

1 **ENROLLED**

2 **Senate Bill No. 601**

3 (BY SENATORS COOKMAN, WALTERS AND STOLLINGS)

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5 [Passed April 13. 2013; in effect ninety days from passage/]
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10 AN ACT to amend and reenact §49-5-2 and §49-5-18 of the Code of
11 West Virginia, 1931, as amended, all relating to juvenile
12 offenders; extending circuit court jurisdiction over juvenile
13 status offenders adjudicated delinquent for habitual truancy
14 until the juvenile reaches twenty-one years of age or
15 completes a court ordered education plan; establishing an age
16 limit on adjudicated juveniles attending regular,
17 nonalternative classes; keeping the records of a juvenile
18 proceeding confidential; and removing the requirement of
19 sealing the records.

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

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

23 **ARTICLE 5. JUVENILE PROCEEDINGS.**

1 **§49-5-2. Juvenile jurisdiction of circuit courts, magistrate**
2 **courts and municipal courts; constitutional guarantees;**
3 **hearings; evidence and transcripts.**

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

6 (b) If during a criminal proceeding in any court it is
7 ascertained or appears that the defendant is under the age of
8 nineteen years and was under the age of eighteen years at the time
9 of the alleged offense, the matter shall be immediately certified
10 to the juvenile jurisdiction of the circuit court. The circuit
11 court shall assume jurisdiction of the case in the same manner as
12 cases which are originally instituted in the circuit court by
13 petition.

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

1 (d) Notwithstanding any other provision of this article,
2 municipal courts have concurrent juvenile jurisdiction with the
3 circuit court for a violation of any municipal ordinance regulating
4 traffic, for any municipal curfew ordinance which is enforceable or
5 for any municipal ordinance regulating or prohibiting public
6 intoxication, drinking or possessing alcoholic liquor or
7 nonintoxicating beer in public places, any other act prohibited by
8 section nine, article six, chapter sixty or section nineteen,
9 article sixteen, chapter eleven of this code or underage possession
10 or use of tobacco or tobacco products, as provided in article
11 nine-a, chapter sixteen of this code. Municipal courts may impose
12 the same punishment for these violations as a circuit court
13 exercising its juvenile jurisdiction could properly impose, except
14 that municipal courts have no jurisdiction to impose a sentence of
15 incarceration for the violation of these laws.

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

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

20 (2) By certification or transfer to the juvenile jurisdiction
21 of the circuit court from the criminal jurisdiction of the circuit
22 court, from any foreign court, or from any magistrate court or
23 municipal court in West Virginia.

24 (f) (1) If a juvenile commits an act which would be a crime if

1 committed by an adult, and the juvenile is adjudicated delinquent
2 for that act, the jurisdiction of the court which adjudged the
3 juvenile delinquent continues until the juvenile becomes twenty-one
4 years of age. The court has the same power over that person that
5 it had before he or she became an adult, and has the further power
6 to sentence that person to a term of incarceration: *Provided*, That
7 any such term of incarceration may not exceed six months. This
8 authority does not preclude the court from exercising criminal
9 jurisdiction over that person if he or she violates the law after
10 becoming an adult or if the proceedings have been transferred to
11 the court's criminal jurisdiction pursuant to section ten of this
12 article.

13 (2) If a juvenile is adjudicated as a status offender because
14 he or she is habitually absent from school without good cause, the
15 jurisdiction of the court which adjudged the juvenile a status
16 offender continues until either the juvenile becomes twenty-one
17 years of age, completes high school, completes a high school
18 equivalent or other education plan approved by the court, or the
19 court otherwise voluntarily relinquishes jurisdiction, whichever
20 occurs first. If the jurisdiction of the court is extended
21 pursuant to this subdivision, the court has the same power over
22 that person that it had before he or she became an adult: *Provided*,
23 That no person so adjudicated who has attained the age of nineteen
24 may be ordered to attend school in a regular, nonaltemative

1 setting.

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

6 (h) A juvenile has the right to be effectively represented by
7 counsel at all stages of proceedings under the provisions of this
8 article. If the juvenile or the juvenile's parent or custodian
9 executes an affidavit showing that the juvenile cannot afford an
10 attorney, the court shall appoint an attorney, who shall be paid in
11 accordance with article twenty-one, chapter twenty-nine of this
12 code.

13 (i) In all proceedings under this article, the juvenile shall
14 be afforded a meaningful opportunity to be heard. This includes
15 the opportunity to testify and to present and cross-examine
16 witnesses. The general public shall be excluded from all
17 proceedings under this article except that persons whose presence
18 is requested by the parties and other persons whom the circuit
19 court determines have a legitimate interest in the proceedings may
20 attend: *Provided*, That in cases in which a juvenile is accused of
21 committing what would be a felony if the juvenile were an adult, an
22 alleged victim or his or her representative may attend any related
23 juvenile proceedings, at the discretion of the presiding judicial
24 officer: *Provided, however*, That in any case in which the alleged

1 victim is a juvenile, he or she may be accompanied by his or her
2 parents or representative, at the discretion of the presiding
3 judicial officer.

4 (j) At all adjudicatory hearings held under this article, all
5 procedural rights afforded to adults in criminal proceedings shall
6 be afforded the juvenile unless specifically provided otherwise in
7 this chapter.

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

11 (l) Except for res gestae, extrajudicial statements made by a
12 juvenile who has not attained fourteen years of age to
13 law-enforcement officials or while in custody are not admissible
14 unless those statements were made in the presence of the juvenile's
15 counsel. Except for res gestae, extrajudicial statements made by
16 a juvenile who has not attained sixteen years of age but who is at
17 least fourteen years of age to law-enforcement officers or while in
18 custody, are not admissible unless made in the presence of the
19 juvenile's counsel or made in the presence of, and with the consent
20 of, the juvenile's parent or custodian, and the parent or custodian
21 has been fully informed regarding the juvenile's right to a prompt
22 detention hearing, the juvenile's right to counsel, including
23 appointed counsel if the juvenile cannot afford counsel, and the
24 juvenile's privilege against self-incrimination.

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

11 **§49-5-18. Confidentiality of juvenile records.**

12 (a) One year after the juvenile's eighteenth birthday, or one
13 year after personal or juvenile jurisdiction has terminated,
14 whichever is later, the records of a juvenile proceeding conducted
15 under this chapter, including, but not limited to, law-enforcement
16 files and records, may be kept in a separate secure confidential
17 place and the records may not be inspected except by order of the
18 circuit court.

19 (b) The records of a juvenile proceeding in which a juvenile
20 was transferred to criminal jurisdiction pursuant to the provisions
21 of section ten of this article shall be kept in a separate secure
22 confidential place and the records may not be inspected except by
23 order of the circuit court if the juvenile is subsequently
24 acquitted or found guilty only of an offense other than an offense

1 upon which the waiver or order of transfer was based, or if the
2 offense upon which the waiver or order of transfer was based is
3 subsequently dismissed.

4 (c) To keep the confidentiality of juvenile records, they
5 shall be returned to the circuit court in which the case was
6 pending and be kept in a separate confidential file. The records
7 shall be physically marked to show that they are to remain
8 confidential and shall be securely kept and filed in a manner so
9 that no one can have access to determine the identity of the
10 juvenile, except upon order of the circuit court.

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

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

18 (f) Any person who willfully violates this section is guilty
19 of a misdemeanor and, upon conviction thereof, shall be fined not
20 more than \$1,000, or confined in jail for not more than six months,
21 or both so fined and confined, and is liable for damages in the
22 amount of \$300 or actual damages, whichever is greater.