (1986).
\textsuperscript{90} W. VA. CODE §§ 49-5-16(a) & 49-5A-2 (1986).
awaiting transportation to the place of commitment. However, the code restricts this holding period to ninety six hours. Additionally, a court may order a child over fourteen who is charged with a violent felony crime housed in a juvenile detention portion of a jail. However, he may not be within the sight of adult prisoners.

B. State ex rel. M.C.H. v. Kinder

In addition to the statutory guidelines discussed above, the West Virginia Supreme Court of Appeals provided further guidance for those judicial officials considering the appropriateness of detention in State ex rel. M.C.H. v. Kinder. In Kinder, the court reiterated the substantial preference for release established by the legislature. To underscore the purpose underlying the preference for release, the court noted the serious costs imposed by secure detention on both society and juveniles alike:

Congressional testimony, various studies, and the media have discussed the negative aspects of secure juvenile detention on both the juvenile and the public. Studies have concluded that the practice of detaining children should be severely limited for the following reasons:

—A detention center’s environment may serve to promote rather than discourage future delinquency behavior.
—Secure detention is costly to the taxpayer.
—Detention may hamper the juvenile’s opportunity to prepare an effective defense.
—Detention may subtly influence the court’s final disposition of the case to the juvenile’s detriment.

91. W. VA. CODE § 49-5-16(a) (1986).
92. Id.
93. Id.
94. Id.
96. Id. at 156.
97. Id. at 156 n.15.
98. Id. (citing UNITED STATES GENERAL ACCOUNTING OFFICE, Report to the Attorney General and the Secretary of the Interior: Improved Efforts needed to Change Juvenile Detention Practices 2 (1983)).
In Kinder, two juveniles, aged seven and nine, petitioned the court for writs of prohibition and habeas corpus, challenging their detention in secure facilities while awaiting disposition of delinquency proceedings. Police arrested the children on a delinquency charge of breaking and entering after apprehending them in a local school with approximately twelve dollars worth of toys, candy, and money in their possession. The magistrate before whom the officers took the children ordered both children detained in secure confinement after the children's mother was unable to post a five thousand dollar bond set for each child. In considering the issues raised, the court held that "young children should not be placed in secure detention except in the most extraordinary cases," and concluded that the bail requirement in this situation was inappropriate. Further, the court declared that "[c]ommitting officials have a duty to explain in writing their reasons for detaining a child, their choice of placement, and if they require secured bail, their reasons for doing so."

The court acknowledged that the code contained basic detention guidelines, but determined that the standards upon which a court was to base its decision to detain were overly general. Citing the relevant statutory language comprising this standard—"taking into account the welfare of the child as well as the interest of society"—the court noted the need for "further refinement." Toward this end, the court listed seven relevant factors to be considered along with the statutory guidelines in making the decision to detain or release an accused juvenile. The factors set forth by the court were:

99. The two juveniles were held in the Kanawha Home for Children in Dunbar, West Virginia, a secure detention facility housing juvenile offenders charged with a variety of categories of criminal offenses, including violent crimes and crimes of a sexual nature. Id. at 151-52.
100. Id. at 152.
101. The children's mother was a thirty-two year old homemaker supporting herself and her children on $206 dollars per month in welfare assistance and food stamps. Id. at 151.
102. Id. at 157.
103. Id. at 158.
104. Id. at 158.
105. Id. at 156 (citing W. VA. CODE § 49-5A-2 (1986)).
106. Id.
(1) the seriousness of the offense charged;
(2) the likelihood of flight, or conversely stated the probability of his appearance;
(3) his prior juvenile record and regularity of appearances;
(4) whether under all the circumstances, he poses a substantial danger to himself or to the community;
(5) his age, maturity, and general health;
(6) his family background and the family's willingness to supervise his behavior; and
(7) the availability of alternative sources of placement, short of a secure detention facility, if the family is unavailable, unfit, or unwilling to exercise control over the child.107

The criteria incorporated in the Kinder opinion, along with the relevant statutory provisions, comprise the juvenile detention criteria as they existed prior to Facilities Review. The petitioners in Facilities Review contended these guidelines continued to be subjective and overly broad and did not provide the level of uniformity necessary to ensure consistent detention decisions statewide.108

V. THE OPINION AND MODIFICATION ON REHEARING

On April 25, 1991, the West Virginia Supreme Court of Appeals rendered its opinion in Facilities Review and granted the petitioners' writ of mandamus.109 The court adopted the IJA/ABA detention criteria as sought by the petitioners, along with the procedural protective measures to ensure against overcrowding of facilities as recommended by the Special Master.110 These newly implemented guidelines were to become effective sixty days after adoption.111

Prior to the effective date for implementation of the new standards, the Prosecuting Attorney for Kanawha County sought to inter-

107. Id. at 157.
110. Id. at 6-8.
111. Id. at 9.
vene on behalf of the State of West Virginia,\textsuperscript{112} and asked for a stay in the implementation of the decision.\textsuperscript{113} The intervenor further petitioned for a rehearing and modification of the guidelines.\textsuperscript{114} The intervenor contended that the new standards, as adopted, did not adequately safeguard the public because the criteria too narrowly restricted the use of detention to too few crimes, and excluded other types of criminal activity which were felt to pose equal danger to the community.\textsuperscript{115}

The court granted the intervenor's motions and petition. After rehearing and reconsideration of the standards, the court again granted the petitioners' writ, with implementation to be effective sixty days after the opinion,\textsuperscript{116} but with modification of the standards to permit detention in situations not covered by the IJA/ABA standards.\textsuperscript{117} Under the modified standards, release is mandatory unless the crime charged, if committed by an adult, would be punishable by a sentence of one year or more, and which, if proven, could result in commitment to a security institution.\textsuperscript{118} Coupled with this requirement must be one or more of the following factors:

a. The crime charged is a category one juvenile offense.\textsuperscript{119}


\textsuperscript{115} According to the Intervenor's petition, unless the accused juvenile was a fugitive or escapee, detention would be permissible only upon accusations of first degree murder, aggravated robbery, kidnapping, first degree sexual assault, and treason. Absent from the permisibly detainable situations were second degree murder, voluntary and involuntary manslaughter, assaults, abduction, arson, distribution of drugs, burglaries, and other serious crimes. \textit{Id.} at 4-5.


\textsuperscript{117} See IJA/ABA standards, supra note 28.


\textsuperscript{119} Category one juvenile offenses include the following: Treason; murder, first or second degree, or felony murder; murder of child by parent; kidnapping; sexual assault, first or second degree; robbery, aggravated or non-aggravated; malicious assault; possession, manufacture, or delivery of controlled substances other than narcotics (except possession of less...
b. The crime charged is a category two or four juvenile offense and there is a judicial finding that the juvenile presents a danger to the public if not securely detained, pursuant to an immediate full detention hearing in which the juvenile is represented by an attorney.

c. The crime charged is a category two, three, or four juvenile offense and the juvenile is an escapee from detention or any commitment setting pursuant to W. VA. CODE §49-5-1 et seq; or the juvenile has a recent record of willful failure to appear at juvenile court proceedings and no measure short of secure detention can be imposed to reasonably ensure appearance.

d. The crime charged is a violation of an alternative method of sentencing.

e. The juvenile is waiting adjudication or disposition for an offense which would be a felony under criminal jurisdiction or a category one, two, three, or four offense and is charged with committing another offense during the interim period which would be a felony or a category one, two, three, or four offense. Another less restrictive means of supervising the juvenile such as electronic monitoring, home detention or shelter care must have been tried and failed.

f. The juvenile is awaiting adjudication or disposition for an offense which would be a felony under criminal jurisdiction or a category one, two, three, or four offense and is released on bond conditions but is found by a judicial authority to have committed a material violation of bond . . . . Another less restrictive means of supervising the juvenile . . . must have been tried and failed.122

120. Category two juvenile offenses include: Child sexual abuse; incest; child abuse, injurious; child neglect, injurious; burglary; sexual assault, third degree; voluntary manslaughter; sexual abuse, second degree; unlawful wounding; any attempted category one offense. Id. at 539 app. A.1.

121. Category three juvenile offenses include: DUI causing death; abduction; sexual procurement, child under sixteen; extortion; DUI, second or third offense or personal injury; possession or placing of explosives; malicious killing of an animal; arson, second, third, or fourth degree; unlawful shooting; involuntary manslaughter; negligent vehicular homicide; battery; hit and run causing personal injury; escape from jail or Department of Corrections; sexual abuse, third degree; any attempted category three offense. Id. at 539-40 app. A.2.

122. Id. at app. A.
Furthermore, a court may detain a juvenile whom the court has verified as a fugitive from another jurisdiction if an official from the other jurisdiction formally requests such detention.123 The court may also order detention upon finding that the youth poses a danger to witnesses if released from custody.124 Additionally, the modified standards provide that the juvenile authority may condition release upon bond.125 The rules continue to provide some degree of judicial discretion, even when release is not mandatory. The relevant language of the standard provides that "[a] juvenile who is excluded from mandatory release . . . is not, pro tanto, to be automatically detained. No category of alleged conduct in and of itself may justify a failure to exercise discretion to release in consideration of the needs of the juvenile and the community."126 Furthermore, when release is not mandatory, the standards suggest the use of less restrictive means of control and require written explanations of the reasons for rejecting such alternatives.127

The Facilities Review court established equally important procedural safeguards to protect against overcrowding of detention centers. Before authorities may transport a juvenile to a detention facility, the arresting officer or judicial official holding the detention hearing must ascertain if a vacancy exists at that facility.128 Furthermore, a facility is now authorized to refuse to accept juveniles beyond their licensed capacity, and any attempts to force such admissions must be immediately reported to the DHHR and the Facilities Review Panel.129 To further ensure against overcrowding, the court set specific time limitations in which a juvenile may remain in detention. The maximum time a juvenile may now be held in detention while awaiting a dispositional hearing is thirty days, and the time held between disposition and trans-

123. Id.
124. Id. at 538.
125. Id. at 537.
126. Id.
127. Id.
128. Id. at 536.
129. Id.
fer to the appropriate placement facility is fourteen days. Should overcrowding occur despite these measures, the lower courts must develop alternatives to detention such as in-home detention, electronic monitoring, and emergency shelters. Additionally, to ensure compliance with the new safeguards, the Facilities Review court initiated a reporting system whereby the status at each facility will be monitored by the DHHR and the Facilities Review Panel on a monthly basis.

VI. ANALYSIS AND IMPLICATIONS OF THE FACILITIES REVIEW DECISION

Facilities Review is worthy of note for its progressive approach to combating injustices and abuses, both real and potential, in the juvenile court process. The court’s decision in Facilities Review comports with the language of Chapter 49 of the West Virginia Code and the court’s earlier opinion in Kinder. The court reiterates its commitment to the children of West Virginia, and reaffirms the legislative and judicial preference for release rather than detention. Moreover, the court’s decision strikes an acceptable balance between the welfare of accused juveniles and the safety of the community, yet provides a workable solution to the problems of overuse and inconsistency in the detention process.

The most salient aspect of the court’s decision in Facilities Review is the establishment of statewide objective standards upon which the decision to detain must be predicated. Although initially unwilling to revise the existing criteria without further substantiation of the petitioners’ allegations, the court ultimately concluded that the use of such standards would “discourage the vague and often subjective method of deciding whether to detain a juvenile.” Accordingly, with agreement of the petitioners and the intervenor, the court articulated very specific, narrowly defined criteria upon which the detention

130. Id.
131. Id.
132. Id.
133. See supra text accompanying note 57.
decision must now be based.\textsuperscript{135} Although similar to those recommended by the IJA/ABA, the standards as adopted are “modified to fit the specialized needs of our juvenile system.”\textsuperscript{136} These criteria constrain but do not abolish the use of detention. Specifically, they ensure release except in the most compelling circumstances, with the decision based on measurable and demonstrable determinants, while preserving the option to detain those who pose the greatest threat to the community.

A second important aspect of the \textit{Facilities Review} decision is the adoption of realistic protective measures to ameliorate the overcrowding problem in some facilities. In light of the potential dangers accompanying overcrowding and the demonstrated prevalence of this situation in Wood County, the court's decision is commendable. The major focus of the measures set forth by the court is prevention of overcrowding. This is to be accomplished by requiring pre-commitment actions by the arresting or judicial officer to ascertain the availability of space for a child before attempting to place a child in a facility.\textsuperscript{137} The \textit{Facilities Review} court also extended to facility personnel the authority to refuse commitments beyond their licensed capacity.\textsuperscript{138} Furthermore, the court set specific limits on the amount of time a juvenile may now be held in detention between adjudication, disposition, and placement, factors which were noticeably absent in the statutory provisions. These time constraints, along with those previously set forth in the code, should force the courts to act expeditiously to adjudicate and dispose of cases.\textsuperscript{139} Additionally, the court established a mechanism for reporting and monitoring compliance with the newly adopted standards and procedural measures, a process that was markedly wanting under the prior law.\textsuperscript{140}

The \textit{Facilities Review} court also noted the roles of the courts and the legislature in the resolution of this problem. The legislature is

\begin{footnotes}
\textsuperscript{135} \textit{Id.} at 537 app. A.
\textsuperscript{136} \textit{Id.} at 536.
\textsuperscript{137} \textit{Id.}
\textsuperscript{138} \textit{Id.}
\textsuperscript{139} \textit{Id.}
\textsuperscript{140} \textit{Id.}
\end{footnotes}
JUVENILE DETENTION

urged to appropriate funds necessary to upgrade or build new facilities and to provide improved services within the facilities.141 Furthermore, should overcrowding occur despite these measures, the Facilities Review decision mandates development of alternative methods of detention, such as in-home detention, electronic monitoring, and emergency shelters.142 However, this approach seems somewhat inconsistent with the court's previously stated goals of preventing detention and overcrowding, since both detentions and overcrowding must occur before alternatives are required. In an earlier case, State ex rel. Harris v. Calendine,143 the court held that a juvenile adjudicated guilty was entitled to the least restrictive alternative consistent with his or her rehabilitative needs. Although Harris dealt with post-dispositional placement, it shows the court's reluctance to lock up children, and it should be more compelling to avoid such incarceration before a finding of guilt when a presumption of innocence should prevail. In Harris, the court stated that in evaluating alternatives to secure confinement, those involved must look beyond what is available "to what facilities could reasonably be made available in an enlightened and humane state solicitous of the welfare of its children."144 Requiring the development and utilization of detention alternatives at the outset would seem more consonant with the court's reasoning in Harris and the philosophy in Facilities Review that "the welfare of our children is a high priority in our State."145

Lastly, the court emphasized the role of the DHHR in managing the detention facilities. The court stressed that "[p]roper management of the facilities is an essential element of the solution,"146 and stated that "[t]he Department's statutory obligations . . . may not be transferred to the judicial and legislative branches of government."147 Moreover, the court charged the DHHR "to aggressively seek the

141. Id.
142. Id.
144. Id. at 331.
146. Id.
147. Id.
funding from the Legislature necessary to fulfill those responsibilities. 148

The potential implications of the Facilities Review decision are worthy of comment. The court’s adoption of definitive standards should eliminate the discretionary nature of the detention decision process and the concomitant disparity in results among counties. By applying these criteria, the number of detained youths should be reduced and those inappropriately detained for vague or unsubstantiated reasons eliminated. At the same time, public safety and court integrity should not be jeopardized. With the procedural measures in place, overcrowding and its attendant dangers should be avoided. The reduction in the number of juveniles detained should result in diminished costs overall, even though the state may have to expend funds to develop and implement alternatives. Furthermore, the decision increases the accountability of judges hearing juvenile cases and should result in more expeditious processing of juvenile cases. In light of the court’s decision in Facilities Review, it behooves judges and lawyers to be aware of the new standards to avoid inappropriate detention and to advocate for release.

VII. Conclusion

The Facilities Review decision is noteworthy for several reasons. Most importantly, it provides clear and narrowly drawn standards upon which judges must base their decision to detain or release the accused juvenile. The factors to be evaluated are readily measurable and verifiable, and limit, but do not abolish, detention. However, the standards eliminate the overbroad judicial discretion embodied in the prior law which should result in a more uniform and consistent decision-making process statewide. Thus, application of these standards should effectively reduce the number of youths detained overall, and particularly the number held for vague or inappropriate reasons such as those detained out of unsubstantiated fear for public safety. At the same time, courts may detain those who pose a real threat to the community or the judicial process. Secondly, implementation of the procedural protective measures established by the court, and the use of the

148. Id.
least restrictive alternative to detention, should ameliorate the problem of overcrowding of facilities. Additionally, the court’s decision should bring about a reduction in the costs of detention borne by the taxpayers of the state.

The Facilities Review decision is sound. When one considers the interests to be protected—those of the society versus those of the accused child—it is clear that the court has struck an acceptable balance between the public’s demand for safety and the welfare of the child. The opinion demonstrates the court’s commitment to the welfare of the children of West Virginia, and charges all participants in the process with the duty to work concertedly and diligently to ensure that this commitment is upheld. In redefining the governing standards for determining the appropriateness of detention and adopting measures to prevent overcrowding of facilities, the West Virginia Supreme Court of Appeals has taken a progressive step toward ensuring a more humane and benevolent treatment of accused youths in West Virginia.