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HB 2332
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FILED

2007 MAR 22 PM 4: 22

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

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ENROLLED

House Bill No. 2332

(By Delegates Perry, Amores, Craig, Perdue,
Campbell, Anderson, Cann and Long)

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Passed March 9, 2007

In Effect Ninety Days from Passage

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H. B. 2332

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY DELEGATES PERRY, AMORES, CRAIG, PERDUE, CAMPBELL,
ANDERSON, CANN AND LONG)

[Passed March 9, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §49-5-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that magistrate courts have concurrent juvenile jurisdiction with circuit courts with regard to enforcement of laws prohibiting the possession or use of tobacco or tobacco products by minors; and giving such concurrent juvenile jurisdiction to municipal courts.

Be it enacted by the Legislature of West Virginia:

That §49-5-2 of the Code of West Virginia, 1931, 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 has 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 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
13 the circuit court for a violation of a traffic law of West
14 Virginia, for a violation of section nine, article six, chapter
15 sixty, section three or section four, article nine-a, chapter
16 sixteen, or section nineteen, article sixteen, chapter eleven of
17 this code, or for any violation of chapter twenty of this code.
18 Juveniles are liable for punishment for violations of these
19 laws in the same manner as adults except that magistrate
20 courts have no jurisdiction to impose a sentence of
21 incarceration for the violation of these laws.

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

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

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

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

46 (f) If a juvenile commits an act which would be a crime
47 if committed by an adult, and the juvenile is adjudicated
48 delinquent for that act, the jurisdiction of the court which
49 adjudged the juvenile delinquent continues until the juvenile

50 becomes twenty-one years of age. The court has the same
51 power over that person that it had before he or she became an
52 adult, and has the further power to sentence that person to a
53 term of incarceration: *Provided*, That any such term of
54 incarceration may not exceed six months. This authority
55 does not preclude the court from exercising criminal
56 jurisdiction over that person if he or she violates the law after
57 becoming an adult or if the proceedings have been transferred
58 to the court's criminal jurisdiction pursuant to section ten of
59 this article.

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

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

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

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

91 (k) At all adjudicatory hearings held under this article, the
92 rules of evidence applicable in criminal cases apply,

93 including the rule against written reports based upon hearsay.

94 (l) Except for res gestae, extrajudicial statements made by
95 a juvenile who has not attained fourteen years of age to
96 law-enforcement officials or while in custody are not
97 admissible unless those statements were made in the presence
98 of the juvenile's counsel. Except for res gestae, extrajudicial
99 statements made by a juvenile who has not attained sixteen
100 years of age but who is at least fourteen years of age to law-
101 enforcement officers or while in custody, are not admissible
102 unless made in the presence of the juvenile's counsel or made
103 in the presence of, and with the consent of, the juvenile's
104 parent or custodian, and the parent or custodian has been
105 fully informed regarding the juvenile's right to a prompt
106 detention hearing, the juvenile's right to counsel, including
107 appointed counsel if the juvenile cannot afford counsel, and
108 the juvenile's privilege against self-incrimination.

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

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



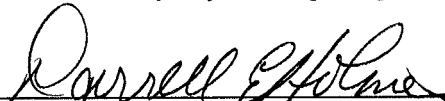
Chairman Senate Committee



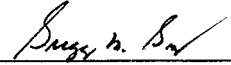
Chairman House Committee

Originating in the House.

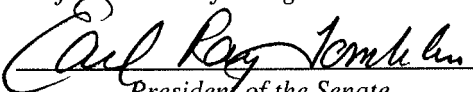
In effect ninety days from passage.



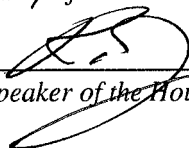
Clerk of the Senate



Clerk of the House of Delegates

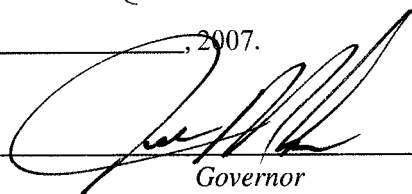


President of the Senate



Speaker of the House of Delegates

The within is approved this the 22nd
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2007

Time

4:00pm