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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2755

(By Delegates Hall, Martin, Paxton,
Amores, L. Smith and Anderson)



Passed April 12, 2001

In Effect Ninety Days from Passage

FILED

2001 APR 25 P 12: 41

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FOR

H. B. 2755

(BY DELEGATES HALL, MARTIN, PAXTON,
AMORES, L. SMITH AND ANDERSON)

[Passed April 12, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact section ten, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiver and transfer of juveniles to the criminal jurisdiction of the circuit court for second degree arson offenses involving setting fire to or burning a public building or church; and defining public building or church.

Be it enacted by the Legislature of West Virginia:

That section ten, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-10. Waiver and transfer of jurisdiction.

1 (a) Upon written motion of the prosecuting attorney filed at
2 least eight days prior to the adjudicatory hearing and with
3 reasonable notice to the juvenile, his or her counsel, and his or
4 her parents, guardians or custodians, the court shall conduct a
5 hearing to determine if juvenile jurisdiction should or must be
6 waived and the proceeding transferred to the criminal jurisdic-
7 tion of the court. Any motion filed in accordance with this
8 section is to state, with particularity, the grounds for the
9 requested transfer, including the grounds relied upon as set
10 forth in subsection (d), (e), (f) or (g) of this section, and the
11 burden is upon the state to establish the grounds by clear and
12 convincing evidence. Any hearing held under the provisions of
13 this section is to be held within seven days of the filing of the
14 motion for transfer unless it is continued for good cause.

15 (b) No inquiry relative to admission or denial of the
16 allegations of the charge or the demand for jury trial may be
17 made by or before the court until the court has determined
18 whether the proceeding is to be transferred to criminal jurisdic-
19 tion.

20 (c) The court shall transfer a juvenile proceeding to
21 criminal jurisdiction if a juvenile who has attained the age of
22 fourteen years makes a demand on the record to be transferred
23 to the criminal jurisdiction of the court. The case may then be
24 referred to magistrate or circuit court for further proceedings,
25 subject to the court's jurisdiction.

26 (d) The court shall transfer a juvenile proceeding to
27 criminal jurisdiction if there is probable cause to believe that:

28 (1) The juvenile is at least fourteen years of age and has
29 committed the crime of treason under section one, article one,
30 chapter sixty-one of this code; the crime of murder under
31 sections one, two and three, article two of said chapter; the
32 crime of robbery involving the use or presenting of firearms or
33 other deadly weapons under section twelve of said article; the

34 crime of kidnaping under section fourteen-a of said article; the
35 crime of first degree arson under section one, article three of
36 said chapter; or the crime of sexual assault in the first degree
37 under section three, article eight-b of said chapter; or

38 (2) The juvenile is at least fourteen years of age and has
39 committed an offense of violence to the person which would be
40 a felony if the juvenile was an adult: *Provided*, That the
41 juvenile has been previously adjudged delinquent for the
42 commission of an offense of violence to the person which
43 would be a felony if the juvenile was an adult; or

44 (3) The juvenile is at least fourteen years of age and has
45 committed an offense which would be a felony if the juvenile
46 was an adult: *Provided*, That the juvenile has been twice
47 previously adjudged delinquent for the commission of an
48 offense which would be a felony if the juvenile was an adult.

49 (e) The court may transfer a juvenile proceeding to criminal
50 jurisdiction if there is probable cause to believe that the juvenile
51 would otherwise satisfy the provisions of subdivision (1),
52 subsection (d) of this section, but who is younger than fourteen
53 years of age.

54 (f) The court may, upon consideration of the juvenile's
55 mental and physical condition, maturity, emotional attitude,
56 home or family environment, school experience and similar
57 personal factors, transfer a juvenile proceeding to criminal
58 jurisdiction if there is probable cause to believe that the juvenile
59 would otherwise satisfy the provisions of subdivision (2) or (3),
60 subsection (d) of this section, but who is younger than fourteen
61 years of age.

62 (g) The court may, upon consideration of the juvenile's
63 mental and physical condition, maturity, emotional attitude,
64 home or family environment, school experience and similar

65 personal factors, transfer a juvenile proceeding to criminal
66 jurisdiction if there is probable cause to believe that:

67 (1) The juvenile, who is at least fourteen years of age, has
68 committed an offense of violence to a person which would be
69 a felony if the juvenile was an adult; or

70 (2) The juvenile, who is at least fourteen years of age, has
71 committed an offense which would be a felony if the juvenile
72 was an adult: *Provided*, That the juvenile has been previously
73 adjudged delinquent for the commission of a crime which
74 would be a felony if the juvenile was an adult; or

75 (3) The juvenile, who is at least fourteen years of age, used
76 or presented a firearm or other deadly weapon during the
77 commission of a felony; or

78 (4) The juvenile has committed a violation of the provisions
79 of section four hundred one, article four, chapter sixty-a of this
80 code which would be a felony if the juvenile was an adult
81 involving the manufacture, delivery or possession with the
82 intent to deliver a narcotic drug. For purposes of this subdivi-
83 sion, the term "narcotic drug" has the same definition as that set
84 forth in section one hundred one, article one of said chapter; or

85 (5) The juvenile has committed the crime of second degree
86 arson as defined in section two, article three, chapter sixty-one
87 of this code involving setting fire to or burning a public
88 building or church. For purposes of this subdivision, the term
89 "public building" means a building or structure of any nature
90 owned, leased or occupied by this state, a political subdivision
91 of this state or a county board of education and used at the time
92 of the alleged offense for public purposes. For purposes of this
93 subdivision, the term "church" means a building or structure of
94 any nature owned, leased or occupied by a church, religious
95 sect, society or denomination and used at the time of the alleged
96 offense for religious worship or other religious or benevolent

97 purpose, or as a residence of a minister or other member of
98 clergy.

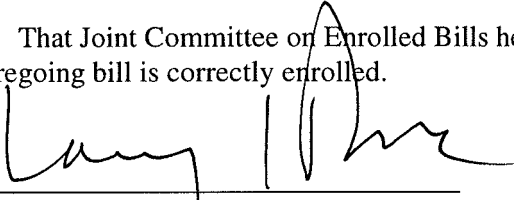
99 (h) For purposes of this section, the term “offense of
100 violence” means an offense which involves the use or threat-
101 ened use of physical force against a person.

102 (i) If, after a hearing, the court directs the transfer of any
103 juvenile proceeding to criminal jurisdiction, it shall state on the
104 record the findings of fact and conclusions of law upon which
105 its decision is based or shall incorporate findings of fact and
106 conclusions of law in its order directing transfer.

107 (j) A juvenile who has been transferred to criminal jurisdic-
108 tion pursuant to the provisions of subsection (e), (f) or (g) of
109 this section, by an order of transfer, has the right to either
110 directly appeal an order of transfer to the supreme court of
111 appeals or to appeal the order of transfer following a conviction
112 of the offense of transfer. If the juvenile exercises the right to
113 a direct appeal from an order of transfer, the notice of intent to
114 appeal and a request for transcript is to be filed within ten days
115 from the date of the entry of any such order of transfer, and the
116 petition for appeal is to be presented to the supreme court of
117 appeals within forty-five days from the entry of the order of
118 transfer. The provisions of article five, chapter fifty-eight of this
119 code pertaining to the appeals of judgments in civil actions
120 applies to appeals under this chapter except as modified in this
121 section. The court may, within forty-five days of the entry of
122 the order of transfer, by appropriate order, extend and reextend
123 the period in which to file the petition for appeal for additional
124 time, not to exceed a total extension of sixty days, as in the
125 court’s opinion may be necessary for preparation of the
126 transcript: *Provided*, That the request for a transcript was made
127 by the party seeking appeal within ten days of entry of the order
128 of transfer. In the event any notice of intent to appeal and
129 request for transcript be timely filed, proceedings in criminal
130 court are to be stayed upon motion of the defendant pending
131 final action of the supreme court of appeals.

Enr. Com. Sub. for H. B. 2755] 6

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



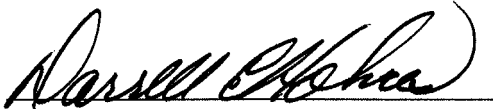
Chairman Senate Committee



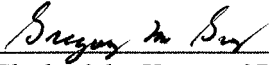
Chairman House Committee

Originating in the House.

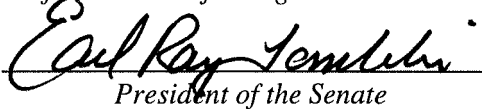
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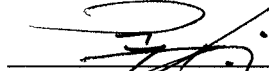
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 24th
day of April, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/01

Time 2:05 pm