

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 384**

4 (By Senators Cookman, Stollings, Unger, Plymale and Palumbo)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported March 22, 2013.]
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9
10 A BILL to amend and reenact §49-5-2 of the Code of West Virginia,
11 1931, as amended, relating to juvenile proceedings; increasing
12 the number of certified legal education credits required to
13 serve as a court-appointed attorney in juvenile cases; and
14 providing for appointment of an attorney where no attorney who
15 has completed the credits is available.

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

17 That §49-5-2 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 5. JUVENILE PROCEEDINGS.**

20 **§49-5-2. Juvenile jurisdiction of circuit courts, magistrate**
21 **courts and municipal courts; Constitutional**
22 **guarantees; hearings; evidence and transcripts.**

23 (a) The circuit court has original jurisdiction of proceedings
24 brought under this article.

25 (b) If during a criminal proceeding in any court it is

1 ascertained or appears that the defendant is under the age of
2 nineteen years and was under the age of eighteen years at the time
3 of the alleged offense, the matter shall be immediately certified
4 to the juvenile jurisdiction of the circuit court. The circuit
5 court shall assume jurisdiction of the case in the same manner as
6 cases which are originally instituted in the circuit court by
7 petition.

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

19 (d) Notwithstanding any other provision of this article,
20 municipal courts have concurrent juvenile jurisdiction with the
21 circuit court for a violation of any municipal ordinance regulating
22 traffic, for any municipal curfew ordinance which is enforceable or
23 for any municipal ordinance regulating or prohibiting public
24 intoxication, drinking or possessing alcoholic liquor or
25 nonintoxicating beer in public places, any other act prohibited by
26 section nine, article six, chapter sixty or section nineteen,

1 article sixteen, chapter eleven of this code or underage possession
2 or use of tobacco or tobacco products, as provided in article nine-
3 a, chapter sixteen of this code. Municipal courts may impose the
4 same punishment for these violations as a circuit court exercising
5 its juvenile jurisdiction could properly impose, except that
6 municipal courts have no jurisdiction to impose a sentence of
7 incarceration for the violation of these laws.

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

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

12 (2) By certification or transfer to the juvenile jurisdiction
13 of the circuit court from the criminal jurisdiction of the circuit
14 court, from any foreign court, or from any magistrate court or
15 municipal court in West Virginia.

16 (f) If a juvenile commits an act which would be a crime if
17 committed by an adult, and the juvenile is adjudicated delinquent
18 for that act, the jurisdiction of the court which adjudged the
19 juvenile delinquent continues until the juvenile becomes twenty-one
20 years of age. The court has the same power over that person that
21 it had before he or she became an adult, and has the further power
22 to sentence that person to a term of incarceration: *Provided*, That
23 any such term of incarceration may not exceed six months. This
24 authority does not preclude the court from exercising criminal
25 jurisdiction over that person if he or she violates the law after
26 becoming an adult or if the proceedings have been transferred to

1 the court's criminal jurisdiction pursuant to section ten of this
2 article.

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

7 (h) A juvenile has the right to be effectively represented by
8 counsel at all stages of proceedings under the provisions of this
9 article. If the juvenile or the juvenile's parent or custodian
10 executes an affidavit showing that the juvenile cannot afford an
11 attorney, the court shall appoint an attorney, who shall be paid in
12 accordance with article twenty-one, chapter twenty-nine of this
13 code. Effective, July 1, 2013, any attorney appointed who
14 represents juveniles shall complete eight hours of continuing
15 education every reporting period, or every two years, in topics
16 specifically related to juvenile proceedings: Provided, That where
17 no attorney has completed this training is available for such
18 appointment, the court shall appoint a competent attorney with
19 demonstrated knowledge of juvenile law. Any attorney appointed
20 pursuant to this section shall perform all duties required as an
21 attorney licensed to practice in the State of West Virginia.

22 (i) In all proceedings under this article, the juvenile shall
23 be afforded a meaningful opportunity to be heard. This includes
24 the opportunity to testify and to present and cross examine
25 witnesses. The general public shall be excluded from all
26 proceedings under this article except that persons whose presence

1 is requested by the parties and other persons whom the circuit
2 court determines have a legitimate interest in the proceedings may
3 attend: *Provided*, That in cases in which a juvenile is accused of
4 committing what would be a felony if the juvenile were an adult, an
5 alleged victim or his or her representative may attend any related
6 juvenile proceedings, at the discretion of the presiding judicial
7 officer: *Provided, however*, That in any case in which the alleged
8 victim is a juvenile, he or she may be accompanied by his or her
9 parents or representative, at the discretion of the presiding
10 judicial officer.

11 (j) At all adjudicatory hearings held under this article, all
12 procedural rights afforded to adults in criminal proceedings shall
13 be afforded the juvenile unless specifically provided otherwise in
14 this chapter.

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

18 (l) Except for *res gestae*, extrajudicial statements made by a
19 juvenile who has not attained fourteen years of age to law-
20 enforcement officials or while in custody are not admissible unless
21 those statements were made in the presence of the juvenile's
22 counsel. Except for *res gestae*, extrajudicial statements made by
23 a juvenile who has not attained sixteen years of age but who is at
24 least fourteen years of age to law-enforcement officers or while in
25 custody, are not admissible unless made in the presence of the
26 juvenile's counsel or made in the presence of, and with the consent

1 of, the juvenile's parent or custodian, and the parent or custodian
2 has been fully informed regarding the juvenile's right to a prompt
3 detention hearing, the juvenile's right to counsel, including
4 appointed counsel if the juvenile cannot afford counsel, and the
5 juvenile's privilege against self-incrimination.

6 (m) A transcript or recording shall be made of all transfer,
7 adjudicatory and dispositional hearings held in circuit court. At
8 the conclusion of each of these hearings, the circuit court shall
9 make findings of fact and conclusions of law, both of which shall
10 appear on the record. The court reporter shall furnish a
11 transcript of the proceedings at no charge to any indigent juvenile
12 who seeks review of any proceeding under this article if an
13 affidavit is filed stating that neither the juvenile nor the
14 juvenile's parents or custodian have the ability to pay for the
15 transcript.

(NOTE: The purpose of this bill is to increase the number of certified legal education credits required to serve as a court appointed attorney in juvenile cases.)

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