

HB 2123

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2123

(By Delegates Givens, Douglas and Staton)



Passed March 19, 1997

In Effect from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2123

(BY DELEGATES GIVENS, DOUGLAS AND STATON)

[Passed March 19, 1997; in effect from passage.]

AN ACT to amend and reenact sections ten, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article seven of said chapter, all relating to waiver and transfer of jurisdiction of juvenile cases to the criminal jurisdiction of the court; eliminating the right to an interlocutory appeal of certain transfer orders; providing for public disclosure of certain juvenile records; requiring that certain juvenile records be sealed; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That sections ten, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article seven of said chapter be amended and reenacted, all to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-10. Waiver and transfer of jurisdiction.

- 1 (a) Upon written motion of the prosecuting attorney
- 2 filed at least eight days prior to the adjudicatory hearing

3 and with reasonable notice to the juvenile, his or her
4 counsel, and his or her parents, guardians or custodians,
5 the court shall conduct a hearing to determine if juvenile
6 jurisdiction should or must be waived and the proceeding
7 transferred to the criminal jurisdiction of the court. Any
8 motion filed in accordance with this section shall state,
9 with particularity, the grounds for the requested transfer,
10 including the grounds relied upon as set forth in
11 subsection (d), (e), (f) or (g) of this section and the burden
12 shall be upon the state to establish such grounds by clear
13 and convincing evidence. Any hearing held under the
14 provisions of this section shall be held within seven days
15 of the filing of the motion for transfer unless it is
16 continued for good cause.

17 (b) No inquiry relative to admission or denial of the
18 allegations of the charge or the demand for jury trial may
19 be made by or before the court until the court has
20 determined whether the proceeding is to be transferred to
21 criminal jurisdiction.

22 (c) The court shall transfer a juvenile proceeding to
23 criminal jurisdiction if a juvenile who has attained the age
24 of fourteen years makes a demand on the record to be
25 transferred to the criminal jurisdiction of the court. The
26 case may then be referred to magistrate or circuit court for
27 further proceedings, subject to the court's jurisdiction.

28 (d) The court shall transfer a juvenile proceeding to
29 criminal jurisdiction if there is probable cause to believe
30 that:

31 (1) The juvenile is at least fourteen years of age and
32 has committed the crime of treason under section one,
33 article one, chapter sixty-one of this code; the crime of
34 murder under sections one, two and three, article two of
35 said chapter; the crime of robbery involving the use or
36 presenting of firearms or other deadly weapons under
37 section twelve of said article; the crime of kidnapping
38 under section fourteen-a of said article; the crime of first
39 degree arson under section one, article three of said
40 chapter; or the crime of sexual assault in the first degree
41 under section three, article eight-b of said chapter; or

42 (2) The juvenile is at least fourteen years of age and
43 has committed an offense of violence to the person which
44 would be a felony if the juvenile were an adult: *Provided,*
45 That the juvenile has been previously adjudged delinquent
46 for the commission of an offense of violence to the person
47 which would be a felony if the juvenile were an adult; or

48 (3) The juvenile is at least fourteen years of age and
49 has committed an offense which would be a felony if the
50 juvenile were an adult: *Provided,* That the juvenile has
51 been twice previously adjudged delinquent for the
52 commission of an offense which would be a felony if the
53 juvenile were an adult.

54 (e) The court may transfer a juvenile proceeding to
55 criminal jurisdiction if there is probable cause to believe
56 that the juvenile would otherwise satisfy the provisions of
57 subdivision (1), subsection (d) of this section, but who is
58 younger than fourteen years of age.

59 (f) The court may, upon consideration of the
60 juvenile's mental and physical condition, maturity,
61 emotional attitude, home or family environment, school
62 experience and similar personal factors, transfer a juvenile
63 proceeding to criminal jurisdiction if there is probable
64 cause to believe that the juvenile would otherwise satisfy
65 the provisions of subdivision (2) or (3), subsection (d) of
66 this section, but who is younger than fourteen years of
67 age.

68 (g) The court may, upon consideration of the
69 juvenile's mental and physical condition, maturity,
70 emotional attitude, home or family environment, school
71 experience and similar personal factors, transfer a juvenile
72 proceeding to criminal jurisdiction if there is probable
73 cause to believe that:

74 (1) The juvenile, who is at least fourteen years of age,
75 has committed an offense of violence to a person which
76 would be a felony if the juvenile were an adult; or

77 (2) The juvenile, who is at least fourteen years of age,
78 has committed an offense which would be a felony if the
79 juvenile were an adult: *Provided,* That the juvenile has

80 been previously adjudged delinquent for the commission
81 of a crime which would be a felony if the juvenile were an
82 adult; or

83 (3) The juvenile, who is at least fourteen years of age,
84 used or presented a firearm or other deadly weapon
85 during the commission of a felony; or

86 (4) The juvenile has committed a violation of the
87 provisions of section four hundred one, article four,
88 chapter sixty-a of this code which would be a felony if the
89 juvenile were an adult involving the manufacture, delivery
90 or possession with the intent to deliver a narcotic drug.
91 For purposes of this subdivision, the term "narcotic
92 drug" has the same definition as that set forth in section
93 one hundred one, article one of said chapter.

94 (h) For purposes of this section, the term "offense of
95 violence" means an offense which involves the use or
96 threatened use of physical force against a person.

97 (i) If, after a hearing, the court directs the transfer of
98 any juvenile proceeding to criminal jurisdiction, it shall
99 state on the record the findings of fact and conclusions of
100 law upon which its decision is based or shall incorporate
101 such findings of fact and conclusions of law in its order
102 directing transfer.

103 (j) A juvenile who has been transferred to criminal
104 jurisdiction pursuant to the provisions of subsection (e),
105 (f) or (g) of this section, by an order of transfer entered
106 after the first day of July, one thousand nine hundred
107 ninety-seven, shall have the right to either directly appeal
108 an order of transfer to the supreme court of appeals or to
109 appeal such order of transfer following a conviction of the
110 offense of transfer. If the juvenile exercises the right to a
111 direct appeal from an order of transfer, the notice of intent
112 to appeal and a request for transcript shall be filed within
113 ten days from the date of the entry of any such order, and
114 the petition for appeal shall be presented to the supreme
115 court of appeals within forty-five days from the entry of
116 such order. The provisions of article five, chapter fifty-
117 eight of this code pertaining to the appeals of judgments
118 in civil actions shall apply to appeals under this chapter

119 except as herein modified. The court may, within forty-
 120 five days of the entry of the order of transfer, by
 121 appropriate order, extend and reextend the period in
 122 which to file the petition for appeal for such additional
 123 time, not to exceed a total extension of sixty days, as in the
 124 court's opinion may be necessary for preparation of the
 125 transcript: *Provided*, That the request for such transcript
 126 was made by the party seeking appeal within ten days of
 127 entry of such order of transfer. In the event any such
 128 notice of intent to appeal and request for transcript be
 129 timely filed, proceedings in criminal court shall be stayed
 130 upon motion of the defendant pending final action of the
 131 supreme court of appeals thereon.

§49-5-17. Confidentiality of juvenile records.

1 (a) Records of a juvenile proceeding conducted under
 2 this chapter are not public records and shall not be
 3 disclosed to anyone unless disclosure is otherwise
 4 authorized by this section.

5 (b) Notwithstanding the provisions of subsection (a) of
 6 this section, a copy of a juvenile's records shall
 7 automatically be disclosed to certain school officials,
 8 subject to the following terms and conditions:

9 (1) Only certain types of juvenile records shall be
 10 disclosed. These include and are limited to cases in which:

11 (A) The juvenile has been charged with an offense
 12 which would be a felony if the juvenile were an adult; and

13 (i) The offense involves violence against another
 14 person;

15 (ii) The offense involves possession of a dangerous or
 16 deadly weapon; or

17 (iii) The offense involves possession or delivery of a
 18 controlled substance as that term is defined in section one
 19 hundred one, article one, chapter sixty-a of this code; and

20 (B) The juvenile case has proceeded to a point where
 21 one or more of the following has occurred:

22 (i) A judge, magistrate or referee has determined that

23 there is probable cause to believe that the juvenile
24 committed the offense as charged;

25 (ii) A judge, magistrate or referee has placed the
26 juvenile on probation for the offense;

27 (iii) A judge, magistrate or referee has placed the
28 juvenile into an improvement period in accordance with
29 section nine, article five, chapter forty-nine of this code; or

30 (iv) Some other type of disposition has been made of
31 the case other than dismissal.

32 (2) The circuit court for each judicial circuit in West
33 Virginia shall designate one person to supervise the
34 disclosure of juvenile records to certain school officials.

35 (3) If the juvenile attends a West Virginia public
36 school, the person designated by the circuit court shall
37 automatically disclose all records of a juvenile case to the
38 county superintendent of schools in the county in which
39 the juvenile attends school. The person designated by the
40 circuit court shall also automatically disclose all records of
41 a juvenile case to the principal of the school which the
42 juvenile attends.

43 (4) If the juvenile attends a private school in West
44 Virginia, the person designated by the circuit court shall
45 determine the identity of the highest ranking person at
46 that school, and shall automatically disclose all records of
47 a juvenile's case to that person.

48 (5) If the juvenile does not attend school at the time
49 the juvenile's case is pending, the person designated by
50 the circuit court shall not transmit the juvenile's records to
51 any school. However, the person designated by the circuit
52 court shall transmit the juvenile's records to any school in
53 West Virginia which the juvenile subsequently attends.

54 (6) The person designated by the circuit court shall
55 not automatically transmit juvenile records to a school
56 which is not located in West Virginia. Instead, the person
57 designated by the circuit court shall contact the out-of-
58 state school, inform it that juvenile records exist, and make
59 an inquiry regarding whether the laws of that state permit

60 the disclosure of juvenile records. If so, the person
61 designated by the circuit court shall consult with the
62 circuit judge who presided over the case to determine
63 whether the juvenile records should be disclosed to the
64 out-of-state school. The circuit judge shall have discretion
65 in determining whether to disclose the juvenile records,
66 and shall consider whether the other state's law regarding
67 disclosure provides for sufficient confidentiality of
68 juvenile records, using this section as a guide. If the
69 circuit judge orders the juvenile records to be disclosed,
70 they shall be disclosed in accordance with the provisions
71 of subdivision (7) of this subsection.

72 (7) The person designated by the circuit court shall
73 transmit the juvenile's records to the appropriate school
74 official under cover of a letter emphasizing the
75 confidentiality of such records and directing the official to
76 consult this section of the code. A copy of this section of
77 the code shall be transmitted with the juvenile's records
78 and cover letter.

79 (8) Juvenile records must be treated as absolutely
80 confidential by the school official to whom they are
81 transmitted, and nothing contained within the juvenile's
82 records shall be noted on the juvenile's permanent
83 educational record. The juvenile records are to be
84 maintained in a secure location and are not to be copied
85 under any circumstances. However, the principal of a
86 school to whom the records are transmitted shall have the
87 duty to disclose the contents of those records to any
88 teacher who teaches a class in which the subject juvenile is
89 enrolled and to the regular driver of a school bus in which
90 the subject juvenile is regularly transported to or from
91 school. Furthermore, any school official to whom the
92 juvenile's records are transmitted may disclose the
93 contents of such records to any adult within the school
94 system who, in the discretion of the school official, has the
95 need to be aware of the contents of those records.

96 (9) If for any reason a juvenile ceases to attend a
97 school which possesses that juvenile's records, the
98 appropriate official at that school shall seal the records
99 and return them to the circuit court which sent them to

100 that school. If the juvenile has changed schools for any
101 reason, the former school shall inform the circuit court of
102 the name and location of the new school which the
103 juvenile attends or will be attending. If the new school is
104 located within West Virginia, the person designated by the
105 circuit court shall forward the juvenile's records to the
106 juvenile's new school in the same manner as provided in
107 subdivision (7) of this subsection. If the new school is not
108 located within West Virginia, the person designated by the
109 circuit court shall handle the juvenile records in
110 accordance with subdivision (6) of this subsection.

111 If the juvenile has been found not guilty of an offense
112 for which records were previously forwarded to the
113 juvenile's school on the basis of a finding of probable
114 cause, the circuit court shall not forward those records to
115 the juvenile's new school. However, this shall not affect
116 records related to other prior or future offenses. If the
117 juvenile has graduated or quit school, or will otherwise not
118 be attending another school, the circuit court shall retain
119 the juvenile's records and handle them as otherwise
120 provided in this article.

121 (10) Under no circumstances shall one school transmit
122 a juvenile's records to another school.

123 (11) Under no circumstances shall juvenile records be
124 automatically transmitted to a college, university or other
125 post-secondary school.

126 (12) No one shall suffer any penalty, civil or criminal,
127 for accidentally or negligently attributing certain juvenile
128 records to the wrong person. However, such person shall
129 have the affirmative duty to promptly correct any mistake
130 that he or she has made in disclosing juvenile records
131 when the mistake is brought to his or her attention. A
132 person who intentionally attributes false information to a
133 certain person shall be subjected to both criminal and civil
134 penalties, in accordance with subsection (e) this section.

135 (13) If a judge, magistrate or referee has determined
136 that there is probable cause to believe that a juvenile has
137 committed an offense but there has been no final
138 adjudication of the charge, the records which are

139 transmitted by the circuit court shall be accompanied by a
140 notice which clearly states in bold print that there has been
141 no determination of delinquency and that our legal system
142 requires a presumption of innocence.

143 (c) Notwithstanding the provisions of subsection (a) of
144 this section, juvenile records may be disclosed, subject to
145 the following terms and conditions:

146 (1) If a juvenile case is transferred to the criminal
147 jurisdiction of the circuit court pursuant to the provisions
148 of subsection (c) or (d), section ten of this article, the
149 juvenile records shall be open to public inspection.

150 (2) If a juvenile case is transferred to the criminal
151 jurisdiction of the circuit court pursuant to the provisions
152 of subsection (e), (f) or (g), section ten of this article, the
153 juvenile records shall be open to public inspection only if
154 the juvenile fails to file a timely appeal of the transfer
155 order, or the supreme court of appeals refuses to hear or
156 denies an appeal which has been timely filed.

157 (3) If a juvenile is fourteen years of age or older and a
158 court has determined there is a probable cause to believe
159 the juvenile committed an offense set forth in subsection
160 (g), section ten of this article, but the case is not
161 transferred to criminal jurisdiction, the juvenile records
162 shall be open to public inspection pending trial only if the
163 juvenile is released on bond and no longer detained or
164 adjudicated delinquent of the offense.

165 (4) If a juvenile is younger than fourteen years of age
166 and a court has determined there is probable cause to
167 believe that the juvenile committed the crime of murder
168 under section one, two or three, article two, chapter sixty-
169 one of this code, or the crime of sexual assault in the first
170 degree under section three, article eight-b of said chapter,
171 but the case is not transferred to criminal jurisdiction, the
172 juvenile records shall be open to public inspection
173 pending trial only if the juvenile is released on bond and
174 no longer detained or adjudicated delinquent of the
175 offense.

176 (5) Upon a written petition and pursuant to a written

177 order, the circuit court may permit disclosure of juvenile
178 records to:

179 (A) A court which has juvenile jurisdiction and has the
180 juvenile before it in a juvenile proceeding;

181 (B) A court exercising criminal jurisdiction over the
182 juvenile which requests such records for the purpose of a
183 presentence report or disposition proceeding;

184 (C) The juvenile, the juvenile's parents or legal
185 guardian, or the juvenile's counsel;

186 (D) The officials of a public institution to which the
187 juvenile is committed if they require such records for
188 transfer, parole or discharge; or

189 (E) A person who is conducting research. However,
190 juvenile records may be disclosed for research purposes
191 only upon the condition that information which would
192 identify the subject juvenile or the juvenile's family shall
193 not be disclosed.

194 (d) Any records open to public inspection pursuant to
195 the provisions of this section are subject to the same
196 requirements governing the disclosure of adult criminal
197 records.

198 (e) Any person who willfully violates this section shall
199 be guilty of a misdemeanor and, upon conviction thereof,
200 shall be fined not more than one thousand dollars, or
201 confined in the county or regional jail for not more than
202 six months, or both so fined and confined, and shall be
203 liable for damages in the amount of three hundred dollars
204 or actual damages, whichever is greater.

§49-5-18. Sealing of juvenile records.

1 (a) One year after the juvenile's eighteenth birthday,
2 or one year after personal or juvenile jurisdiction has
3 terminated, whichever is later, the records of a juvenile
4 proceeding conducted under this chapter, including, but
5 not limited to, law-enforcement files and records, shall be
6 sealed by operation of law.

7 (b) The records of a juvenile proceeding in which a

8 juvenile was transferred to criminal jurisdiction pursuant
9 to the provisions of section ten of this article shall be
10 sealed by operation of law if the juvenile is subsequently
11 acquitted or found guilty only of an offense other than an
12 offense upon which the waiver or order of transfer was
13 based, or if the offense upon which the waiver or order of
14 transfer was based is subsequently dismissed.

15 (c) To seal juvenile records, they shall be returned to
16 the circuit court in which the case was pending and be
17 kept in a separate confidential file. The records shall be
18 physically marked to show that they have been sealed and
19 shall be securely sealed and filed in such a manner that no
20 one can determine the identity of the juvenile.

21 (d) Sealed records may not be opened except upon
22 order of the circuit court.

23 (e) Sealing of juvenile records has the legal effect of
24 extinguishing the offense as if it never occurred.

25 (f) The records of a juvenile convicted under the
26 criminal jurisdiction of the circuit court pursuant to
27 subdivision (1), subsection (d), section ten of this article
28 may not be sealed.

29 (g) Any person who willfully violates this section shall
30 be guilty of a misdemeanor and, upon conviction thereof,
31 shall be fined not more than one thousand dollars, or
32 confined in the county or regional jail for not more than
33 six months, or both so fined and confined, and shall be
34 liable for damages in the amount of three hundred dollars
35 or actual damages, whichever is greater.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

1 (a) Except as otherwise provided in this chapter, all
2 records and information concerning a child or juvenile
3 which are maintained by a state department, agency, court
4 or law-enforcement agency shall be kept confidential and
5 shall not be released or disclosed to anyone, including any
6 federal or state agency.

7 (b) Notwithstanding the provisions of subsection (a) of
8 this section or any other provision of this code to the

9 contrary, records concerning a child or juvenile, except
10 adoption records, juvenile court records and records
11 related to child abuse or neglect proceedings shall be
12 made available:

13 (1) Where otherwise authorized by this chapter;

14 (2) To the child, parent, or the attorney of the child or
15 parent;

16 (3) With the written consent of the child or of
17 someone authorized to act on the child's behalf; or

18 (4) Pursuant to a subpoena or order of a court of
19 record; however, a subpoena for such records may be
20 quashed by a court for good cause.

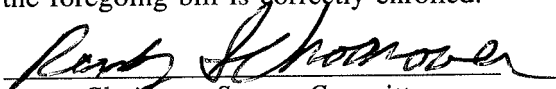
21 (c) Records related to child abuse or neglect
22 proceedings shall be made available for inspection only
23 by the child, his or her parents or custodian, the child's
24 counsel and other parties to the proceeding.

25 (d) Except in juvenile proceedings which are
26 transferred to criminal proceedings, law-enforcement
27 records and files concerning a child or juvenile shall be
28 kept separate from the records and files of adults and not
29 included within the court files. Law-enforcement records
30 and files concerning ^(C.H.U.D.) a ~~child~~ juvenile shall only be open
31 to inspection pursuant to the provisions of sections
32 seventeen and eighteen, article five of this chapter.

33 (e) Any person who willfully violates the provisions of
34 this section is guilty of a misdemeanor and, upon
35 conviction thereof, shall be fined not more than one
36 thousand dollars, or confined in the county or regional jail
37 for not more than six months, or be both fined and
38 confined. A person convicted of violating the provisions
39 of this section shall also be liable for damages in the
40 amount of three hundred dollars or actual damages,
41 whichever is greater.

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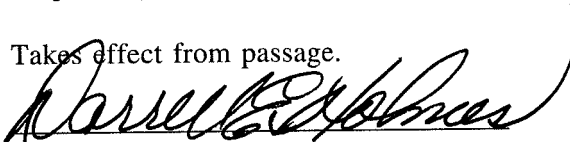
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

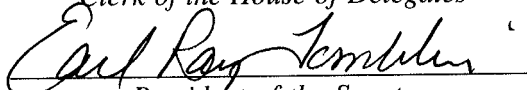

Chairman House Committee


Originating in the House.

Takes effect from passage.

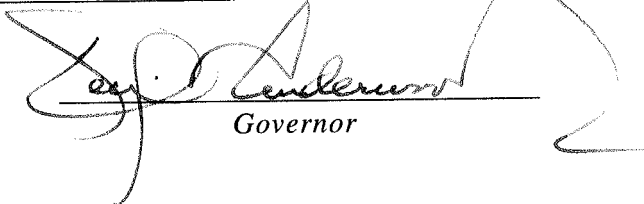

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 27th
day of March, 1997.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/97

Time 2:40pm