

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

INTRODUCED

House Bill 4211

By Delegate Steele

[Introduced January 10, 2024; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-701 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §62-1A-12, all relating to
 3 removing language relating to statements while in custody; relating generally to custodial
 4 interrogation of a child; requiring the child have contact with legal counsel by certain
 5 means; requiring the child have contact with a parent, guardian, legal custodian, or other
 6 legally recognized equivalent by certain means; permitting a law-enforcement officer to
 7 ask questions reasonably believed to be necessary to protect life or property without
 8 requiring contact with counsel, parents, guardians, or other recognized persons; and
 9 requiring questions of a child be limited to obtaining such information reasonably believed
 10 to be necessary to protect life or property.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

**§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts;
 Constitutional guarantees; requirements; hearings; right to counsel; opportunity to
 be heard; evidence and transcripts.**

1 (a) The circuit court has original jurisdiction of proceedings brought under this article. A
 2 person under the age of 18 years who appears before the circuit court in proceedings under this
 3 article is a ward of the court and protected accordingly.

4 (b) If during a criminal proceeding in any court it is ascertained or appears that the
 5 defendant is under the age of 19 years and was under the age of 18 years at the time of the alleged
 6 offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The
 7 circuit court shall assume jurisdiction of the case in the same manner as cases which are originally
 8 instituted in the circuit court by petition.

9 (c) Notwithstanding any other provision of this article, magistrate courts have concurrent
10 juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a
11 violation of §60-6-9, §16-9A-3 or §16-9A-4, or §11-16-19 of this code, or for any violation of
12 chapter 20 of this code. Juveniles are liable for punishment for violations of these laws in the same
13 manner as adults except that magistrate courts have no jurisdiction to impose a sentence of
14 incarceration for the violation of these laws.

15 (d) Notwithstanding any other provision of this article, municipal courts have concurrent
16 juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic,
17 for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating
18 or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in
19 public places, any other act prohibited by §60-6-9 or §11-16-19 of this code or underage
20 possession or use of tobacco or tobacco products, as provided in §16-9A-1 *et seq.* of this code.
21 Municipal courts may impose the same punishment for these violations as a circuit court
22 exercising its juvenile jurisdiction could properly impose, except that municipal courts have no
23 jurisdiction to impose a sentence of incarceration for the violation of these laws.

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

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

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

31 (f)(1) If a juvenile commits an act which would be a crime if committed by an adult, and the
32 juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the
33 juvenile delinquent continues until the juvenile becomes 21 years of age. The court has the same
34 power over that person that it had before he or she became an adult, and has the power to

35 sentence that person to a term of incarceration: *Provided*, That any term of incarceration may not
36 exceed six months. This authority does not preclude the court from exercising criminal jurisdiction
37 over that person if he or she violates the law after becoming an adult or if the proceedings have
38 been transferred to the court's criminal jurisdiction pursuant to §49-4-704 of this code.

39 (2) If a juvenile is adjudicated as a status offender because he or she is habitually absent
40 from school without good cause, the jurisdiction of the court which adjudged the juvenile a status
41 offender continues until either the juvenile becomes 21 years of age, completes high school,
42 completes a high school equivalent or other education plan approved by the court, or the court
43 otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the court
44 is extended pursuant to this subdivision, the court has the same power over that person that it had
45 before he or she became an adult. No person so adjudicated who has attained the age of 19 may
46 be ordered to attend school in a regular, nonalternative setting.

47 (g) A juvenile ~~is entitled to~~ may be admitted to bail or recognizance in the same manner as
48 an adult and be afforded the protection guaranteed by Article III of the West Virginia Constitution.

49 (h) A juvenile has the right to be effectively represented by counsel at all stages of
50 proceedings under this article, including participation in multidisciplinary team meetings, until the
51 child is no longer under the jurisdiction of the court. If the juvenile or the juvenile's parent or
52 custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall
53 appoint an attorney, who shall be paid in accordance with §29-21-1 *et seq.* of this code.

54 (i)(1) In all proceedings under this article, the juvenile ~~will~~ shall be afforded a meaningful
55 opportunity to be heard. This includes the opportunity to testify and to present and cross-examine
56 witnesses. The general public shall be excluded from all proceedings under this article except that
57 persons whose presence is requested by the parties and other persons whom the circuit court
58 determines have a legitimate interest in the proceedings may attend.

59 (2) In cases in which a juvenile is accused of committing what would be a felony if the
60 juvenile were an adult, an alleged victim or his or her representative may attend any related
61 juvenile proceedings, at the discretion of the presiding judicial officer.

62 (3) In any case in which the alleged victim is a juvenile, he or she may be accompanied by
63 his or her parents or representative, at the discretion of the presiding judicial officer.

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

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

69 (l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained
70 14 years of age to law-enforcement officials ~~or while in custody~~ are not admissible unless those
71 statements were made in the presence of the juvenile's counsel. Except for res gestae,
72 extrajudicial statements made by a juvenile who has not attained 16 years of age but who is at
73 least 14 years of age to law-enforcement officers ~~or while in custody~~, are not admissible unless
74 made in the presence of the juvenile's counsel or made in the presence of, and with the consent of,
75 the juvenile's parent or custodian, and the parent or custodian has been fully informed regarding
76 the juvenile's right to a prompt detention hearing, the juvenile's right to counsel, including
77 appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege against self-
78 incrimination. The admissibility of statements made by a juvenile, pursuant to a custodial
79 interrogation, shall be governed by the provisions of §62-1A-12 of this code.

80 (m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional
81 hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall
82 make findings of fact and conclusions of law, both of which shall appear on the record. The court
83 reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who

84 seeks review of any proceeding under this article if an affidavit is filed stating that neither the
85 juvenile nor the juvenile's parents or custodian have the ability to pay for the transcript.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-12. Custodial interrogation of a juvenile; consultation with legal counsel; admissibility of statements.

1 (a) For purposes of this section, "custodial interrogation" means any interview conducted
2 by a law enforcement officer in such circumstances that would lead a reasonable person to
3 consider himself to be in custody associated with arrest and during which the law-enforcement
4 officer takes actions or asks questions that are reasonably likely to elicit a response from the
5 person that could incriminate him.

6 (b) Prior to the custodial interrogation of a juvenile that has not yet attained 14 years of age,
7 the juvenile shall:

8 (1) Consult with, and have access to legal counsel in person, by telephone, or by video
9 conference throughout the entirety of the custodial interrogation, and;

10 (2) Have contact and access to his or her parent, guardian, legal custodian, or other person
11 standing in loco parentis in person, by telephone, or by video conference throughout the entirety of
12 the custodial interrogation. The consent of the parent, guardian, legal custodian, or other person
13 standing in loco parentis in person, is required in order for a juvenile to give an admissible
14 statement pursuant to a custodial interrogation. The parent shall be fully informed regarding the
15 juvenile's right to a prompt detention hearing, the juvenile's right to counsel, including appointed
16 counsel, if the juvenile cannot afford counsel, and the juvenile's privilege against self-
17 incrimination.

18 (c) Prior to the custodial interrogation of a juvenile that is fourteen years of age but has not
19 attained 18 years of age, the juvenile shall:

20 (1) Consult with, and have access to legal counsel in person, by telephone, or by video
21 conference throughout the entirety of the custodial interrogation, or;

22 (2) Have contact and access to his or her parent, guardian, legal custodian, or other person
23 standing in loco parentis in person, by telephone, or by video conference throughout the entirety of
24 the custodial interrogation. The consent of the parent, guardian, legal custodian, or other person
25 standing in loco parentis in person, is required in order for a juvenile to give an admissible
26 statement pursuant to a custodial interrogation. The parent shall be fully informed regarding the
27 juvenile's right to a prompt detention hearing, the juvenile's right to counsel, including appointed
28 counsel, if the juvenile cannot afford counsel, and the juvenile's privilege against self-
29 incrimination.

30 (d) Any statement made by a juvenile, during or after a custodial interrogation that does not
31 comply with the provisions of this section shall be inadmissible as evidence unless:

32 (1) The law-enforcement officer who conducted the custodial interrogation of the juvenile
33 reasonably believed the information sought was necessary to protect life or property from an
34 imminent threat, and;

35 (2) The law-enforcement officer's questions were limited to those that were reasonably
36 necessary to obtain such information.

37 (e) Res gestae statements of the juvenile may not be subject to the provisions of this
38 section.

NOTE: The purpose of this bill is to establish limitation on law-enforcement officers conducting custodial interrogations of a child with certain exceptions.

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