

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 384**

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

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[Originating in the Committee on the Judiciary;  
reported March 22, 2013.]

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A BILL to amend and reenact §49-5-2 of the Code of West Virginia, 1931, as amended, relating to juvenile proceedings; increasing the number of certified legal education credits required to serve as a court-appointed attorney in juvenile cases; and providing for appointment of an attorney where no attorney who has completed the credits is available.

*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.**

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

34 for 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  
44 circuit court, from any foreign court, or from any magistrate  
45 court or municipal court in West Virginia.

46 (f) If a juvenile commits an act which would be a crime  
47 if committed by an adult, and the juvenile is adjudicated  
48 delinquent for that act, the jurisdiction of the court which  
49 adjudged the juvenile delinquent continues until the juvenile  
50 becomes twenty-one years of age. The court has the same  
51 power over that person that it had before he or she became an

52 adult, and has the further power to sentence that person to a  
53 term of incarceration: *Provided*, That any such term of  
54 incarceration may not exceed six months. This authority  
55 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  
58 transferred to the court's criminal jurisdiction pursuant to  
59 section ten of this article.

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

64 (h) A juvenile has the right to be effectively represented  
65 by counsel at all stages of proceedings under the provisions  
66 of this article. If the juvenile or the juvenile's parent or  
67 custodian executes an affidavit showing that the juvenile  
68 cannot afford an attorney, the court shall appoint an attorney,  
69 who shall be paid in accordance with article twenty-one,

70 chapter twenty-nine of this code. Effective, July 1, 2013, any  
71 attorney appointed who represents juveniles shall complete  
72 eight hours of continuing education every reporting period,  
73 or every two years, in topics specifically related to juvenile  
74 proceedings: *Provided*, That where no attorney has  
75 completed this training is available for such appointment, the  
76 court shall appoint a competent attorney with demonstrated  
77 knowledge of juvenile law. Any attorney appointed pursuant  
78 to this section shall perform all duties required as an attorney  
79 licensed to practice in the State of West Virginia.

80 (i) In all proceedings under this article, the juvenile shall  
81 be afforded a meaningful opportunity to be heard. This  
82 includes the opportunity to testify and to present and cross  
83 examine witnesses. The general public shall be excluded  
84 from all proceedings under this article except that persons  
85 whose presence is requested by the parties and other persons  
86 whom the circuit court determines have a legitimate interest  
87 in the proceedings may attend: *Provided*, That in cases in

88 which a juvenile is accused of committing what would be a  
89 felony if the juvenile were an adult, an alleged victim or his  
90 or her representative may attend any related juvenile  
91 proceedings, at the discretion of the presiding judicial  
92 officer: *Provided, however,* That in any case in which the  
93 alleged victim is a juvenile, he or she may be accompanied  
94 by his or her parents or representative, at the discretion of the  
95 presiding judicial officer.

96 (j) At all adjudicatory hearings held under this article, all  
97 procedural rights afforded to adults in criminal proceedings  
98 shall be afforded the juvenile unless specifically provided  
99 otherwise in this chapter.

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

103 (l) Except for *res gestae*, extrajudicial statements made  
104 by a juvenile who has not attained fourteen years of age to  
105 law-enforcement officials or while in custody are not

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

119 (m) A transcript or recording shall be made of all  
120 transfer, adjudicatory and dispositional hearings held in  
121 circuit court. At the conclusion of each of these hearings, the  
122 circuit court shall make findings of fact and conclusions of  
123 law, both of which shall appear on the record. The court



124 reporter shall furnish a transcript of the proceedings at no  
125 charge to any indigent juvenile who seeks review of any  
126 proceeding under this article if an affidavit is filed stating  
127 that neither the juvenile nor the juvenile's parents or  
128 custodian have the ability to pay for the transcript.

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(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.)