

FILE
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WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

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ENROLLED

Senate Bill No. 601

(BY SENATORS COOKMAN, WALTERS AND STOLLINGS)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 601

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ENROLLED

Senate Bill No. 601

SECRETARY OF STATE

(BY SENATORS COOKMAN, WALTERS AND STOLLINGS)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §49-5-2 and §49-5-18 of the Code of West Virginia, 1931, as amended, all relating to juvenile offenders; extending circuit court jurisdiction over juvenile status offenders adjudicated delinquent for habitual truancy until the juvenile reaches twenty-one years of age or completes a court ordered education plan; establishing an age limit on adjudicated juveniles attending regular, nonalternative classes; keeping the records of a juvenile proceeding confidential; and removing the requirement of sealing the records.

Be it enacted by the Legislature of West Virginia:

That §49-5-2 and §49-5-18 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 circuit
44 court, from any foreign court, or from any magistrate court or
45 municipal court in West Virginia.

46 (f) (1) If a juvenile commits an act which would be a
47 crime if committed by an adult, and the juvenile is
48 adjudicated delinquent for that act, the jurisdiction of the
49 court which adjudged the juvenile delinquent continues until
50 the juvenile becomes twenty-one years of age. The court has
51 the same power over that person that it had before he or she
52 became an adult, and has the further power to sentence that
53 person to a term of incarceration: *Provided*, That any such
54 term of incarceration may not exceed six months. This
55 authority 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 (2) If a juvenile is adjudicated as a status offender
61 because he or she is habitually absent from school without
62 good cause, the jurisdiction of the court which adjudged the
63 juvenile a status offender continues until either the juvenile
64 becomes twenty-one years of age, completes high school,
65 completes a high school equivalent or other education plan
66 approved by the court, or the court otherwise voluntarily
67 relinquishes jurisdiction, whichever occurs first. If the
68 jurisdiction of the court is extended pursuant to this
69 subdivision, the court has the same power over that person
70 that it had before he or she became an adult: *Provided*, That

71 no person so adjudicated who has attained the age of nineteen
72 may be ordered to attend school in a regular, nonalternative
73 setting.

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

78 (h) A juvenile has the right to be effectively represented
79 by counsel at all stages of proceedings under the provisions
80 of this article. If the juvenile or the juvenile's parent or
81 custodian executes an affidavit showing that the juvenile
82 cannot afford an attorney, the court shall appoint an attorney,
83 who shall be paid in accordance with article twenty-one,
84 chapter twenty-nine of this code.

85 (i) In all proceedings under this article, the juvenile shall
86 be afforded a meaningful opportunity to be heard. This
87 includes the opportunity to testify and to present and
88 cross-examine witnesses. The general public shall be
89 excluded from all proceedings under this article except that
90 persons whose presence is requested by the parties and other
91 persons whom the circuit court determines have a legitimate
92 interest in the proceedings may attend: *Provided*, That in
93 cases in which a juvenile is accused of committing what
94 would be a felony if the juvenile were an adult, an alleged
95 victim or his or her representative may attend any related
96 juvenile proceedings, at the discretion of the presiding
97 judicial officer: *Provided, however*, That in any case in which
98 the alleged victim is a juvenile, he or she may be
99 accompanied by his or her parents or representative, at the
100 discretion of the presiding judicial officer.

101 (j) At all adjudicatory hearings held under this article, all
102 procedural rights afforded to adults in criminal proceedings

103 shall be afforded the juvenile unless specifically provided
104 otherwise in this chapter.

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

108 (l) Except for res gestae, extrajudicial statements made by
109 a juvenile who has not attained fourteen years of age to
110 law-enforcement officials or while in custody are not
111 admissible unless those statements were made in the presence
112 of the juvenile's counsel. Except for res gestae, extrajudicial
113 statements made by a juvenile who has not attained sixteen
114 years of age but who is at least fourteen years of age to
115 law-enforcement officers or while in custody, are not
116 admissible unless made in the presence of the juvenile's
117 counsel or made in the presence of, and with the consent of,
118 the juvenile's parent or custodian, and the parent or custodian
119 has been fully informed regarding the juvenile's right to a
120 prompt detention hearing, the juvenile's right to counsel,
121 including appointed counsel if the juvenile cannot afford
122 counsel, and the juvenile's privilege against
123 self-incrimination.

124 (m) A transcript or recording shall be made of all transfer,
125 adjudicatory and dispositional hearings held in circuit court.
126 At the conclusion of each of these hearings, the circuit court
127 shall make findings of fact and conclusions of law, both of
128 which shall appear on the record. The court reporter shall
129 furnish a transcript of the proceedings at no charge to any
130 indigent juvenile who seeks review of any proceeding under
131 this article if an affidavit is filed stating that neither the
132 juvenile nor the juvenile's parents or custodian have the
133 ability to pay for the transcript.

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

1 (a) One year after the juvenile's eighteenth birthday, or
2 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 not
5 limited to, law-enforcement files and records, may be kept in
6 a separate secure confidential place and the records may not
7 be inspected except by order of the circuit court.

8 (b) The records of a juvenile proceeding in which a
9 juvenile was transferred to criminal jurisdiction pursuant to
10 the provisions of section ten of this article shall be kept in a
11 separate secure confidential place and the records may not be
12 inspected except by order of the circuit court if the juvenile
13 is subsequently acquitted or found guilty only of an offense
14 other than an offense upon which the waiver or order of
15 transfer was based, or if the offense upon which the waiver or
16 order of transfer was based is subsequently dismissed.

17 (c) To keep the confidentiality of juvenile records, they
18 shall be returned to the circuit court in which the case was
19 pending and be kept in a separate confidential file. The
20 records shall be physically marked to show that they are to
21 remain confidential and shall be securely kept and filed in a
22 manner so that no one can have access to determine the
23 identity of the juvenile, except upon order of the circuit court.

24 (d) Marking the juvenile records to show they are to
25 remain confidential has the legal effect of extinguishing the
26 offense as if it never occurred.

27 (e) The records of a juvenile convicted under the criminal
28 jurisdiction of the circuit court pursuant to subdivision (1),
29 subsection (d), section ten of this article may not be marked
30 and kept as confidential.

31 (f) Any person who willfully violates this section is guilty
32 of a misdemeanor and, upon conviction thereof, shall be fined

33 not more than \$1,000, or confined in jail for not more than
34 six months, or both so fined and confined, and is liable for
35 damages in the amount of \$300 or actual damages, whichever
36 is greater.

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

Rocky Fifer
.....
Member ~~Chairman~~ Senate Committee

Randy Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Miranda
.....
Clerk of the Senate

Steph N. Sal
.....
Clerk of the House of Delegates

Jeffery J. K
.....
President of the Senate

[Signature]
.....
Speaker of the House of Delegates

SECRETARY OF STATE

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FILED

The within *is approved* this the *29th*
Day of *April*, 2013.

Carl Roy Lamb
.....
Governor

PRESENTED TO THE GOVERNOR

APR 26 2013

Time 10:45 am