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WEST VIRGINIA LEGISLATURE

EXTRAORDINARY SESSION, 1996



ENROLLED

HOUSE BILL No. 706

(By Delegate *Mr. Spieker, Mr. Chambers,
and Delegate Ashley,
[By Request of the Executive]*

Passed July 14 1996
In Effect From Passage

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H. B. 106

(BY MR. SPEAKER, MR. CHAMBERS, AND DELEGATE ASHLEY)
[By Request of the Executive]

[Passed July 14, 1996; in effect from passage.]

AN ACT to amend and reenact section two, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the admissibility of extrajudicial statements made by juveniles to law-enforcement officers or while in custody.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

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

1 (a) The circuit court shall have original jurisdiction of
2 proceedings brought under this article.

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

11 (c) Notwithstanding any other provision of this article,
12 magistrate courts shall have concurrent juvenile jurisdic-
13 tion with the circuit court for a violation of a traffic law of

14 West Virginia or for any violation of chapter twenty of this
15 code. Juveniles shall be liable for punishment for viola-
16 tions of such laws in the same manner as adults except
17 that magistrate courts shall have no jurisdiction to impose
18 a sentence of incarceration for the violation of such laws.

19 (d) Notwithstanding any other provision of this article,
20 municipal courts shall have concurrent juvenile jurisdic-
21 tion with the circuit court for a violation of any municipal
22 ordinance regulating traffic or for any municipal curfew
23 ordinance which is enforceable. Municipal courts may
24 impose the same punishment for such violations as a cir-
25 cuit court exercising its juvenile jurisdiction could prop-
26 erly impose, except that municipal courts shall have no
27 jurisdiction to impose a sentence of incarceration for the
28 violation of such laws.

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

32 (1) By a juvenile petition requesting that the juvenile
33 be adjudged neglected or delinquent;

34 (2) By certification or transfer to the juvenile jurisdic-
35 tion of the circuit court from the criminal jurisdiction of
36 the circuit court, from any foreign court, or from any
37 magistrate court or municipal court in West Virginia; or

38 (3) By a warrant, capias or attachment which charges a
39 juvenile with an act of delinquency, is issued by a judge,
40 referee or magistrate, and is returnable to the circuit court.

41 (f) If a juvenile commits an act which would be a
42 crime if committed by an adult, and the juvenile is ad-
43 judged a delinquent for such act, the jurisdiction of the
44 court which adjudged the juvenile a delinquent shall con-
45 tinue until the juvenile becomes twenty-one years of age.
46 The court shall have the same power over the person that it
47 had before he or she became an adult, and shall have the
48 further power to sentence the person to a term of incar-
49 ceration which cannot exceed six months. This authority
50 shall not preclude the court from exercising criminal juris-
51 diction over the person if he or she violates the law after

52 becoming an adult or if the proceedings have been trans-
53 ferred to the court's criminal jurisdiction pursuant to sec-
54 tion ten of this article.

55 (g) A juvenile shall be entitled to be admitted to bail
56 or recognizance in the same manner as an adult and shall
57 have the protection guaranteed by Article III of the West
58 Virginia Constitution.

59 (h) A juvenile shall have the right to be effectively
60 represented by counsel at all stages of proceedings under
61 the provisions of this article. If the juvenile or the juve-
62 nile's parents or custodian executes an affidavit showing
63 that the juvenile cannot afford an attorney, the court shall
64 appoint an attorney, who will be paid in accordance with
65 article twenty-one, chapter twenty-nine of this code.

66 (i) In all proceedings under this article, the juvenile
67 shall have a meaningful opportunity to be heard. This
68 includes the opportunity to testify and to present and
69 cross-examine witnesses. The general public shall be ex-
70 cluded from all such proceedings except persons whose
71 presence is requested by the parties and other persons
72 whom the circuit court determines have a legitimate inter-
73 est in the proceedings.

74 (j) At all adjudicatory hearings held under this article,
75 all procedural rights afforded to adults in criminal pro-
76 ceedings shall be applicable unless specifically provided
77 otherwise in this chapter.

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

82 (l) Extrajudicial statements, other than res gestae, which
83 were made by a juvenile under fourteen years of age to
84 law-enforcement officials or while in custody shall not be
85 admissible unless such statements were made in the pres-
86 ence of the juvenile's counsel. Extrajudicial statements,
87 other than res gestae, which were made by a juvenile who
88 is under sixteen years of age but above the age of thirteen
89 to law-enforcement officers or while in custody, shall not

90 be admissible unless made in the presence of the juvenile's
91 counsel or made in the presence of, and with the consent
92 of, the juvenile's parent or custodian who has been fully
93 informed regarding the juvenile's right to a prompt deten-
94 tion hearing, the juvenile's right to counsel, including
95 appointed counsel if the juvenile cannot afford counsel,
96 and the juvenile's privilege against self-incrimination.

97 (m) A transcript or recording shall be made of all trans-
98 fer, adjudicatory and dispositional hearings. At the con-
99 clusion of any hearing, the circuit court shall make find-
100 ings of fact and conclusions of law, both of which shall
101 appear on the record. The court reporter shall furnish a
102 transcript of the proceedings at no charge to any indigent
103 juvenile who seeks review of any proceeding under this
104 article if an affidavit is filed stating that neither the juve-
105 nile nor the juvenile's parents or custodian have the ability
106 to pay for the transcript.

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

Ray Johnson
Chairman Senate Committee

Rudy Seavitt
Chairman House Committee

Originating in the House.

Takes effect from passage.

Darrell Holmes
Clerk of the Senate

Gregory M. Gray
Clerk of the House of Delegates

Earl Ray Embles
President of the Senate

Paul Caber
Speaker of the House of Delegates

The within *is approved* this the *24th*
day of *July*, 1996.

Yastin Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 7/19/96

Time 3:50 pm