

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4728

BY DELEGATE PRITT

[Introduced February 15, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-701 of the Code of West Virginia, 1931, as amended, relating
 2 to authorizing family courts to certify a juvenile to the jurisdiction of a circuit court for
 3 proceedings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

PART VII. JUVENILE PROCEEDINGS

**§49-4-701. Juvenile jurisdiction of circuit courts, magistrate courts, ~~and~~ municipal courts
and family courts; Constitutional guarantees; requirements; hearings; right to
 counsel; opportunity to be heard; evidence and transcripts.**

1 (a) The circuit court has original jurisdiction of proceedings brought under this article. A
 2 person under the age of 18 years who appears before the circuit court in proceedings under this
 3 article is a ward of the court and protected accordingly.

4 (b) If during a criminal proceeding in any court or a civil or family proceeding in family court
 5 it is ascertained or appears that the defendant or individual is under the age of 19 years and was
 6 under the age of 18 years at the time of ~~the~~ an alleged offense, the matter shall be immediately
 7 certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction
 8 of the case in the same manner as cases which are originally instituted in the circuit court by
 9 petition.

10 (c) Notwithstanding any other provision of this article, magistrate courts have concurrent
 11 juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a
 12 violation of §60-6-9, §16-9A-3, or §16-9A-4, or §11-16-19 of this code, or for any violation of
 13 chapter 20 of this code. Juveniles are liable for punishment for violations of these laws in the
 14 same manner as adults except that magistrate courts have no jurisdiction to impose a sentence
 15 of incarceration for the violation of these laws.

16 (d) Notwithstanding any other provision of this article, municipal courts have concurrent

17 juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating
18 traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance
19 regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or
20 nonintoxicating beer in public places, any other act prohibited by §60-6-9 or §11-16-19 of this
21 code or underage possession or use of tobacco or tobacco products, as provided in §16-9A-1 *et*
22 *seq.* of this code. Municipal courts may impose the same punishment for these violations as a
23 circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts
24 have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

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

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

29 (2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal
30 jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal
31 court in West Virginia.

32 (f)(1) If a juvenile commits an act which would be a crime if committed by an adult, and
33 the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the
34 juvenile delinquent continues until the juvenile becomes 21 years of age. The court has the same
35 power over that person that it had before he or she became an adult, and has the power to
36 sentence that person to a term of incarceration: *Provided*, That any term of incarceration may not
37 exceed six months. This authority does not preclude the court from exercising criminal jurisdiction
38 over that person if he or she violates the law after becoming an adult or if the proceedings have
39 been transferred to the court's criminal jurisdiction pursuant to section 704 of this article.

40 (2) If a juvenile is adjudicated as a status offender because he or she is habitually absent
41 from school without good cause, the jurisdiction of the court which adjudged the juvenile a status
42 offender continues until either the juvenile becomes 21 years of age, completes high school,

43 completes a high school equivalent or other education plan approved by the court, or the court
44 otherwise voluntarily relinquishes jurisdiction, whichever occurs first. If the jurisdiction of the court
45 is extended pursuant to this subdivision, the court has the same power over that person that it
46 had before he or she became an adult. No person so adjudicated who has attained the age of 19
47 may be ordered to attend school in a regular, nonalternative setting.

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

50 (h) A juvenile has the right to be effectively represented by counsel at all stages of
51 proceedings under this article, including participation in multidisciplinary team meetings, until the
52 child is no longer under the jurisdiction of the court. If the juvenile or the juvenile's parent or
53 custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall
54 appoint an attorney, who shall be paid in accordance with §29-21-1 *et seq.* of this code.

55 (i)(1) In all proceedings under this article, the juvenile will be afforded a meaningful
56 opportunity to be heard. This includes the opportunity to testify and to present and cross-examine
57 witnesses. The general public shall be excluded from all proceedings under this article except
58 that persons whose presence is requested by the parties and other persons whom the circuit court
59 determines have a legitimate interest in the proceedings may attend.

60 (2) In cases in which a juvenile is accused of committing what would be a felony if the
61 juvenile were an adult, an alleged victim or his or her representative may attend any related
62 juvenile proceedings, at the discretion of the presiding judicial officer.

63 (3) In any case in which the alleged victim is a juvenile, he or she may be accompanied
64 by his or her parents or representative, at the discretion of the presiding judicial officer.

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

68 (k) At all adjudicatory hearings held under this article, the rules of evidence applicable in

69 criminal cases apply, including the rule against written reports based upon hearsay.

70 (l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained
71 14 years of age to law-enforcement officials or while in custody are not admissible unless those
72 statements were made in the presence of the juvenile's counsel. Except for res gestae,
73 extrajudicial statements made by a juvenile who has not attained 16 years of age but who is at
74 least 14 years of age to law-enforcement officers or while in custody, are not admissible unless
75 made in the presence of the juvenile's counsel or made in the presence of, and with the consent
76 of, the juvenile's parent or custodian, and the parent or custodian has been fully informed
77 regarding the juvenile's right to a prompt detention hearing, the juvenile's right to counsel,
78 including appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege
79 against self-incrimination.

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

NOTE: The purpose of this bill is to authorize family courts to certify a juvenile to the jurisdiction of a circuit court for proceedings.

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