

COMMITTEE SUBSTITUTE

FOR

H. B. 2701

(By Delegates Shaver, Argento and Perry)

(Originating in the House Committee on the Judiciary)

[March 4, 2009]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-5-12b, relating to an escape of any person from the custody of the Division of Juvenile Services as either a misdemeanor or a felony depending on the type of facility they were committed to in when the escape occurred; providing definitions; providing for criminal penalties; establishing venue for the proceedings; and allowing for the transfer of jurisdiction back to the original committing court if the person is under eighteen and all parties agree.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-5-12b, to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12b. Escape from custody of the Director of Juvenile

Services.

(a) For purposes of this section:

(1) "Community-based staff-secure facility" means any public or private pre-adjudication and pre-dispositional residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents;

(2) "Hardware-secure detention center" means any facility operated by or contracted with the Division of Juvenile Services for the pre-adjudication residential placement of juveniles to assure the safe and secure confinement of the juvenile pending the resolution of a petition for a delinquent act which if committed by an adult would be a crime; and

(3) "Juvenile correctional facility" means any facility operated by or contracted with the Division of Juvenile Services for treatment, instruction and rehabilitation of juveniles that have been adjudicated delinquent and committed to the Division of Juvenile Services upon disposition.

(b) Any person who escapes from the custody of the director of the Division of Juvenile Services, who was committed to a community-based staff-secure facility, is guilty of a misdemeanor, and upon conviction thereof, shall be confined in

jail for not more than one year. A term of imprisonment imposed pursuant to the provisions of this section shall be imposed as a consecutive sentence and shall not be served concurrently with any imprisonment, confinement or detention imposed under any prior sentence being served or otherwise being discharged at the time such person commits an offense under the provisions of this section. Time served by such person after any other prior sentence has been served or otherwise discharged shall be applied to any sentence which may ultimately be imposed for an offense under this section. Venue for the prosecution of a violation of this section shall be in the county in which the escape occurs: *Provided*, That if the person is under the age of eighteen, upon agreement of all parties, the prosecution of the escape may be transferred to the circuit court from which the juvenile was originally committed.

(c) Any person who escapes from the custody of the Division of Juvenile Services, who was committed to a juvenile correctional facility or a hardware-secure detention center, is guilty of a felony, and upon conviction thereof, shall be imprisoned in a state correctional facility not more than five years. A term of imprisonment imposed pursuant to the provisions of this section shall be imposed as a consecutive sentence and shall not be served concurrently with any imprisonment, confinement or detention imposed under any prior sentence being served or otherwise being discharged at the time such person

commits an offense under the provisions of this section. Time served by such person after any other prior sentence has been served or otherwise discharged shall be applied to any sentence which may ultimately be imposed for an offense under this section. Venue for the prosecution of a violation of this section shall be in the county in which the escape occurs: *Provided*, That if the person is under the age of eighteen, upon agreement of all parties, the prosecution of the escape may be transferred to the circuit court from which the juvenile was originally committed.