

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2122

By Delegates Steele and Hillenbrand

[Originating in the Committee on the Judiciary,

Reported on February 21, 2023]

1 A BILL to amend the Code of West Virginia, 1931, as amended by amending §49-4-701(l), by
2 removing language relating to statements while in custody, and adding thereto a new
3 section designated §62-1A-12; relating to custodial interrogation of a child; requiring the
4 child have contact with legal counsel by certain means; requiring the child have contact
5 with a parent, guardian, legal custodian, or other legally recognized equivalent by certain
6 means; permitting a law-enforcement officer to ask questions reasonably believed to be
7 necessary to protect life or property without requiring contact with counsel, parents,
8 guardians, or other recognized persons; and requiring questions of a child be limited to
9 obtaining such information reasonably believed 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 eighteen years who appears before the circuit court in proceedings under
3 this 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 nineteen years and was under the age of eighteen years at the time
6 of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the
7 circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases
8 which are originally 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 section nine, article six, chapter sixty, section three or section four, article nine-a,
12 chapter sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any
13 violation of chapter twenty of this code. Juveniles are liable for punishment for violations of these
14 laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a
15 sentence of incarceration for the violation of these laws.

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

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

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

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

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

37 to sentence that person to a term of incarceration: *Provided*, That any term of incarceration may
38 not exceed six months. This authority does not preclude the court from exercising criminal
39 jurisdiction over that person if he or she violates the law after becoming an adult or if the
40 proceedings have been transferred to the court's criminal jurisdiction pursuant to section seven
41 hundred four of this article.

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

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

52 (h) A juvenile has the right to be effectively represented by counsel at all stages of
53 proceedings under this article, including participation in multidisciplinary team meetings, until the
54 child is no longer under the jurisdiction of the court. If the juvenile or the juvenile's parent or
55 custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall
56 appoint an attorney, who shall be paid in accordance with article twenty-one, chapter twenty-nine
57 of this code.

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

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

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

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

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

73 (l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained
74 fourteen years of age to law-enforcement officials ~~or while in custody~~ are not admissible unless
75 those statements were made in the presence of the juvenile's counsel. Except for res gestae,
76 extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at
77 least fourteen years of age to law-enforcement officers ~~or while in custody~~, are not admissible
78 unless made in the presence of the juvenile's counsel or made in the presence of, and with the
79 consent of, the juvenile's parent or custodian, and the parent or custodian has been fully informed
80 regarding the juvenile's right to a prompt detention hearing, the juvenile's right to counsel,
81 including appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege
82 against self-incrimination. The admissibility of statements made by a juvenile, pursuant to a
83 custodial interrogation, shall be governed by the provisions of §61-1A-12.

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 1A. SEARCH AND SEIZURE.

§61-1A-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 fourteen years
7 of age, 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 must 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 eighteen 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 must 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 shall 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.