

**Senate Bill No. 559**

(By Senators Palumbo, Cookman, Stollings, Fitzsimmons and Miller)

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[Introduced March 18, 2013; referred to the Committee on the  
Judiciary.]

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A BILL to amend and reenact §49-5-2 of the Code of West Virginia, 1931, as amended, relating to expanding circuit court jurisdiction over certain juvenile status offenders.

*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.**

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

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of

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

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

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

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

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

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

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

17 (f) (1) If a juvenile commits an act which would be a crime if  
18 committed by an adult, and the juvenile is adjudicated delinquent  
19 for that act, the jurisdiction of the court which adjudged the  
20 juvenile delinquent continues until the juvenile becomes twenty-one  
21 years of age. The court has the same power over that person that  
22 it had before he or she became an adult, and has the further power  
23 to sentence that person to a term of incarceration: *Provided, That*  
24 any such term of incarceration may not exceed six months. This

1 authority does not preclude the court from exercising criminal  
2 jurisdiction over that person if he or she violates the law after  
3 becoming an adult or if the proceedings have been transferred to  
4 the court's criminal jurisdiction pursuant to section ten of this  
5 article.

6       (2) If a juvenile is adjudicated as a status offender because  
7 he or she is habitually absent from school without good cause, the  
8 jurisdiction of the court which adjudged the juvenile a status  
9 offender continues until either the juvenile becomes twenty-one  
10 years of age, completes high school, completes a high school  
11 equivalent or other education plan approved by the court, or the  
12 court otherwise voluntarily relinquishes jurisdiction, whichever  
13 occurs first. If the jurisdiction of the court is extended by this  
14 subdivision, the court has the same power over that person that it  
15 had before he or she became an adult.

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

20       (h) A juvenile has the right to be effectively represented by  
21 counsel at all stages of proceedings under the provisions of this  
22 article. If the juvenile or the juvenile's parent or custodian  
23 executes an affidavit showing that the juvenile cannot afford an  
24 attorney, the court shall appoint an attorney, who shall be paid in

1 accordance with article twenty-one, chapter twenty-nine of this  
2 code.

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

18       (j) At all adjudicatory hearings held under this article, all  
19 procedural rights afforded to adults in criminal proceedings shall  
20 be afforded the juvenile unless specifically provided otherwise in  
21 this chapter.

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

1       (1) Except for res gestae, extrajudicial statements made by a  
2 juvenile who has not attained fourteen years of age to  
3 law-enforcement officials or while in custody are not admissible  
4 unless those statements were made in the presence of the juvenile's  
5 counsel. Except for res gestae, extrajudicial statements made by  
6 a juvenile who has not attained sixteen years of age but who is at  
7 least fourteen years of age to law-enforcement officers or while in  
8 custody, are not admissible unless made in the presence of the  
9 juvenile's counsel or made in the presence of, and with the consent  
10 of, the juvenile's parent or custodian, and the parent or custodian  
11 has been fully informed regarding the juvenile's right to a prompt  
12 detention hearing, the juvenile's right to counsel, including  
13 appointed counsel if the juvenile cannot afford counsel, and the  
14 juvenile's privilege against self-incrimination.

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

NOTE: The purpose of this bill is to allow circuit courts to retain jurisdiction over juvenile status offenders after they turn eighteen in certain situations.

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