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Senate Bill No. 61

(By Senator Foster)

[Introduced January 12, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §49-5-2 of the Code of West Virginia,
1931, as amended, relating to the appointment of hearing
officers for juvenile drug courts.

Be it enacted by the Legislature of West Virginia:

That §49-5-2 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

**§49-5-2. Juvenile jurisdiction of circuit courts, magistrate
courts and municipal courts; constitutional
guarantees; hearings; evidence and transcripts.**

(a) The circuit court has original jurisdiction of proceedings
brought under this article.

(b) If, during a criminal proceeding, ~~in any court~~ it is
ascertained or appears that the defendant is under the age of
nineteen years and was under the age of eighteen years at the time

1 of the alleged offense, the matter shall be immediately certified
2 to the juvenile jurisdiction of the circuit court. The circuit
3 court shall assume jurisdiction of the case in the same manner as
4 cases which are originally instituted in the circuit court by
5 petition.

6 (c) Notwithstanding any other provision of this article,
7 magistrate courts have concurrent juvenile jurisdiction with the
8 circuit court for a violation of a traffic law of West Virginia,
9 for a violation of section nine, article six, chapter sixty,
10 section three or section four, article nine-a, chapter sixteen, or
11 section nineteen, article sixteen, chapter eleven of this code or
12 for any violation of chapter twenty. ~~of this code.~~ Juveniles are
13 liable for punishment for violations of these laws in the same
14 manner as adults except that magistrate courts have no jurisdiction
15 to impose a sentence of incarceration. ~~for the violation of these~~
16 ~~laws~~

17 (d) Notwithstanding any other provision of this article,
18 municipal courts have concurrent juvenile jurisdiction with the
19 circuit court for a violation of ~~any~~ a municipal ordinance
20 regulating traffic, for ~~any~~ a municipal curfew ordinance which is
21 enforceable or for ~~any~~ a municipal ordinance regulating or
22 prohibiting public intoxication, drinking or possessing alcoholic
23 liquor or nonintoxicating beer in public places, any other act
24 prohibited by section nine, article six, chapter sixty or section

1 nineteen, article sixteen, chapter eleven of this code or underage
2 possession or use of tobacco or tobacco products as provided in
3 article nine-a, chapter sixteen of this code. Municipal courts may
4 impose the same punishment for these violations as a circuit court
5 exercising its juvenile jurisdiction ~~could properly impose~~ except
6 that municipal courts have no jurisdiction to impose a sentence of
7 incarceration. ~~for the violation of these laws.~~

8 (e) A juvenile may be brought before the circuit court for
9 proceedings under this article only by the following means:

10 (1) By a juvenile petition requesting that the juvenile be
11 adjudicated as a status offender or a juvenile delinquent; or

12 (2) By certification or transfer to the juvenile jurisdiction
13 of the circuit court from the criminal jurisdiction of the circuit
14 court, from any foreign court or from any magistrate court or
15 municipal court in West Virginia.

16 (f) If a juvenile commits an act which would be a crime if
17 committed by an adult and the juvenile is adjudicated delinquent
18 for that act, the jurisdiction of the court which adjudged the
19 juvenile delinquent continues until the juvenile becomes twenty-one
20 years of age. The court has the same power over that person that
21 it had before he or she became an adult and has the further power
22 to sentence that person to a term of incarceration ~~Provided, That~~
23 ~~any such~~ except that a term of incarceration may not exceed six
24 months. This authority does not preclude the court from exercising

1 criminal jurisdiction over that person if he or she violates the
2 law after becoming an adult or if the proceedings have been
3 transferred to the court's criminal jurisdiction pursuant to
4 section ten of this article.

5 (g) A juvenile is entitled to be admitted to bail or
6 recognizance in the same manner as an adult and shall be afforded
7 the protection guaranteed by Article III of the West Virginia
8 Constitution.

9 (h) A juvenile has the right to be effectively represented by
10 counsel at all stages of proceedings under the provisions of this
11 article. If the juvenile or the juvenile's parent or custodian
12 executes an affidavit showing that the juvenile cannot afford an
13 attorney, the court shall appoint an attorney who shall be paid in
14 accordance with article twenty-one, chapter twenty-nine of this
15 code.

16 (I) In all proceedings under this article, the juvenile shall
17 be afforded a meaningful opportunity to be heard ~~This includes~~
18 including the opportunity to testify and to present and cross-
19 examine witnesses. The general public shall be excluded from all
20 proceedings under this article except ~~that~~ for persons whose
21 presence is requested by the parties and ~~other persons whom the~~
22 ~~circuit court determines~~ others who are determined by the circuit
23 court to have a legitimate interest in the proceedings. ~~may attend.~~
24 ~~Provided, That~~ In cases in which a juvenile is accused of

1 committing what would be a felony if the juvenile were an adult, an
2 alleged victim or his or her representative may attend any related
3 juvenile proceedings at the discretion of the presiding judicial
4 officer. ~~Provided, however, That in any~~ In a case in which the
5 alleged victim is a juvenile, he or she may be accompanied by his
6 or her parents or representative at the discretion of the presiding
7 judicial officer.

8 (j) At ~~all~~ adjudicatory hearings held under this article, all
9 procedural rights afforded to adults in criminal proceedings shall
10 be afforded the juvenile unless specifically provided otherwise in
11 this chapter.

12 (k) At all adjudicatory hearings held under this article, the
13 rules of evidence applicable in criminal cases apply including the
14 rule against written reports based upon hearsay.

15 (l) Except for res gestae, extrajudicial statements made by a
16 juvenile who has not attained fourteen years of age to law-
17 enforcement officials or while in custody are not admissible unless
18 those statements were made in the presence of the juvenile's
19 counsel. Except for res gestae, extrajudicial statements made to
20 law-enforcement officers or while in custody by a juvenile who has
21 not attained sixteen years of age but who is at least fourteen
22 years of age, ~~to law-enforcement officers or while in custody,~~ are
23 not admissible unless made in the presence of the juvenile's
24 counsel or made in the presence of, and with the consent of, the

1 juvenile's parent or custodian and the parent or custodian has been
2 fully informed regarding the juvenile's right to a prompt detention
3 hearing, the juvenile's right to counsel, including appointed
4 counsel if the juvenile cannot afford counsel and the juvenile's
5 privilege against self-incrimination.

6 (m) A transcript or recording shall be made of all transfer,
7 adjudicatory and dispositional hearings held in circuit court. At
8 the conclusion of each of these hearings, the circuit court shall
9 make findings of fact and conclusions of law, both of which shall
10 appear on the record. The court reporter shall furnish a
11 transcript of the proceedings at no charge to any indigent juvenile
12 who seeks review of any proceeding under this article if an
13 affidavit is filed stating that neither the juvenile nor the
14 juvenile's parents or custodian have the ability to pay for the
15 transcript.

16 (n) The Supreme Court of Appeals is authorized to appoint
17 appropriate hearing officers for the operation of juvenile drug
18 courts. Hearing officers shall be limited to current or
19 senior-status circuit judges or family court judges.

(NOTE: The purpose of this bill is to authorize the Supreme Court to appoint hearing officers for juvenile drug courts.)

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