WEST VIRGINIA CODE: §25-5-11

§25-5-11. Standards of operation; violations.

(a) The facility shall be staffed at all times. The staffing pattern shall be adequate to ensure intense supervision of inmates and maintenance of security within the facility. The staffing pattern shall address the facility's operations and programs, transportation and security needs. In determining security need, considerations shall include, but not be limited to, the proximity of the facility to neighborhoods and schools.

(b) The facility shall provide the following services and programs which shall be consistent with the standards of the jail and correctional facilities standards commission:

(1) Health and medical services;

(2) Food services;

(3) Mail, telephone use, and visitation;

(4) Access to legal services and legal materials;

(5) Vocational training;

(6) Educational programs;

(7) Counseling services including personal counseling;

(8) Drug and alcohol counseling; and

(9) Sanitation services.

(c) In addition to the requirements of subsections (a) and (b) of this section, all facilities governed by this article shall be designed, constructed and at all times maintained and operated in accordance with standards and rules of the jail and correctional facility standards commission pursuant to section nine, article twenty, chapter thirty-one of the Code of West Virginia, as amended: Provided, That any more stringent requirements mandated by the commissioner shall be complied with.

(d) All facilities governed by this article shall at all times comply with all applicable federal and state Constitutional standards, all applicable federal laws and rules and regulations, state laws and rules and local ordinances, building, safety and health codes.

(e) If any of the requirements of subsection (d) of this section have not been complied with, the commissioner may cause a notice of violation to be served upon the contractor or his duly authorized agent. A copy of the notice shall be handed to the contractor or his duly

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authorized agent in person or served by United States certified mail, return receipt requested, addressed to the contractor at the permanent address shown on the application for approval to operate a prison facility. The notice shall specify in what respects the contractor has failed to comply with subsection (d) and shall specify a reasonable time for abatement of the violation not to exceed fifteen days. If the contractor has not abated the violation within the time specified in the notice, or any reasonable extension thereof, which extension is not to exceed seventy-five days, the commissioner shall assess a penalty as hereinafter provided. If a violation is not abated within the time specified or any extension thereof, a mandatory civil penalty of not less than $500 per day per violation shall be assessed until the violation is abated.

(f) Any contractor who violates any part of subsection (d) may also be assessed an additional civil penalty in the discretion of the commissioner. The penalty shall not exceed $500 per day. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, the commissioner shall consider the contractor's history of previous violations at the particular facility, the seriousness of the violation, including any hazard to the health or safety of the public, whether the contractor was negligent, and the demonstrated good faith of the contractor in attempting to achieve timely compliance after notification of the violation.

(g)(1) Upon the issuance of a notice or order pursuant to this section, the commissioner shall, within thirty days, set a proposed penalty assessment and notify the contractor in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt thereof or, if the contractor desires to contest the violation, an informal conference with the commissioner may be requested within fifteen days or a formal hearing before three members of the Regional Jail Authority, who are appointed by the secretary to hear cases pursuant to this article, may be requested within thirty days. The notice of proposed penalty assessment shall advise the contractor of the right to an informal conference or a formal hearing pursuant to this section. When an informal conference is requested, the contractor shall have fifteen days from receipt of the commissioner's decision resulting therefrom to request a formal hearing before three members of the Regional Jail Authority.

(A) When an informal conference is held, the commissioner shall have authority to affirm, modify or vacate the notice, order or proposed penalty assessment.

(B) Formal hearings shall be subject to the provisions of article five, chapter twenty-nine-a of this code. Following the hearing, the three Regional Jail Authority members may affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment and costs of the proceedings be paid.

(2) Civil penalties under this section may be recovered by the commissioner in the circuit court in the county where the facility is located or in the circuit court of Kanawha County. Civil penalties collected under this article shall be deposited with the state Treasurer to the

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credit of the Division of Corrections in a special revenue fund to be known as the "Private Prison Fund," which is hereby created.

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