

Adopted by House 4-12-2013

SB601 H JUD AM 4-10 #1

The Committee on the Judiciary moves to amend the bill on page one, following the enacting section by striking out the remainder of the bill and inserting in lieu thereof the following language:

1 "That §49-5-2 and §49-5-18 of the Code of West Virginia, 1931,
2 as amended, be amended and reenacted to read as follows:

3 **ARTICLE 5. JUVENILE PROCEEDINGS.**

4 **§49-5-2. Juvenile jurisdiction of circuit courts, magistrate**
5 **courts and municipal courts; constitutional guarantees; hearings;**
6 **evidence and transcripts.**

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

9 (b) If during a criminal proceeding in any court it is
10 ascertained or appears that the defendant is under the age of
11 nineteen years and was under the age of eighteen years at the time
12 of the alleged offense, the matter shall be immediately certified
13 to the juvenile jurisdiction of the circuit court. The circuit
14 court shall assume jurisdiction of the case in the same manner as
15 cases which are originally instituted in the circuit court by
16 petition.

17 (c) Notwithstanding any other provision of this article,
18 magistrate courts have concurrent juvenile jurisdiction with the
19 circuit court for a violation of a traffic law of West Virginia,

1 for a violation of section nine, article six, chapter sixty,
2 section three or section four, article nine-a, chapter sixteen, or
3 section nineteen, article sixteen, chapter eleven of this code, or
4 for any violation of chapter twenty of this code. Juveniles are
5 liable for punishment for violations of these laws in the same
6 manner as adults except that magistrate courts have no jurisdiction
7 to impose a sentence of incarceration for the violation of these
8 laws.

9 (d) Notwithstanding any other provision of this article,
10 municipal courts have concurrent juvenile jurisdiction with the
11 circuit court for a violation of any municipal ordinance regulating
12 traffic, for any municipal curfew ordinance which is enforceable or
13 for any municipal ordinance regulating or prohibiting public
14 intoxication, drinking or possessing alcoholic liquor or
15 nonintoxicating beer in public places, any other act prohibited by
16 section nine, article six, chapter sixty or section nineteen,
17 article sixteen, chapter eleven of this code or underage possession
18 or use of tobacco or tobacco products, as provided in article
19 nine-a, chapter sixteen of this code. Municipal courts may impose
20 the same punishment for these violations as a circuit court
21 exercising its juvenile jurisdiction could properly impose, except
22 that municipal courts have no jurisdiction to impose a sentence of
23 incarceration for the violation of these laws.

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

26 (1) By a juvenile petition requesting that the juvenile be

1 adjudicated as a status offender or a juvenile delinquent; or

2 (2) By certification or transfer to the juvenile jurisdiction
3 of the circuit court from the criminal jurisdiction of the circuit
4 court, from any foreign court, or from any magistrate court or
5 municipal court in West Virginia.

6 (f) (1) If a juvenile commits an act which would be a crime if
7 committed by an adult, and the juvenile is adjudicated delinquent
8 for that act, the jurisdiction of the court which adjudged the
9 juvenile delinquent continues until the juvenile becomes twenty-one
10 years of age. The court has the same power over that person that
11 it had before he or she became an adult, and has the further power
12 to sentence that person to a term of incarceration: *Provided*, That
13 any such term of incarceration may not exceed six months. This
14 authority does not preclude the court from exercising criminal
15 jurisdiction over that person if he or she violates the law after
16 becoming an adult or if the proceedings have been transferred to
17 the court's criminal jurisdiction pursuant to section ten of this
18 article.

19 (2) If a juvenile is adjudicated as a status offender because
20 he or she is habitually absent from school without good cause, the
21 jurisdiction of the court which adjudged the juvenile a status
22 offender continues until either the juvenile becomes twenty-one
23 years of age, completes high school, completes a high school
24 equivalent or other education plan approved by the court, or the
25 court otherwise voluntarily relinquishes jurisdiction, whichever
26 occurs first. If the jurisdiction of the court is extended

1 pursuant to this subdivision, the court has the same power over
2 that person that it had before he or she became an adult: *Provided,*
3 That no person so adjudicated who has attained the age of nineteen
4 may be ordered to attend school in a regular, non-altenative
5 setting.

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

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

17 (i) In all proceedings under this article, the juvenile shall
18 be afforded a meaningful opportunity to be heard. This includes
19 the opportunity to testify and to present and cross-examine
20 witnesses. The general public shall be excluded from all
21 proceedings under this article except that persons whose presence
22 is requested by the parties and other persons whom the circuit
23 court determines have a legitimate interest in the proceedings may
24 attend: *Provided,* That in cases in which a juvenile is accused of
25 committing what would be a felony if the juvenile were an adult, an
26 alleged victim or his or her representative may attend any related

1 juvenile proceedings, at the discretion of the presiding judicial
2 officer: *Provided, however,* That in any case in which the alleged
3 victim is a juvenile, he or she may be accompanied by his or her
4 parents or representative, at the discretion of the presiding
5 judicial officer.

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

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

13 (l) Except for *res gestae*, extrajudicial statements made by a
14 juvenile who has not attained fourteen years of age to
15 law-enforcement officials or while in custody are not admissible
16 unless those statements were made in the presence of the juvenile's
17 counsel. Except for *res gestae*, extrajudicial statements made by
18 a juvenile who has not attained sixteen years of age but who is at
19 least fourteen years of age to law-enforcement officers or while in
20 custody, are not admissible unless made in the presence of the
21 juvenile's counsel or made in the presence of, and with the consent
22 of, the juvenile's parent or custodian, and the parent or custodian
23 has been fully informed regarding the juvenile's right to a prompt
24 detention hearing, the juvenile's right to counsel, including
25 appointed counsel if the juvenile cannot afford counsel, and the
26 juvenile's privilege against self-incrimination.

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

11 **§49-5-18. Confidentiality of juvenile records.**

12 (a) One year after the juvenile's eighteenth birthday, or one
13 year after personal or juvenile jurisdiction has terminated,
14 whichever is later, the records of a juvenile proceeding conducted
15 under this chapter, including, but not limited to, law-enforcement
16 files and records, ~~shall be~~ may be sealed by operation of law kept
17 in a separate secure confidential place and the records may not be
18 inspected except by order of the circuit court.

19 (b) The records of a juvenile proceeding in which a juvenile
20 was transferred to criminal jurisdiction pursuant to the provisions
21 of section ten of this article shall be ~~sealed by operation of law~~
22 kept in a separate secure confidential place and the records may
23 not be inspected except by order of the circuit court if the
24 juvenile is subsequently acquitted or found guilty only of an
25 offense other than an offense upon which the waiver or order of
26 transfer was based, or if the offense upon which the waiver or

1 order of transfer was based is subsequently dismissed.

2 (c) To ~~seal~~ keep the confidentiality of juvenile records, they
3 shall be returned to the circuit court in which the case was
4 pending and be kept in a separate confidential file. The records
5 shall be physically marked to show that they ~~have been sealed~~ are
6 to remain confidential and shall be securely ~~sealed~~ kept and filed
7 in ~~such~~ a manner so that no one can have access to determine the
8 identity of the juvenile, except upon order of the circuit court.

9 ~~(d) Sealed records may not be opened except upon order of the~~
10 ~~circuit court.~~

11 ~~(e) Sealing of juvenile records~~

12 (d) Marking the juvenile records to show they are to remain
13 confidential has the legal effect of extinguishing the offense as
14 if it never occurred.

15 ~~(f) (e)~~ The records of a juvenile convicted under the criminal
16 jurisdiction of the circuit court pursuant to subdivision (1),
17 subsection (d), section ten of this article may not be ~~sealed~~
18 marked and kept as confidential.

19 ~~(g) (f)~~ Any person who willfully violates this section ~~shall~~
20 ~~be~~ is guilty of a misdemeanor and, upon conviction thereof, shall
21 be fined not more than \$1,000, or confined in ~~the county or~~
22 ~~regional~~ jail for not more than six months, or both so fined and
23 confined, and ~~shall be~~ is liable for damages in the amount of \$300
24 or actual damages, whichever is greater."