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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001



ENROLLED

House Bill No. 2959

(By Delegates Amores, Staton, Webster, R. Thompson,
Wills and Faircloth)



Passed April 12, 2001

In Effect Ninety Days from Passage

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H. B. 2959

(BY DELEGATES AMORES, STATON, WEBSTER, R. THOMPSON,
WILLS AND FAIRCLOTH)

[Passed April 12, 2001; in effect ninety days 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 inadmissibility of certain statements made by juveniles when in custody or in the presence of law-enforcement officers.

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.

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1 (a) The circuit court has original jurisdiction of proceedings
2 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 of
5 nineteen years and was under the age of eighteen years at the
6 time of the alleged offense, the matter shall be immediately
7 certified to the juvenile jurisdiction of the circuit court. The
8 circuit court shall assume jurisdiction of the case in the same
9 manner as cases which are originally instituted in the circuit
10 court by petition.

11 (c) Notwithstanding any other provision of this article,
12 magistrate courts have concurrent juvenile jurisdiction with the
13 circuit court for a violation of a traffic law of West Virginia, for
14 a violation of section nine, article six, chapter sixty or section
15 nineteen, article sixteen, chapter eleven of this code, or for any
16 violation of chapter twenty of this code. Juveniles are liable for
17 punishment for violations of these laws in the same manner as
18 adults except that magistrate courts have no jurisdiction to
19 impose a sentence of incarceration for the violation of these
20 laws.

21 (d) Notwithstanding any other provision of this article,
22 municipal courts have concurrent juvenile jurisdiction with the
23 circuit court for a violation of any municipal ordinance regulat-
24 ing traffic, for any municipal curfew ordinance which is
25 enforceable or for any municipal ordinance regulating or
26 prohibiting public intoxication, drinking or possessing alcoholic
27 liquor or nonintoxicating beer in public places, or any other act
28 prohibited by section nine, article six, chapter sixty or section
29 nineteen, article sixteen, chapter eleven of this code. Municipal
30 courts may impose the same punishment for these violations as
31 a circuit court exercising its juvenile jurisdiction could properly
32 impose, except that municipal courts have no jurisdiction to
33 impose a sentence of incarceration for the violation of these
34 laws.

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

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

39 (2) By certification or transfer to the juvenile jurisdiction of
40 the circuit court from the criminal jurisdiction of the circuit
41 court, from any foreign court, or from any magistrate court or
42 municipal court in West Virginia.

43 (f) If a juvenile commits an act which would be a crime if
44 committed by an adult, and the juvenile is adjudicated delin-
45 quent for that act, the jurisdiction of the court which adjudged
46 the juvenile delinquent continues until the juvenile becomes
47 twenty-one years of age. The court has the same power over
48 that person that it had before he or she became an adult, and has
49 the further power to sentence that person to a term of incarceration:
50 *Provided*, That any such term of incarceration may not
51 exceed six months. This authority does not preclude the court
52 from exercising criminal jurisdiction over that person if he or
53 she violates the law after becoming an adult or if the proceed-
54 ings have been transferred to the court's criminal jurisdiction
55 pursuant to section ten of this article.

56 (g) A juvenile is entitled to be admitted to bail or recogni-
57 zance in the same manner as an adult and shall be afforded the
58 protection guaranteed by Article III of the West Virginia
59 constitution.

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

67 (i) In all proceedings under this article, the juvenile shall be
68 afforded a meaningful opportunity to be heard. This includes
69 the opportunity to testify and to present and cross-examine
70 witnesses. The general public shall be excluded from all
71 proceedings under this article except that persons whose
72 presence is requested by the parties and other persons whom the
73 circuit court determines have a legitimate interest in the
74 proceedings may attend: *Provided*, That in cases in which a
75 juvenile is accused of committing what would be a felony if the
76 juvenile were an adult, an alleged victim or his or her represen-
77 tative may attend any related juvenile proceedings, at the
78 discretion of the presiding judicial officer: *Provided, however*,
79 That in any case in which the alleged victim is a juvenile, he or
80 she may be accompanied by his or her parents or representative,
81 at the discretion of the presiding judicial officer.

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

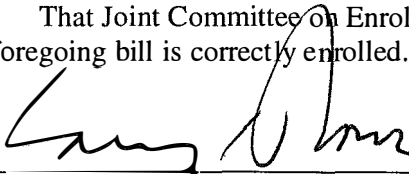
86 (k) At all adjudicatory hearings held under this article, the
87 rules of evidence applicable in criminal cases apply, including
88 the rule against written reports based upon hearsay.

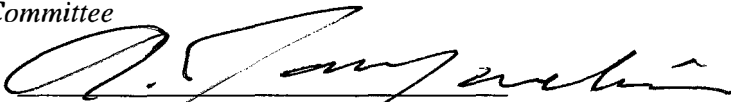
89 (l) Except for res gestae, extrajudicial statements made by
90 a juvenile who has not attained fourteen years of age to law-
91 enforcement officials or while in custody are not admissible
92 unless those statements were made in the presence of the
93 juvenile's counsel. Except for res gestae, extrajudicial state-
94 ments made by a juvenile who has not attained sixteen years of
95 age but who is at least fourteen years of age to law-enforcement
96 officers or while in custody, are not admissible unless made in
97 the presence of the juvenile's counsel or made in the presence
98 of, and with the consent of, the juvenile's parent or custodian,
99 and the parent or custodian has been fully informed regarding

100 the juvenile's right to a prompt detention hearing, the juvenile's
101 right to counsel, including appointed counsel if the juvenile
102 cannot afford counsel, and the juvenile's privilege against self-
103 incrimination.

104 (m) A transcript or recording shall be made of all transfer,
105 adjudicatory and dispositional hearings held in circuit court. At
106 the conclusion of each of these hearings, the circuit court shall
107 make findings of fact and conclusions of law, both of which
108 shall appear on the record. The court reporter shall furnish a
109 transcript of the proceedings at no charge to any indigent
110 juvenile who seeks review of any proceeding under this article
111 if an affidavit is filed stating that neither the juvenile nor the
112 juvenile's parents or custodian have the ability to pay for the
113 transcript.

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


Chairman Senate Committee

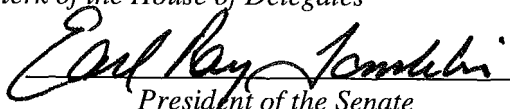

Chairman House Committee

Originating in the House.

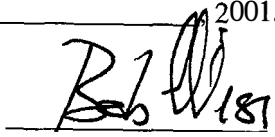
In effect ninety days from passage.


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 25th
day of April 2001.

Governor

PRESENTED TO THE

Date 4/23/01
Time 3:15pm