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# **WEST VIRGINIA CODE CHAPTER 25**

*WV Legislature*

**§25-1-1**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-1a**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-2.**

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

**§25-1-3**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-3a**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-3b**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-3c**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-4**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

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**§25-1-5**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-5a**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-6**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-7**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-8**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-9.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

§25-1-10

Repealed

Acts, 2017 Reg. Sess., Ch. 34.

WV Legislature

**§25-1-10a.**

Repealed.

Acts, 1961 Reg. Sess., Ch. 138.

WV Legislature

**§25-1-11**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-11a**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-11b**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-11c**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-11d**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-11e**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-11f**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-12.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-13**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-14**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-15**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-16**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-16a**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-17**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-18**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-19**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-20**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-21**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-22**

**Repealed**

**Acts, 2018 Reg. Sess., Ch. 107.**

*WV Legislature*

**§25-1-23.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-24.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-25.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-26.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-27.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-28.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-29.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-30.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-31.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-32.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-33.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1-34.**

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-1A-1. Definitions.**

As used in this article,

(a) "Civil action" means any action or appeal from an action filed by any current or former inmate or his or her personal representative with respect to conditions of confinement, including, but not limited to, petitions for extraordinary writs, civil actions under 42 U.S.C. §1983 and other federal and state laws and negligence actions. Actions that exclusively concern an inmate's sentence or conviction are not subject to the requirements of this article.

(b) "Correctional facility" means any county jail, regional jail or any facility operated by the Division of Corrections, the West Virginia Regional Jail and Correctional Facility Authority or Division of Juvenile Services for the confinement of inmates.

(c) "Inmate" means any person confined in a correctional facility who is accused of, convicted of, sentenced for or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program.

**§25-1A-2. Exhaustion of ordinary administrative remedies.**

(a) As used in this section, an "ordinary administrative remedy" is a formal administrative process by which an inmate submits a grievance seeking redress or presenting concerns regarding any general or particular aspect of prison life which does not involve violence, sexual assault or sexual abuse against an inmate. An ordinary administrative remedy includes, but is not limited to, complaints concerning food quality, health care, appeals of prison discipline, physical plant, classification, staff treatment or some other alleged wrong.

(b) The Commissioner of the Division of Corrections and the Executive Director of the Regional Jail Authority are authorized to establish procedures for ordinary administrative remedies according to their respective authority for issuance of policies governing the conduct of inmates.

(c) An inmate may not bring a civil action regarding an ordinary administrative remedy until the procedures promulgated by the agency have been exhausted.

(d) An ordinary administrative remedy is considered exhausted when the inmate's grievance complies with duly promulgated rules and regulations regarding inmate grievance procedures, has been accepted, fully appealed and has received a final decision from the Commissioner of Corrections or the Commissioner's designee, or the Executive Director of the Regional Jail Authority, or the director's designee.

(e) The agency shall issue a final decision regarding an ordinary administrative remedy no later than sixty days from the date the inmate filed his or her initial grievance. Computation of the sixty-day time period shall not include time consumed by inmates in preparing any administrative appeal. The agency may claim an extension of time to issue a final decision regarding an ordinary administrative remedy of up to thirty days if the sixty day final decision time frame is insufficient to make an appropriate decision, except in cases involving a threat to health, life or safety of the prisoner. The agency shall notify the inmate in writing of any such extension and provide a date by which the final decision regarding an ordinary administrative remedy will be made.

**§25-1A-2a. Exhaustion of administrative remedies which address sexual assault and sexual abuse.**

(a) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident involving sexual assault or sexual abuse against an inmate. For purposes of this article, "sexual assault" or "sexual abuse" means any offense which would constitute a violation of article eight-b, chapter sixty-one of this code. The agency shall ensure that:

(1) An inmate who alleges an incident involving sexual assault or sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint; and,

(2) Such grievance may not be referred to a staff member who is the subject of the complaint.

(b) The agency shall issue a final agency decision on the merits of any portion of a grievance within sixty days of the initial filing of the grievance. Computation of the sixty-day time period shall not include time consumed by inmates in preparing any administrative appeal. The agency may claim an extension of time to respond, of up to thirty days, if the normal time period for response is insufficient to make an appropriate decision, except in cases involving threat to health, life or safety of the prisoner. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(c) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.

(d) Third parties, including fellow inmates, staff members, family members, attorneys and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to incidents involving sexual assault or sexual abuse, and shall also be permitted to file such requests on behalf of inmates. If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

(e) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of sexual assault or sexual abuse, the agency shall immediately forward the grievance, or any portion thereof that alleges the substantial risk of sexual assault or sexual abuse, to a level of review at which immediate corrective action may be taken, shall provide an initial response within forty-eight hours, and shall issue a final agency decision within five calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of sexual assault or sexual abuse and the action taken in response to the emergency grievance.

(f) The agency shall establish procedures for processing an inmate grievance which alleges imminent violence. The commissioner and the executive director shall, by December 31, 2013, propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to meet the requirements of this subsection.

(g) An administrative remedy for an allegation of violence, sexual assault or sexual abuse against an inmate is considered exhausted when the inmate's grievance has complied with duly promulgated rules and regulations regarding inmate grievance procedures for imminent violence, sexual assault or sexual abuse, has been accepted, fully appealed and has received a final decision from the Commissioner of Corrections or the Commissioner's designee, or the Executive Director of the Regional Jail Authority, or the director's designee.

(h) The agency may discipline an inmate for filing a grievance related to sexual assault or sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

(i) Notwithstanding any other provision of this code, no inmate shall be prevented from filing an appeal of his or her conviction or from bringing a civil or criminal action alleging violence, sexual assault or sexual abuse, after exhaustion of administrative remedies. If such a civil or criminal action is ultimately dismissed by a judge as frivolous, then the inmate shall pay the filing costs associated with the civil or criminal action as provided for in this article.

**§25-1A-3. Payment of filing fees and court costs.**

(a) Notwithstanding any other provision of this code, an inmate may not file with any court of this state a civil action without the payment of filing fees as set forth in this section: Provided, That the collection of the full filing fee is not required before the inmate's claim may be filed and served.

(b) When an inmate seeks to file a civil action as an indigent and requests that customary filing fees and court costs be waived, the clerk of the court in which the inmate has filed his or her complaint shall notify the warden or designated representative of the facility in which the inmate resides of the inmate's request and the amount of filing costs. Once the facility receives notification, the custodian of the inmate's trust account shall immediately compute the average monthly balance of the inmate's trust account over the preceding three-month period and deduct from the inmate's trust account thirty percent of the average balance as a partial filing fee. The custodian shall deduct that same amount or up to thirty percent of the balance of the inmate's trust account, whichever is greater, on a monthly basis until the filing fee is paid in full.

(c) The custodian of the inmate's trust account shall place all funds deducted from the inmate's trust into a special account designated as the "filing fees account," to be established for each correctional facility and to be administered by the custodian and warden or chief administrator of each facility. Biannually the custodian and warden or chief administrator of the filing fees account shall distribute the balance of the account, minus any expense in maintaining that account, to the circuit clerk of the county in which the state correctional facility resides as a filing fee for all suits filed by indigent inmates of that facility.

**§25-1A-4. Judicial review of initial pleading; dismissal.**

(a) The court shall, prior to issuance of process, review the complaint, petition or other initial pleading to determine whether a civil action is frivolous or malicious as defined in subsection (b) of this section and fails to state a claim for which relief can be granted or seeks monetary relief from a party who is immune from such relief. If the complaint, petition or other initial pleading is frivolous or malicious, fails to state a claim for which relief can be granted or seeks monetary relief from a party who is immune from such relief, the court shall not issue process and shall dismiss the case.

(b) A civil action is frivolous or malicious if it:

(1) Has no arguable basis in fact or law; or

(2) Is substantially similar to a previous civil action in which the inmate did not substantially prevail, either in that it is brought against the same parties or in that the civil action arises from the same operative facts of a previous civil action; or

(3) Has been brought with the intent to harass an opposing party.

**§25-1A-5. Hearings.**

(a) To the extent practicable, a court shall conduct pretrial proceedings in any civil action in which an inmate's participation is required or permitted by telephone, video conference or other telecommunications technology without removing the inmate from the facility in which an inmate is confined.

(b) Subject to the agreement of the official with custody over an inmate, the court may conduct hearings at the correctional facility in which an inmate is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference or other communications technology in any hearing held at the facility.

(c) No court may compel the commissioner of the Division of Corrections or warden of any correctional facility operated by the Division of Corrections or the executive director of the West Virginia Regional Jail and Correctional Facility Authority or any administrator of any facility operated by the West Virginia Regional Jail and Correctional Facility Authority to transport to court any inmate having a maximum security classification if the warden or administrator of the facility tenders to the court an affidavit attesting to the custody level of the inmate and stating that, in the warden's or administrator's opinion, the inmate possesses a substantial risk of escape if transported. If a warden or administrator files an affidavit, then the warden or administrator shall, upon demand of the court, provide suitable room to conduct any trial or hearings at which an inmate's presence is required. The warden or administrator shall allow the court, counsel and all court personnel access to the correctional facility to conduct the proceedings the court considers necessary.

**§25-1A-6. Loss of good-time credit.**

Upon a finding by the court that a civil action is frivolous, malicious or intended to harass the party against whom the civil action is brought or that the inmate knowingly testified falsely or otherwise knowingly presented false evidence or information to the court, the court may order that the inmate forfeit earned good-time credit. A court may take additional evidence to determine the appropriate amount of good-time credit to be forfeited.

WV Legislature

**§25-1A-7. Court-ordered payments.**

Any compensatory damages awarded to an inmate in connection with a civil action, after deduction for any attorney fees, shall be paid directly to satisfy any outstanding court-ordered payments pending against the inmate, including, but not limited to, restitution or child support. The remainder of the award after full payment of all pending court orders shall be forwarded to the inmate.

WV Legislature

**§25-1A-8. Attorney fees.**

(a) In any action based upon prison conditions brought under any statute or Constitutional provision, if attorney fees are recoverable pursuant to any state statute, no attorney fees shall be awarded to a prisoner, except to the extent that:

(1) The fees were directly and reasonably incurred by an attorney in proving an actual violation of prisoner's rights protected by the Constitution or statute; and

(2) The amount of the fees is proportionately related to the court-ordered relief for the violation, or the fees were directly and reasonably incurred in enforcing the relief ordered for the violation.

(b) Nothing in this section shall prohibit a prisoner from entering into an agreement to pay an attorney fee in excess of the amount authorized in this section, if the fee is paid by the prisoner rather than by another party to a civil action.

**§25-1A-9. Limitations on civil actions brought by prisoners in forma pauperis.**

(a) Absent an order of a circuit court permitting the filing, an inmate is not permitted to proceed in forma pauperis when bringing a civil action or appealing a judgment in a civil action or proceeding if he or she has, on three or more occasions, while incarcerated or detained in any correctional facility, brought an action or appeal in any court of this state that was dismissed on the grounds it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the inmate is under imminent danger of serious physical injury.

(b) Any civil action asserting an inmate is under imminent danger of serious physical injury shall state with particularity the factual basis of the assertion.

(c) The provisions of subsection (a) of this section do not apply to an inmate seeking a writ of habeas corpus ad subjiciendum relating solely to the propriety of an inmate's custody.

**§25-1B-1. Authorization; definitions.**

(a) The Division of Corrections may establish a correctional center nursery in one or more of the correctional centers for women operated by the division. The program would allow eligible inmates and children born to them while in the custody of the division to reside together in the institution. In establishing this program, neither the inmate's participation in the program nor any provision of this article shall affect, modify or interfere with the inmate's custodial rights to the child nor does it establish legal custody of the child with the division.

(b) As used in this article:

(1) "Correctional Center Nursery Program" means the program authorized by this article.

(2) "Public assistance" means all forms of assistance, including monetary assistance from any public source paid either to the mother or child or any other person on behalf of the child.

(3) "Support" means the payment of money, including interest:

(A) For a child or spouse ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of \$10 upon \$100 per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time;

(B) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or

(C) For a mother, ordered by a court of competent jurisdiction, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

(4) "Support order" means an award of support by order of a court of competent jurisdiction.

**§25-1B-2. Eligible inmates.**

An inmate is eligible to participate in the Correctional Center Nursery Program if she is pregnant at the time she is delivered into the custody of the Division of Corrections; she gives birth on or after the date the program is implemented; and she and the child meet any other criteria established by the division. Placement into the nursery program shall be by internal classification of the division. A sentencing court is without jurisdiction to order a placement of an inmate into the nursery program.

WV Legislature

**§25-1B-3. Terms of participation.**

To participate in the Correctional Center Nursery Program, each eligible inmate selected by the division shall agree in writing to:

- (1) Comply with any educational, counseling or other requirements established for the program by the Division of Corrections;
- (2) If eligible, have the child participate in the Medicaid program or a health insurance program;
- (3) Accept the normal risks of child bearing;
- (4) Abide by any court decisions regarding the allocation of parental rights and responsibilities with respect to the child;
- (5) Assign to the division any rights to support from any other person; and
- (6) Specify with whom the child is to be placed in the event the inmate's participation in the program is terminated for a reason other than release from imprisonment.

**§25-1B-4. Termination of inmate's participation in program.**

An inmate's participation in the Correctional Center Nursery Program may be terminated by the division if one of the following occurs:

- (a) The inmate fails to comply with the agreement entered into under section three of this article;
- (b) The inmate's child becomes seriously ill, cannot meet medical criteria established by the division for the program or otherwise cannot safely participate in the program;
- (c) A court of competent jurisdiction issues an order that designates a person other than the inmate as the child's custodial parent and legal custodian;
- (d) A court of competent jurisdiction grants custody of the child to a person other than the inmate;
- (e) An order is issued granting shared parenting of the child;
- (f) An order regarding the child is issued granting temporary, permanent, or legal custody of the child to a person other than the inmate, or to a public children services agency or private child placing agency; or
- (g) The inmate is released from imprisonment.

**§25-1B-5. Collection of child support.**

(a) The rights to support assigned by any inmate shall constitute an obligation of the person who is responsible for providing the support to the division for the support provided the inmate and child pursuant to the Correctional Center Nursery Program. The Bureau of Child Support Enforcement shall collect support payments made pursuant to the assignment and forward them to the division.

(b) The division may receive the following:

(1) Money that is assigned or donated on behalf of, and public assistance provided to, a specific inmate or child participating in the Correctional Center Nursery Program; and

(2) Money or other property assigned or donated to establish and maintain the Correctional Center Nursery Program.

(c) Ten percent of the moneys described in this section shall be placed in the mandatory savings account of the mother for whom the money was received. The remaining moneys shall be used for items not covered by other program funds.

**§25-1B-6. Program support; Correctional Center Nursery Fund.**

The division shall obtain sufficient resources to initiate and maintain the Correctional Center Nursery Program if the program is established. The division may accept gifts, grants, property, funds, money, interest on investment of the fund, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, foundation, firm or corporation to support the program. All moneys collected shall be deposited in a special revenue account, designated the Correctional Center Nursery Fund, which is hereby created. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2008, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature. If there are sufficient moneys in the fund, they shall be invested by the West Virginia Investment Management Board in accordance with the provisions of article six, chapter twelve of this code.

**§25-1B-7. Voluntary regulation.**

Notwithstanding any other provision of this code to the contrary, neither the Correctional Center Nursery Program nor the division, with respect to the program, is subject to any regulation, licensing or oversight by the Office of Health Facility Licensure and Certification unless the division and the Office of Health Facility Licensure and Certification agree to voluntary regulation, licensing or oversight.

WV Legislature

§25-2-1.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-2.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-3.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-4.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-5.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-6.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-7.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-8.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-9.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-10.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-11.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-12.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-13.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-14.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-15.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-16.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-17.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-18.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-2-19.

Repealed.

Acts, 1935 Reg. Sess., Ch. 76.

WV Legislature

§25-3-1.

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

§25-3-2.

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

§25-3-3.

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

§25-3-4.

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

§25-3-5.

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

§25-3-6.

Repealed.

Acts, 1969 Reg. Sess., Ch. 139.

WV Legislature

**§25-4-1. Purpose of article.**

The purpose of this article is to provide appropriate facilities for the housing of young adult offenders convicted of or pleading guilty to violation of law before courts with original jurisdiction, who are amenable to discipline other than in close confinement, and to give better opportunity to young adult offenders for reformation and encouragement of self-discipline.

WV Legislature

**§25-4-2. Establishment of centers.**

The West Virginia commissioner of corrections is authorized to establish, operate and maintain centers to be operated in connection with the state correctional system as provided in this article.

WV Legislature

**§25-4-3. Authority of commissioner of corrections.**

The West Virginia commissioner of corrections has the authority to acquire land and other property by purchase, grant, gift or otherwise in connection with the establishment of centers and to construct buildings, fences and other facilities, and to acquire personal property necessary for the maintenance and operation of the centers; to direct all needed improvements and repairs necessary for the proper upkeep of the centers, and to provide for the necessary food, medical treatment and safekeeping of persons confined in the centers; and to employ personnel to operate the centers and to provide the necessary work and other programs for the offenders assigned to the centers.

**§25-4-4. Warden.**

Each center shall be under the direction of a warden who shall have the minimum qualification of a college degree with a major in criminal justice or a related field and the powers and duties as described in sections eleven and eleven-a, article one of this chapter. The warden shall be paid an annual salary to be fixed by the Commissioner of Corrections. The warden, subject to the authority of the commissioner, has the responsibility for the overall operation of the center.

At each center the warden shall administer programming which shall include the following components:

- (1) A work program;
- (2) An educational program in accordance with section thirteen-f, article two, chapter eighteen of this code;
- (3) A recreational program; and
- (4) A counseling program with an emphasis on substance abuse and life skills.

**§25-4-5.**

Repealed.

Acts, 1999 Reg. Sess., Ch. 64.

WV Legislature

**§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.**

The circuit court may suspend the imposition of sentence of any young adult, as defined in this section, convicted of or pleading guilty to a felony offense, other than an offense punishable by life imprisonment, including, but not limited to, felony violations of the provisions of chapter seventeen-c of this code, who had attained his or her eighteenth birthday but had not reached his or her twenty-fourth birthday at the time the offense was committed for which the offender is being sentenced and commit the young adult to the custody of the West Virginia Commissioner of Corrections to be assigned to a center: Provided, That no person over the age of twenty-five may be committed pursuant to this section. Young adult offenders who have previously been committed to a young adult offender center are not eligible for commitment to this program. The period of confinement in the center shall be for a period of not less than six months but not more than two years to successfully complete the program requirements set by the warden. The court shall order a presentence investigation to be conducted and provide the warden with a copy of the presentence investigation report, along with the commitment order.

If, in the opinion of the warden, the young adult offender is an unfit person to remain in the center, the offender shall be returned to the committing court to be dealt with further according to law. The offender is entitled to a hearing before the committing court to review the warden's determination. The standard for review is whether the warden, considering the offender's overall record at the center and the offender's compliance with the center's rules, policies, procedures, programs and services, abused his or her discretion in determining that the offender is an unfit person to remain in the center. At the hearing before the committing court, the state need not offer independent proof of the offender's disciplinary infractions contained in the record of the center when opportunity for an administrative hearing on those infractions was previously made available at the institution. If the court upholds the warden's determination, the court may sentence the offender for the crime for which the offender was convicted. In his or her discretion, the judge may allow the defendant credit on the sentence for time the offender spent in the center.

A young adult offender shall be returned to the jurisdiction of the court which originally committed the offender when, in the opinion of the warden, the young adult offender has satisfactorily completed the center training program. The offender is then eligible for probation for the offense the offender was convicted of or plead guilty to and the judge of the court shall immediately place the offender on probation. If the court finds there is reasonable cause to believe that the offender has engaged in new criminal conduct between his or her release from the center and the sentencing hearing for the crime for which the offender was ordered to the center, the judge may sentence the offender for the crime for which the offender was first convicted, with credit for the time spent at the center. In the event the offender's probation is subsequently revoked, the judge shall impose the sentence the young adult offender would have originally received had the offender not been committed to the center and subsequently placed on probation. The court shall, however,

give the offender credit on his or her sentence for the time spent in the center.

WV Legislature

**§25-4-7. Physical, educational and psychological examinations; transfer and placement.**

Every young adult offender committed under this article shall be given complete physical, educational and psychological examinations in the same manner and under the same protections and requirements of subsections (b) and (c), section two, article one, chapter twenty-eight of this code. In addition to those requirements, all admission, transfer and placement requirements and authority provided to the commissioner in subsections (d) and (e), section two, article one, chapter twenty-eight of this code are applicable.

**§25-4-8. Labor, study or activities may be required.**

Offenders assigned to centers may be required to labor on the buildings and grounds of the center, in the making of forest roads, for fire prevention and fire fighting, on forestation and reforestation of public lands, on the making of fire trails and firebreaks, on fire suppression, on building or improving public parks or lands, or engage in any studies or activities prescribed or permitted by the warden, subject to the approval of the commissioner of corrections.

WV Legislature

**§25-4-9. Wages of offenders.**

The West Virginia commissioner of corrections may provide for the payment of wages to the offenders assigned to centers for the work they perform.

WV Legislature

**§25-4-10. Authority to arrest inmates.**

All officers and employees of a center have the power of peace officers so far as necessary to take into custody center inmates.

WV Legislature

**§25-4-11. Escape; aiding escape.**

(a) Any inmate of a center who shall escape from said center or the custody of an officer or employee of such center shall be guilty of a felony and, upon conviction thereof, be committed to the custody of the commissioner of corrections for not more than five years. A term of incarceration imposed pursuant to the provisions of this section shall be imposed as a consecutive sentence and not served concurrently with any sentence or period of confinement previously imposed.

(b) Any person who willfully permits or aids any inmate of such center to escape therefrom or conceals him with the intent of enabling him to elude pursuit is guilty of a felony and, upon conviction thereof, shall be committed to the custody of the commissioner of corrections for not more than five years.

**§25-4-12. Independent or cooperative establishment of centers.**

The West Virginia commissioner of public institutions may establish centers independently or in cooperation with the natural resources commission of West Virginia on such terms as may be agreed upon by the commissioner of public institutions and the director of the department of natural resources.

WV Legislature

**§25-5-1. Short title.**

This article shall be known as "The Private Prison Enabling and Contracting Act."

WV Legislature

**§25-5-2. Legislative findings and purpose.**

The Legislature hereby finds that adequate and modern prison facilities are essential to the safety and welfare of the people of this state and other states, and that contracting for portions of governmental services is a viable alternative for this state and its political subdivisions.

Further, the Legislature finds that allowing for the establishment of private prison facilities is an economic development opportunity for local communities and will augment the General Revenue Fund.

**§25-5-3. Definitions.**

As used in this article, unless the context clearly requires a different meaning, the term:

(a) "Commissioner" means the commissioner of the Division of Corrections.

(b) "Contracting agency" means the appropriate governmental agency with the authority to enter into a contract with a prison vendor for correctional services. A contracting agency shall include, but not be limited to, the State of West Virginia and its political subdivisions, the federal government, any federal agency, one or more of the remaining United States, or a political subdivision of one or more of the remaining United States.

(c) "Correctional services" means the following functions, services and activities, when provided within a prison or otherwise:

(1) Design and modification or construction of prison facilities;

(2) Education, training and jobs programs;

(3) Development and implementation of systems for the classification of inmates and management information systems or other information systems or services;

(4) Food services, commissary, medical services, transportation, sanitation or other ancillary services;

(5) Counseling, special treatment programs or other programs for special needs;

(6) Recreational, religious or other activities; and

(7) Operation of correctional facilities, including management, custody of inmates, and providing security.

(d) "Division" means the Division of Corrections of the department of public safety of West Virginia.

(e) "Foreign" in the context of a foreign state or other unit of government means any state or political subdivision or the District of Columbia or the federal government or a federal agency other than the State of West Virginia and its political subdivisions.

(f) "Inmate" means an individual sentenced to incarceration by a court or contracting agency.

(g) "Prison contractor" or "contractor" or "prison vendor" means any individual, partnership, corporation, unincorporated association or any other nongovernmental entity which is licensed to do business in the State of West Virginia and which has or will enter into a contractual agreement with a contracting agency to provide correctional services.

(h) "Prison" or "prison facility" or "facility" means any minimum or medium or maximum adult correctional institution operated under the authority of the division or of a political subdivision of this state, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means.

(i) "Private correctional officer" means any full-time or part-time employee of a prison vendor whose primary responsibility is the supervision, protection, care and control of inmates within a private correctional facility.

(j) "Regional jail authority" means the West Virginia Regional Jail and Correctional Facility Authority created by article twenty, chapter thirty-one of this code.

(k) "Secretary" means the secretary of the department of public safety.

(l) "State" means the State of West Virginia.

**§25-5-4. Authority of the commissioner of the Division of Corrections; authority of secretary of department of public safety.**

- (a) The commissioner of the Division of Corrections shall promulgate rules, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article.
- (b) The commissioner shall have the authority to recommend or to not recommend to the secretary that a prison vendor be granted the privilege of operating a prison facility in this state.
- (c) The commissioner shall have the authority to issue notices of violations, assess penalties and proceed in the collection of money due the state by private contractors.
- (d) The secretary of the department of public safety may, upon the recommendation of the commissioner, grant approval for a prison vendor to operate a private prison in this state.
- (e) The commissioner shall have the authority to accept the custody of and to confine inmates from sentencing authorities located outside the State of West Virginia.
- (f) The commissioner shall have the authority to expend funds contained in the private prison fund, established pursuant to subdivision (2), subsection (g), section eleven of this article, to cover any and all expenses incurred because of private prison operations within the state.

**§25-5-5. Prohibition of constructing or operating a correctional facility; exceptions.**

- (a) No person may operate a private prison facility or provide correctional services in this state without first obtaining the written approval of the secretary.
- (b) No person may construct, modify, lease, or otherwise alter a private prison facility without first obtaining the written approval of the Regional Jail Authority.
- (c) Nothing in this section shall impair the right of the state or its political subdivisions to operate a prison facility or provide correctional services.
- (d) No private contractor may operate a correctional facility in this state for the confinement of maximum security inmates sentenced to a term of incarceration by a foreign court.

**§25-5-6. Authority of the state and its political subdivisions to contract for correctional services.**

A contracting agency of this state, its political subdivisions or their designee may contract with a prison contractor for the construction, lease, acquisition, improvement, operation, and management of correctional facilities and services.

WV Legislature

**§25-5-7. Granting private contractor ability to contract with foreign contracting agencies.**

A private contractor upon the approval of the secretary and the Regional Jail Authority may contract for correctional services with foreign contracting agencies provided such contract meets the minimal requirements contained in section nine of this article. Upon approval the facility may receive inmates sentenced to confinement by a foreign authority.

WV Legislature

**§25-5-8. Reporting requirements.**

The contractor shall prepare the following information and submit it to the commissioner, as applicable:

(1) The prison vendor shall develop and implement a plan for the dissemination of information about the facility to the public, government agencies and the media. This information shall be made available to all persons. All documents and records, except financial records, inmate records and personnel records, maintained by the prison vendor, shall be deemed public records.

(2) The facility shall comply with all applicable laws and regulations of the local and state government regarding sanitation, food service, safety and health. Copies of inspections completed by the appropriate authorities shall be sent by the contractor to the division.

(3) The facility shall report for investigation all crimes in connection with the facility to the division of public safety and all other political subdivisions' law-enforcement agencies having jurisdiction where the prison is located. A written report shall be made of all extraordinary or unusual occurrences and forwarded to the commissioner. Extraordinary or unusual occurrences shall include, but not be limited to:

- (A) Death of an inmate or staff member;
- (B) Attempted suicide or suicide;
- (C) Serious injury, whether accidental or self-inflicted;
- (D) Attempted escape or escape from confinement;
- (E) Fire;
- (F) Riot;
- (G) Battery, whether by a staff member or inmate;
- (H) Sexual assaults; and
- (I) Occurrence of contagious diseases.

**§25-5-9. Terms of contract.**

Contracts awarded under the provisions of this article shall:

(1) Provide for internal and perimeter security to protect the public, staff members and inmates.

(2) Impose discipline on inmates only in accordance with the rules promulgated by the commissioner.

(3) Provide for proper food, clothing, housing, and medical care for inmates.

(4) Require that a contractor shall adhere to the rules promulgated by the commissioner.

(5) Require that the contractor and the contracting agency shall indemnify, defend and hold harmless the state, its agencies, political subdivisions, and the employees and other contractors of the state, its agencies and political subdivisions from any claim or cause of action which arises from any act or omission by the contractor or any of the contractor's employees or subcontractors.

(6) Require the contractor to indemnify the state or its political subdivisions for any moneys the state or its political subdivisions may expend for claims against the state or its political subdivisions pursuant to section seventeen of this article.

(7) Require a foreign contracting agency to transport an inmate back to the contracting agency's state for parole, furlough or release.

**§25-5-10. Site selection.**

The Regional Jail Authority shall approve the site for the proposed facility. Approval shall be in accordance with legislative rules promulgated in accordance with chapter twenty-nine-a of this code. One such legislative rule shall establish criteria for identifying and evaluating potential sites for private prisons and shall provide for a public hearing or hearings to allow reasonable participation in the selection process by the citizens of the area to be affected by the construction and operation of a private prison.

WV Legislature

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

**§25-5-12. Access by contracting agency, commissioner; reimbursement of expenses; report by commissioner.**

(a) The commissioner shall cause to be made such inspections of prison facilities as are necessary to effectively enforce the requirements of this article. The commissioner or his authorized representative or a contracting agency shall have access to all areas of the facility and to inmates and staff at all times. The contractor shall provide to the commissioner any and all data, reports, and other materials that the commissioner determines are necessary to carry out inspections pursuant to this article.

(b) The contractor shall reimburse the Division of Corrections for expenses incurred for inspections. Such reimbursement shall be payable to the Division of Corrections.

(c) The commissioner shall report on the performance of contractors operating within this state, no less frequently than annually, until the year one thousand nine hundred ninety-three and thereafter as requested by either the Speaker of the House of Delegates, the President of the Senate, the Regional Jail Authority or the Governor. Upon such request, the report shall be submitted to the Speaker of the House of Delegates, to the President of the Senate, to the Regional Jail Authority and to the Governor.

**§25-5-13. Sovereign immunity.**

The sovereign immunity of the state shall not extend to the contractor or its insurer.

WV Legislature

**§25-5-14. Powers and duties not delegable to contractor.**

(a) No contract for correctional services may authorize, allow or imply a delegation of the authority or responsibility of the contracting agency to a prison contractor for any of the following:

- (1) Developing or implementing procedures for calculating inmate release and parole eligibility dates;
  - (2) Developing or implementing procedures for calculating and awarding good time;
  - (3) Approving inmates for work release;
  - (4) Approving the type of work inmates may perform and the wages or good time, if any, which may be given to inmates engaging in such work;
  - (5) Granting, denying or revoking good time; and
  - (6) Recommending that the contracting state's parole authority either deny or grant parole, although the contractor may submit written reports that have been prepared in the ordinary course of business.
- (b) Notwithstanding the provisions of subsection (a) of this section, the contractor may use inmates for community service upon the request and approval of the political subdivision where the prison is located.

**§25-5-15. Bonding requirements.**

A contractor shall give a performance bond payable to the State of West Virginia, in a form satisfactory to the commissioner, executed by a surety company qualified to do business in this state and in the penal sum, as determined by the commissioner, in an amount not less than \$100,000. The bond shall be conditioned on the contractor performing all the requirements of this article and the rules promulgated hereunder.

WV Legislature

**§25-5-16. Insurance.**

(a) The contractor shall provide an adequate policy of insurance specifically including insurance for civil rights claims as determined by a risk management or actuarial firm with demonstrated experience in public liability for state governments. In determining the adequacy of the policy, such risk management or actuarial firm shall determine whether:

- (1) The insurance is adequate to protect the state, its political subdivisions or other contracting agencies from actions by a third party against the contractor;
- (2) The insurance is adequate to protect the state, its political subdivisions or contracting agencies against claims arising as a result of any occurrence; and
- (3) The insurance is adequate to satisfy other requirements specified by the risk management or actuarial firm.

(b) The insurance contract shall contain a provision that the state, its political subdivisions and contracting agencies are named insureds, and that the state, its political subdivisions and contracting agencies shall be sent any notice of cancellation.

(c) The contractor shall not self-insure.

**§25-5-17. Liability; indemnification.**

A contractor which has been approved to operate a facility pursuant to this article shall indemnify, defend and hold harmless the state, its officers, agents, and employees, and any local government entity in the state having jurisdiction over the facility or ownership of the facility from:

- (1) Any claims or losses for services rendered by the contractor or person performing or supplying services in connection with the performance of the contract;
- (2) Any claims or losses to any person injured or damaged by the willful or negligent acts of the contractor, its officers or employees in the operation of a private prison or in the performance of the contract;
- (3) Any claims or losses resulting to any person injured or damaged by the private contractor, its officers or employees by the publication, translation, reproduction, delivery, performance, use or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or state regulations or statutes;
- (4) Any failure of the contractor, its officers or employees to adhere to West Virginia laws, including, but not limited to, labor laws and minimum wage laws;
- (5) Any Constitutional, federal, state or civil rights claim brought against the state related to the prison facility;
- (6) Any claims, losses, demands or causes of action arising out of the contractor's activities in this state; and
- (7) Any attorney's fees or court costs arising from any habeas corpus actions or other inmate suits which may arise, including, but not limited to, attorney's fees for the state's representation as well as for any court appointed representation of any inmate as well as the costs of any special judge who may be appointed to hear such actions.

**§25-5-18. Firearms; capture of escapees; nonresident private correctional officers.**

(a) Private correctional officers of a private contractor shall be authorized to carry and use firearms in the course of their employment only after completing a training course, approved by the commissioner, in the use of firearms in accordance with rules promulgated by the division.

(b) Upon notification by the contractor of an escape from the facility or a disturbance at the facility, the state shall use all reasonable means to recapture escapees or quell any disturbance.

(c) When acting within the scope of their normal employment at the private prison facility, nonresident private correctional officers shall be deemed residents for purposes of section eleven, article six, chapter sixty-one of this code.

**§25-5-19. Employee training requirements; preference.**

(a) All employees of a facility operated pursuant to this article shall receive training in a program approved by the commissioner. All training expenses shall be the responsibility of the contractor.

(b) West Virginia residents shall be given a hiring preference for positions at the facilities permitted to operate in accordance with this article.

**§25-5-20. Reimbursement to state and its subdivisions.**

Any cost incurred by the state or its political subdivisions relating to the apprehension of an escapee or the quelling of a disturbance at the facility shall be chargeable to and borne by the contractor. The contractor shall also reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of the escapee following recapture.

WV Legislature

**§25-6-1. Purpose of article.**

The purpose of this article is to establish a program of boot camps that will encourage boot camp inmates to become responsible, productive citizens by providing academic education, social skills, education, physical wellness program, self-discipline programs, substance abuse treatment and vocational education and counseling. It is the aim of the Legislature that such a program will create a more positive environment for both inmates and correctional employees who operate the boot camp; and that will reduce the recidivism rate of persons so incarcerated.

**§25-6-2. Authorization to establish boot camp program.**

The commissioner of the Division of Corrections is hereby authorized to establish a program of boot camps that may be used for eligible offenders who are sentenced to serve a term of imprisonment under the custody of the commissioner of corrections and whom the commissioner or the circuit court may permit to serve his or her sentence as a sentence to boot camp in accordance with this article.

WV Legislature

**§25-6-3. Definitions.**

As used in this article, unless the context clearly requires a different meaning, the term:

- (a) "Commissioner" means the commissioner of the Division of Corrections;
- (b) "Division" means Division of Corrections; and
- (c) "Eligible offender" means eligible offender as defined in section four of this article.

**§25-6-4. Eligibility.**

(a) Appropriate inmates may participate in the boot camp program in accordance with the following criteria:

(1) One who is not less than eighteen years of age nor more than twenty-eight years of age;

(2) One who is medically, physically and psychologically fit to participate in the program;

(3) One who volunteers for the program;

(4) One who has been convicted of a felony and, has been sentenced to the custody of the commissioner of corrections for a period of incarceration of not less than one year;

(5) One who was not convicted of murder in the first degree or murder in the second degree;

(6) One who was not convicted of kidnapping;

(7) One who was not convicted of first or second degree sexual assault;

(8) One who was not convicted of any offense pursuant to article eight-d, chapter sixty-one of this code;

(9) One who was not convicted of incest;

(10) One who has not been previously convicted of a felony; and

(11) Such other criteria as the commissioner of the Division of Corrections may promulgate pursuant to chapter twenty-nine-a of this code.

(b) The circuit court of conviction may direct that a person be admitted or excluded from participation in the state boot camp program. The commissioner, pursuant to operational policies and procedures, may in his discretion, direct placement of an inmate in a boot camp program.

(c) Any placement in the boot camp shall be subject to the extent funding is available or appropriated and subject to the availability of space in the boot camp: Provided, That nothing in this section shall give any court the power to hold the Division of Corrections or any officer or employee of the division in contempt of court for failure to adhere to a circuit court directive that a person be placed in the state boot camp program if space or funding is unavailable.

**§25-6-5. Internal policy development.**

(a) The Division of Corrections shall promulgate operational procedures and policies for the program which shall require that the pilot program be established at one site, which site shall then be under the control and authority of the Division of Corrections. The program shall consist of all of the following for each eligible offender whom the division permits to serve his or her sentence as a sentence to boot camp:

(1) A period of imprisonment at the boot camp of not more than twelve months which period of imprisonment shall consist of a military style combination of discipline, physical training and physical labor, substance abuse education, employment skills training, social skills training, and psychological evaluation and treatment. Additionally, the state Board of Education and State Superintendent of Schools, pursuant to section five, article twenty, chapter eighteen of this code, respectively, may, as funds are available, establish an education program for those eligible offenders who are not recipients of a high school diploma or a certificate of high school equivalence.

(2) Upon successful completion of the boot camp program, and notwithstanding any other provisions for determining parole eligibility, an inmate shall be released on parole in accordance with this article. Except as otherwise provided in this article, a release on parole under this section shall require that the eligible offender be under intensive supervision by the adult parole authority and may provide for supervision of the offender by the adult parole authority subsequent to the expiration of his or her period of boot camp incarceration under any terms and for any period of time prescribed by the provisions of article twelve, chapter sixty-two of this code.

(b) The policies and procedures for the boot camp program also shall include, but are not limited to, all of the following:

(1) Policies and procedures identifying the facilities under the control and authority of the Division of Corrections designated by the commissioner of corrections that will be used for prisoners serving a sentence to boot camp;

(2) Policies and procedures governing academic education, or psychological testing and evaluation, discipline, physical training and labor for eligible offenders serving a sentence to boot camp based upon the offender's physical conditions and needs: Provided, That the education program shall be administered by the state Board of Education and State Superintendent of Schools in accordance with section thirteen-f, article two, chapter eighteen and section five, article twenty, chapter eighteen of this code, respectively;

(3) Policies and procedures establishing additional criteria the commissioner deems necessary to determine the eligibility of offenders to serve their sentence as a sentence to boot camp;

(4) Policies and procedures establishing a method of intensive supervision for an eligible

offender who is released on parole of the type described in this section for the remainder of his or her parole sentence, and rules governing the supervision of the offender subsequent to the expiration of his or her parole sentence;

(5) Policies and procedures to effectuate notification to sentencing courts of the performance of eligible offenders serving their sentence of imprisonment as a sentence to boot camp;

(6) Any other policies and procedures that are necessary for the proper operation of the program.

(c) An eligible offender who does not satisfactorily complete the entire period of boot camp incarceration, he or she shall be removed from the program of boot camp and shall be required to serve the remainder of the original sentence of imprisonment which would have been available to the sentencing court had boot camp not been directed by the circuit court or allowed by the commissioner.

(d) If the circuit court directs or the division permits an eligible offender to serve his or her sentence of imprisonment as a sentence to boot camp, the eligible offender shall commence a period of parole of the type described in this article. If an eligible offender violates the conditions of parole, he or she may be declared a parole violator and his or her parole shall be subject to revocation pursuant to the provision of article twelve, chapter sixty-two of this code.

**§25-6-6. Reporting requirements; sunset provisions; performance audit.**

(a) The commissioner shall keep sentencing courts informed of the performance of eligible offenders serving their sentences of imprisonment as a sentence to boot camp, including, but not limited to, notice of eligible offenders who fail to satisfactorily complete their entire sentence to boot camp or who satisfactorily complete their entire sentence to boot camp.

(b) The boot camp program shall be subject to termination and sunset, after conduct of performance audit thereon, pursuant to the provisions of article ten, chapter four of this code, five years after the effective date of the creation thereof, together with allowance for subsequent periods applicable to the winding up of the affairs of such boot camp program. The performance audit shall be filed with the president of the Senate and the speaker of the House of Delegates. The performance audit required by this section shall contain all of the following:

(1) A summary of the program as initially established, a summary of all changes in the program made during the period covered by the audit and the reasons for the changes, and a summary of the program as it exists on the date of the preparation of the audit;

(2) A summary of the effectiveness of the program;

(3) An analysis of the total cost of the program, of its cost per inmate who was permitted to serve a sentence to boot camp and who served the entire sentence to boot camp, and of its cost per inmate who was permitted to serve a sentence to boot camp;

(4) A summary of the standards and criteria used by the division of corrections in determining which eligible offenders were permitted to serve their sentence of imprisonment as a sentence to boot camp;

(5) A summary of the characteristics of the eligible offenders who were permitted to serve their sentence of imprisonment as a sentence to boot camp, which summary shall include, but not be limited to, a listing of every offense of which any such eligible offender was convicted or to which any such eligible offender pleaded guilty and in relation to which he or she served a sentence to boot camp, and the total number of such eligible offenders who were convicted of or pleaded guilty to each such offense;

(6) A listing of the number of eligible offenders who were permitted to serve a sentence to boot camp and who did not serve the entire sentence to boot camp, and, to the extent possible, a summary of the length of the terms of imprisonment served by such eligible offenders after they were removed from the program;

(7) A summary of the effect of the program on overcrowding at correctional facilities under the control and authority of the division of corrections;

(8) To the extent possible, an analysis of the rate of the recidivism of eligible offenders who were permitted to serve a sentence to boot camp and who served the entire sentence to boot

camp;

(9) Recommendations as to legislative changes to the program that would assist in its operation or that could further alleviate overcrowding at correctional facilities, and recommendations as to whether the program should be expanded.

WV Legislature

**§25-6-7. Construction and applicability of other acts.**

This article shall be liberally construed to accomplish the intent and purposes of the Legislature in adopting it and shall be the sole authority required for the accomplishment of the purposes set forth in this article.

WV Legislature

**§25-7-1. Legislative findings.**

The Legislature finds that the means now provided for the use of inmate labor are inadequate to furnish a sufficient number of inmates with employment. It is the intent of this article:

- (a) To provide more adequate, regular and suitable employment for the inmates and confined juvenile or youthful offenders of this state;
- (b) To use the labor of inmates and confined juvenile or youthful offenders for self-maintenance and to reimburse this state for expenses incurred by reason of their crimes and confinement;
- (c) To provide for the requisition and distribution of correctional industries articles and products directly through established state authorities, with no possibility of private profit except for those specific articles and products manufactured and sold pursuant to 18 U.S.C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program, and pursuant to sections thirteen, fourteen, fifteen and sixteen of this article; and
- (d) To provide for correctional industries to be profitable in view of the fact that it is a self-sufficient authority.

**§25-7-2. Citation of article.**

This article may be cited as the Correctional Industries Act of 2009.

WV Legislature

**§25-7-3. Establishment of industries at correctional facilities; purposes and extent.**

The Commissioner of the Division of Corrections or the commissioner's designee has exclusive authority to execute contracts for the sale of products manufactured or serviced at state correctional facilities, as necessary to carry out the provisions of this article. The commissioner or designee is authorized to purchase equipment, raw materials and supplies and to employ necessary supervisory personnel to establish and maintain, at state correctional facilities and institutions under the commissioner's control, industries which use the services of inmates to manufacture and produce articles and products for use by any office, department, institution or agency supported, in whole or in part, by this state or its political subdivisions.

**§25-7-4. Correctional industries service contracts.**

(a) The commissioner may enter into contracts with private entities under which inmate or resident labor is provided through correctional industries for work involving the delivery of products or for service work. Service work means work which includes, but is not limited to, repairs, replacement of original manufactured items, packaging, sorting, recycling, labeling or similar work that is not original equipment manufacturing. The use of inmate or resident labor may not result in the displacement of civilian workers employed in the local region where the work is performed. The division may negotiate the wage for inmate or resident labor under correctional industries contracts and, except as provided in sections thirteen, fourteen, fifteen and sixteen of this article, the wage may be less than the prevailing wage for work of a similar nature in the private sector.

(b) The Division of Corrections, in cooperation with the Department of Commerce, shall develop and maintain a marketing plan encouraging private sector businesses to employ inmates through the correctional industries program.

**§25-7-5. Purchase of inmate-made goods by state agencies.**

(a) On and after the effective date of this article, all offices, departments, institutions and agencies of this state supported, in whole or in part, by state funds shall purchase all articles or products which they require from the commissioner, if those articles or products are produced or manufactured by correctional industries, as provided by this article. No state office, department, institution or agency may purchase an article or product which correctional industries produces from any other source, unless specifically excepted from the provisions of this section pursuant to section six of this article.

(b) Purchases of correctional industries articles or products by state offices, departments, institutions and agencies shall be made on requisition by the office, department, institution or agency requiring the articles or products.

(c) Political subdivisions, not-for-profit corporations and charitable agencies chartered in West Virginia, units of the federal government and units of government of other states may purchase articles and products produced by correctional industries. Entities which contract with the state, its political subdivisions, its agencies or its public institutions may purchase from correctional industries articles and products used in the performance of their contracts.

**§25-7-6. Exceptions to mandatory purchase requirement.**

Exceptions from the mandatory purchase provisions of section five of this article may be granted when a correctional industries article or product does not meet the reasonable requirements of the requesting state office, department, institution or agency, or when the requisition cannot be fulfilled because of insufficient supply or other reason. No state office, department, institution or agency may evade the requirements of section five of this article, or of this section, making insubstantial variations from the characteristics of correctional industries products or articles.

**§25-7-7. Catalogues and a website of articles and products made and produced.**

The commissioner shall arrange for the creation and updating of catalogues and a website containing descriptions of the correctional industries articles and products manufactured or produced pursuant to the provisions of this article. The commissioner shall make copies of the catalogue and the website address available to entities eligible to acquire correctional industries articles and products.

WV Legislature

**§25-7-8. Commissioner to determine prices.**

The commissioner or the commissioner's designee shall determine the prices of correctional industries articles and products. The prices shall be uniform for all and as near as is practicable to the fair market price.

WV Legislature

**§25-7-9. Annual statements by the commissioner.**

At the close of each fiscal year, the commissioner shall prepare a financial report on the financial condition of the correctional industries operation, in accordance with generally accepted accounting principles. Within sixty days after the end of the fiscal year, the commissioner shall file the report with the Secretary of the Department of Military Affairs and Public Safety, the Secretary of the Department of Administration and the Office of the Legislative Auditor.

WV Legislature

**§25-7-10. Indebtedness for capital outlay projects.**

To carry out the provisions of this article, the commissioner is authorized to enter into contracts to acquire and purchase equipment, tools, supplies and materials, with payment to be made over a period not exceeding five years.

WV Legislature

**§25-7-11. Correctional industries account.**

(a) The Correctional Industries Account is continued in the State Treasury. All funds collected from the sale or disposition of articles and products manufactured or produced by correctional industries in accordance with this article shall be deposited in this account.

(b) Except as provided in subsection (c) of this section, funds collected and deposited may be used only to purchase manufacturing supplies, equipment, machinery and materials used to carry out the purposes of this article; to pay necessary personnel; and to defray necessary expenses, including inmate earnings, all of which are under the direction of the commissioner and subject to the commissioner's approval.

(c) The Correctional Industries Account may not be maintained in excess of the amount necessary to efficiently and properly carry out the purposes of this article. In no event may the Correctional Industries Account be maintained in excess of \$2 million. Any moneys in the account exceeding \$2 million shall be transferred at the end of each fiscal year into the Division of Corrections Additional Operations Account established pursuant to subsection (d) of this section.

(d) There is hereby created in the State Treasury a special revenue account known as the Additional Operations Account. The commissioner is authorized to use funds from the account to offset operational costs, for building and maintenance, purchases, equipment repair or replacement for the Division of Corrections and to defray necessary expenses incident to those activities.

**§25-7-12. Sale of inmate-made goods on open market prohibited; penalty; exceptions.**

(a) Subject to the provisions of subsections (e) and (f) of this section and section five of this article, it is unlawful to sell or offer for sale on the open market any articles or products manufactured or produced, wholly or in part, by inmates of this state or any other state. This section does not apply to articles or products manufactured and sold pursuant to sections thirteen, fourteen, fifteen and sixteen of this article; pursuant to the requirements of 18 U.S.C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program; or products made with waste tires. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than \$5,000 or confined not less than three months nor more than one year, or both. Each sale or offer for sale shall constitute a separate offense under this subsection.

(b) Any use of waste tires shall comply with applicable laws and with the rules of the Division of Environmental Protection.

(c) Products made by inmates from waste tires and sold on the open market must be competitively priced with privately produced goods of the same nature and may not be sold at a loss.

(d) Profits earned from the sale of products made by inmates from waste tires shall be deposited in the Correctional Industries Account to reimburse funds expended collecting waste tires and producing waste tire products, and to cover the reasonable cost of periodic replacement of outdated, obsolete or inoperable machinery or equipment used in such collection or production. Any funds remaining shall be divided equally between the Correctional Industries Account and the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code.

(e) Notwithstanding the provisions of subsection (a) of this section, any article or product manufactured or produced, wholly or in part, by inmates of West Virginia correctional facilities which is designed and intended to be used solely by blind and persons with disabilities, including, but not limited to, braille books and reading materials, may be sold or distributed on the open market by the Division of Corrections or other state department or agency.

(f) Notwithstanding the provisions of subsection (a) of this section, arts and crafts produced by inmates may be sold to the general public by the Division of Corrections or by such other state agencies or departments as the commissioner designates. The arts and crafts may be sold only on consignment, so that the inmates whose arts and crafts products are sold receive payment for the products. Payments shall be deposited in accounts or funds and managed as provided in section three-a, article one of this chapter: Provided, That when the Division of Corrections or other agency or department of state government provides materials used in the production of an arts and crafts product, the fair market value of such materials may be deducted from the account of the individual inmate after the sale of the

product.

(g) For purposes of this section, "arts and crafts" means articles produced individually by artistic or craft skill such as painting, sculpture, pottery, jewelry or similar articles.

WV Legislature

**§25-7-13. Establishment of programs authorized by the federal Prison Industry Enhancement (PIE) Certification Program for employment of inmates by private persons; lease of land and improvements.**

(a) The Commissioner of the Division of Corrections may establish programs for the employment of inmates by a private person or entity for the manufacture of articles and products as part of a program authorized pursuant to 18 U.S.C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program. In establishing these programs, the commissioner may enter into agreements with private persons or entities to construct or lease facilities at a state adult correctional facility, or at another agreed location, for manufacturing and processing goods or for any other business, commercial or agricultural enterprise.

(b) In connection with an agreement made under subsection (a) of this section, the commissioner may lease land and improvements on the grounds of a state correctional facility for use by the private party to the agreement. Any such lease shall be for a term of not more than twenty years and may contain options for renewal.

**§25-7-14. Agreement between commissioner and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; inmate participation on voluntary basis; and workers' compensation.**

(a) The Commissioner of the Division of Corrections and a private person or entity may enter into an agreement to establish a program for inmates to manufacture articles and products pursuant to the federal Prison Industry Enhancement (PIE) Certification Program. The agreement shall include the following:

(1) That a participating inmate be paid at a rate not less than that paid for similar work in the same locality's private sector, including applicable wage increases for overtime work;

(2) That an inmate's work or participation in a PIE certification program shall be only on a voluntary basis and only after the inmate has been informed of the conditions of participation;

(3) That, in the discretion of the commissioner or the commissioner's designee, any inmate may be removed from or refused participation in the PIE certification program;

(4) That the agreement will not result in the displacement of civilian workers; and

(5) That the private person or entity shall provide for workers' compensation insurance, or equivalent coverage, to inmates participating in the PIE certification program: Provided, That the commissioner of the division of corrections may provide workers compensation or equivalent insurance coverage for persons participating in the PIE certification program, if reimbursement is made to the division by the private person or entity for all costs of the workers' compensation insurance or equivalent coverage, as a condition of the agreement.

(b) The provisions of this section shall not apply to correctional industry service contracts under section four of this article or to operations authorized in section three of this article that are restricted from sale in the open market.

(c) A commercial or agricultural enterprise established under this chapter is a private enterprise subject to federal and state laws governing the operation of similar enterprises.

(d) The earnings of an inmate participating in a PIE certification program under this article shall be deposited in the Inmate Trust Account with the Division of Corrections. The earnings shall be paid to the inmate after withholding of state, federal and local taxes, and after other deductions provided for in this chapter, including expenses for room and board: Provided, That the commissioner shall adopt policies and procedures for the additional deduction from an inmate's earnings of not less than five percent nor more than twenty percent, to be paid into the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code. Total deductions shall not exceed eighty percent of the inmate's gross earnings. Earnings deposited by the commissioner, with accrued interest, shall be paid to the inmate no later than at the inmate's discharge or release on parole.

(e) Spousal support or child support shall be deducted from an inmate's earnings as directed by the inmate or by court order. If the inmate's dependents are receiving Temporary Assistance for Needy Families (TANF), the disbursements shall be made to the Bureau for Child Support Enforcement or any other state's public assistance agency.

WV Legislature

**§25-7-15. Establishment of programs authorized by the federal Prison Industry Enhancement (PIE) Certification Program for employment of juvenile residents by private persons; lease of land and improvements.**

(a) The Director of the Division of Juvenile Services may establish programs for the employment of residents by a private person or entity for the manufacture of articles and products as part of a program authorized pursuant to 18 U.S.C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program. In establishing these programs, the director may enter into agreements with private persons or entities to construct or lease facilities at a state juvenile correctional facility, or at another agreed location, for manufacturing and processing goods or for any other business, commercial or agricultural enterprise.

(b) In connection with any agreement made under subsection (a) of this section, the director may lease land and improvements on the grounds of a juvenile correctional facility for use by the private party to the agreement. Any such lease shall be for a term of not more than twenty years and may contain options for renewal.

**§25-7-16. Agreement between director and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; resident participation on voluntary basis; workers' compensation and unemployment compensation.**

(a) The Director of the Division of Juvenile Services and a private person or entity may enter into an agreement to establish a program for residents to manufacture articles and products pursuant to the federal Prison Industry Enhancement (PIE) Certification Program. The agreement shall include the following:

(1) That a participating resident be paid at a rate not less than that paid for similar work in the same locality's private sector, including applicable wage increases for overtime work;

(2) That a resident's work or participation in a PIE certification program shall be only on a voluntary basis and only after the resident has been informed of the conditions of participation;

(3) That, in the discretion of the director or the director's designee, any resident may be removed from or refused participation in the PIE certification program;

(4) That the agreement will not result in the displacement of civilian workers; and

(5) That the private person or entity shall provide for workers' compensation insurance, or equivalent coverage, to residents participating in the PIE certification program: Provided, That, the director of the division of juvenile services may provide workers compensation or equivalent insurance coverage for persons participating in the PIE certification program, if reimbursement is made to the division by the private person or entity for all costs of the workers' compensation insurance or equivalent coverage, as a condition of the agreement.

(b) The provisions of this section shall not apply to correctional industry service contracts provided for in section four of this article or to operations authorized by section three of this article that are restricted from sale in the open market. (c) A commercial or agricultural enterprise established under this chapter is a private enterprise subject to federal and state laws governing the operation of similar enterprises.

(d) The earnings of a resident participating in a PIE certification program under this article shall be deposited in the Resident Trust Account with the Division of Juvenile Services. The earnings shall be paid to the resident after withholding of state, federal and local taxes, and after other deductions provided for in this chapter. The expenses of room and board, as fixed by the director and the budget agency for facilities operated by the director or, if the resident is housed in a facility not operated by the director, the amount paid by the Division of Juvenile Services to the operator of the facility or other appropriate authority for room and board, and other incidentals as established by agreement between the Division of Juvenile Services and the appropriate authority, shall be deducted: Provided, That the director shall adopt policies and procedures for the additional deduction from a resident's

earnings of not less than five percent nor more than twenty percent, to be paid into the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code. Total deductions shall not exceed eighty percent of the resident's gross earnings. Earnings deposited by the director, with accrued interest, shall be paid to the resident no later than at the resident's discharge or release on parole.

When special circumstances warrant, or for just cause, the director may waive room and board charges by a facility operated by the Division of Juvenile Services or, if the resident is housed in a facility not operated by the Division of Juvenile Services, authorize payment of room and board charges from other available funds.

(e) Spousal support or child support shall be deducted from a resident's earnings as directed by the resident or by court order. If the resident's dependents are receiving Temporary Assistance for Needy Families (TANF), the disbursements shall be made to the Bureau for Child Support Enforcement or any other state's public assistance agency.