

1                                   **H. B. 2314**

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3                   (By Delegate Hamilton)

4                   [Introduced January 12, 2011; referred to the  
5                   Committee on the Judiciary.]

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10 A BILL to amend and reenact §49-5-10 of the Code of West Virginia,  
11       1931, as amended, relating to adding child abuse and neglect  
12       which results in serious bodily injury to the list of crimes  
13       for which a juvenile may be charged as an adult.

14 *Be it enacted by the Legislature of West Virginia:*

15       That §49-5-10 of the Code of West Virginia, 1931, as amended,  
16 be amended and reenacted to read as follows:

17 **ARTICLE 5.   JUVENILE PROCEEDINGS.**

18 **§49-5-10.   Waiver and transfer of jurisdiction.**

19       (a) Upon written motion of the prosecuting attorney filed at  
20 least eight days prior to the adjudicatory hearing and with  
21 reasonable notice to the juvenile, his or her counsel, and his or  
22 her parents, guardians or custodians, the court shall conduct a  
23 hearing to determine if juvenile jurisdiction should or must be  
24 waived and the proceeding transferred to the criminal jurisdiction

1 of the court. Any motion filed in accordance with this section is  
2 to state, with particularity, the grounds for the requested  
3 transfer, including the grounds relied upon as set forth in  
4 subsection (d), (e), (f), ~~or~~ (g) or (h) of this section, and the  
5 burden is upon the state to establish the grounds by clear and  
6 convincing evidence. Any hearing held under the provisions of this  
7 section is to be held within seven days of the filing of the motion  
8 for transfer unless it is continued for good cause.

9       (b) No inquiry relative to admission or denial of the  
10 allegations of the charge or the demand for jury trial may be made  
11 by or before the court until the court has determined whether the  
12 proceeding is to be transferred to criminal jurisdiction.

13       (c) The court shall transfer a juvenile proceeding to criminal  
14 jurisdiction if a juvenile who has attained the age of fourteen  
15 years makes a demand on the record to be transferred to the  
16 criminal jurisdiction of the court. The case may then be referred  
17 to magistrate or circuit court for further proceedings, subject to  
18 the court's jurisdiction.

19       (d) The court shall transfer a juvenile proceeding to criminal  
20 jurisdiction if there is probable cause to believe ~~that~~:

21       (1) The juvenile is at least fourteen years of age and has  
22 committed the crime of treason under section one, article one,  
23 chapter sixty-one of this code; the crime of murder under sections  
24 one, two and three, article two of said chapter; the crime of

1 robbery involving the use or presenting of firearms or other deadly  
2 weapons under section twelve of said article; the crime of  
3 kidnaping under section fourteen-a of said article; the crime of  
4 first degree arson under section one, article three of said  
5 chapter; or the crime of sexual assault in the first degree under  
6 section three, article eight-b of said chapter; or

7       (2) The juvenile is at least fourteen years of age and has  
8 committed an offense of violence to the person which would be a  
9 felony if the juvenile was an adult. ~~Provided, That the juvenile~~  
10 This includes a juvenile who has been previously adjudged  
11 delinquent for the commission of an offense of violence to the  
12 person which would be a felony if the juvenile was an adult; or

13       (3) The juvenile is at least fourteen years of age and has  
14 committed an offense which would be a felony if the juvenile was an  
15 adult. ~~Provided, That the juvenile~~ This includes a juvenile who  
16 has been twice previously adjudged delinquent for the commission of  
17 an offense which would be a felony if the juvenile was an adult.

18       (e) The court may transfer a juvenile proceeding to criminal  
19 jurisdiction if there is probable cause to believe ~~that~~ the  
20 juvenile would otherwise satisfy the provisions of subdivision (1),  
21 subsection (d) of this section, but who is younger than fourteen  
22 years of age.

23       (f) The court may, upon consideration of the juvenile's mental  
24 and physical condition, maturity, emotional attitude, home or

1 family environment, school experience and similar personal factors,  
2 transfer a juvenile proceeding to criminal jurisdiction if there is  
3 probable cause to believe ~~that~~ the juvenile would otherwise satisfy  
4 the provisions of subdivision (2) or (3), subsection (d) of this  
5 section, but who is younger than fourteen years of age.

6 (g) The court may transfer a juvenile proceeding to criminal  
7 jurisdiction if the juvenile is at least fourteen years of age and  
8 there is probable cause to believe he or she has committed the  
9 crime of child abuse and neglect resulting in bodily injury under  
10 section four, article eight-d, chapter sixty-one of this code or  
11 the crime of child abuse and neglect resulting in death under  
12 section four-a, article eight-d, chapter sixty-one of this code.

13 ~~(g)~~ (h) The court may, upon consideration of the juvenile's  
14 mental and physical condition, maturity, emotional attitude, home  
15 or family environment, school experience and similar personal  
16 factors, transfer a juvenile proceeding to criminal jurisdiction if  
17 there is probable cause to believe ~~that~~:

18 (1) The juvenile, who is at least fourteen years of age, has  
19 committed an offense of violence to a person which would be a  
20 felony if the juvenile was an adult; or

21 (2) The juvenile, who is at least fourteen years of age, has  
22 committed an offense which would be a felony if the juvenile was an  
23 adult. ~~Provided, That the juvenile~~ This includes a juvenile who  
24 has been previously adjudged delinquent for the commission of a

1 crime which would be a felony if the juvenile was an adult; or

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

5       (4) The juvenile has committed a violation of the provisions  
6 of section four hundred one, article four, chapter sixty-a of this  
7 code which would be a felony if the juvenile was an adult involving  
8 the manufacture, delivery or possession with the intent to deliver  
9 a narcotic drug. For purposes of this subdivision, the term  
10 "narcotic drug" has the same definition as ~~that~~ set forth in  
11 section one hundred one, article one of said chapter; or

12       (5) The juvenile has committed the crime of second degree  
13 arson as defined in section two, article three, chapter sixty-one  
14 of this code involving setting fire to or burning a public building  
15 or church. For purposes of this subdivision, the term "public  
16 building" means a building or structure of any nature owned, leased  
17 or occupied by this state, a political subdivision of this state or  
18 a county board of education and used at the time of the alleged  
19 offense for public purposes. For purposes of this subdivision, the  
20 term "church" means a building or structure of any nature owned,  
21 leased or occupied by a church, religious sect, society or  
22 denomination and used at the time of the alleged offense for  
23 religious worship or other religious or benevolent purpose, or as  
24 a residence of a minister or other member of clergy.

1       ~~(h)~~ (i) For purposes of this section, the term "offense of  
2 violence" means an offense which involves the use or threatened use  
3 of physical force against a person.

4       ~~(i)~~ (j) If, after a hearing, the court directs the transfer of  
5 any juvenile proceeding to criminal jurisdiction, it shall state on  
6 the record the findings of fact and conclusions of law upon which  
7 its decision is based or shall incorporate findings of fact and  
8 conclusions of law in its order directing transfer.

9       ~~(j)~~ (k) A juvenile who has been transferred to criminal  
10 jurisdiction pursuant to the provisions of subsection (e), (f) or  
11 (g) of this section, by an order of transfer, has the right to  
12 either directly appeal an order of transfer to the Supreme Court of  
13 Appeals or to appeal the order of transfer following a conviction  
14 of the offense of transfer. If the juvenile exercises the right to  
15 a direct appeal from an order of transfer, the notice of intent to  
16 appeal and a request for transcript is to be filed within ten days  
17 from the date of the entry of any such order of transfer, and the  
18 petition for appeal is to be presented to the Supreme Court of  
19 Appeals within forty-five days from the entry of the order of  
20 transfer. The provisions of article five, chapter fifty-eight of  
21 this code pertaining to the appeals of judgments in civil actions  
22 applies to appeals under this chapter except as modified in this  
23 section. The court may, within forty-five days of the entry of the  
24 order of transfer, by appropriate order, extend and reextend the

1 period in which to file the petition for appeal for additional  
2 time, not to exceed a total extension of sixty days, as in the  
3 court's opinion may be necessary for preparation of the transcript  
4 ~~Provided, That~~ if the request for a transcript was made by the  
5 party seeking appeal within ten days of entry of the order of  
6 transfer. In the event any notice of intent to appeal and request  
7 for transcript be timely filed, proceedings in criminal court are  
8 to be stayed upon motion of the defendant pending final action of  
9 the Supreme Court of Appeals.

NOTE: The purpose of this bill is to allow for juveniles to be  
tried as adults for instances of child abuse resulting in bodily  
injury and child abuse which results in death.

Strike-throughs indicate language that would be stricken from  
the present law, and underscoring indicates new language that would  
be added.