WEST VIRGINIA CODE CHAPTER 28

WV Legislature

§28-1-1. Care of youthful male offenders.

The State Commissioner of Corrections shall be charged with the care, training and reformation of male youths of the state committed to his custody. Education of the male youths is subject to the provisions of section thirteen-f, article two, chapter eighteen of this code. All state facilities and institutions for such purpose shall be managed and controlled as prescribed in article one, chapter twenty-five of this code.

WV Legislature

§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.

(a) Any male youth between the ages of 10 and 18 years may be committed to the custody of the Commissioner of Corrections by a circuit court of this state in the manner prescribed in §49-4-701 through §49-4-725 of this code; and further, any male youth who has been adjudged delinquent pursuant to §49-1-202 of this code, who, as a result thereof, was placed on probation and has been found, in a proceeding pursuant to the procedural requirements of §49-4-701 through §49-4-725 of this code, to have violated a term of probation, prior to the attainment of his or her 20th birthday, which constitutes a criminal offense, may be committed to the custody of the Commissioner of Corrections as a youthful offender.

(b) Every youth committed under this article shall, following the dispositional proceeding, be transferred to the place or places designated by the Commissioner of Corrections for complete physical, educational, and psychological examinations, including all appropriate tests, to be completed as soon as possible, the completion of the physical examinations to be within 20 days. The youth shall be housed in a manner so as to prevent the spread of infectious disease. Following disposition and prior to transfer to the custody of the Commissioner of Corrections, each youth shall be allowed to visit with his or her relatives, without being committed to jail for a period of not less than one hour. The cost of the examinations in this subsection shall be borne by the committing county. The youth shall be provided all treatment and rehabilitation indicated by the examinations.

In lieu of the physical examinations and tests provided for in this subsection, the court may, in the absence of objection, have the county health officer or other local health care facility perform physical and mental examinations and tests, so long as the examinations and tests are performed prior to the dispositional proceeding. Except as otherwise provided by law, a child shall not be committed to a jail following a dispositional proceeding solely to await a physical, educational, or mental examination or the results of the exam.

(c) All examinations shall be private. A youth who is mentally ill or significantly intellectually disabled shall not be committed to, or retained by, the Commissioner of Corrections, but shall be returned to the committing court for further disposition. A youth who has a serious infectious disease shall not be retained in the custody of the Commissioner of Corrections, but shall be transferred to an appropriate treatment facility. Detailed medical records shall be kept of every youth.

(d) The results of any physical, educational, and psychological examinations, together with a copy of the petition, the adjudicatory order, and the dispositional order shall accompany every youth committed to the Commissioner of Corrections, without which the youth shall not be accepted. The commissioner, or his or her designated representative, shall review the records of each youth committed to assure that a youth is not illegally detained in an inappropriate facility or custodial situation.

WV Legislature

(e) The Commissioner of Corrections may transfer and place such youth in any of the established centers or homes or halfway programs and in less restrictive settings, whether under his or her jurisdiction or private nonprofit residential facilities, as he or she may determine appropriate to promote the rehabilitation of the youth. To the extent possible, a youth under the age of 15 shall not be in regular contact with youths between the ages of 16 and 18.

WV Legislature

§28-1-3.

Repealed.

Acts, 1980 Reg. Sess., Ch. 30.

WV Legislature

§28-1-4. Conveyance of boys; expenses.

As soon as practicable after a youth, on any account, is committed to the custody of the state commissioner of public institutions, the papers in the case shall be mailed to the superintendent of the receiving youth facility, and such youth shall remain in the custody of the court pronouncing such commitment until he be delivered to an officer of the receiving youth facility, who shall be sent without delay and duly authorized by the superintendent to conduct such youth by the most direct and convenient route to said facility; but no youth committed to any facility shall be lodged in any jail or lockup, if he be under the age of sixteen years. The superintendent of a facility shall, insofar as is consistent with the safe conveyance of youths to the facility, cause as many youths as may be committed from the same or several counties to be conducted to the facility at the same time. The expense incurred in conducting a youth to a youth facility, including transportation and other necessary traveling expenses of the youth and of his conductor, shall be paid by the county court out of the treasury of the county from which the youth was committed to the facility, and a written statement of such necessary expenditures, fully itemized and sworn to by the officer making such expenditures, and attested by the superintendent of the facility, when presented to any county court, shall be a bill against such court, to be paid to the receiving facility and credited to that fund of the facility from which the original expenditure was made; but when two or more youths shall be so conducted from more than one county, the necessary expenditure on the personal account of the conductor shall be apportioned among the counties concerned in due proportion to the mileage traveled by the youths from their respective counties.

WV Legislature

§28-1-5. Rules and regulations.

The State Commissioner of Corrections shall have authority to make such rules and regulations for the management and government of the facilities for youthful offenders under his control, and the instruction, discipline, training, employment and disposition of the boys and their transportation to and from the various facilities, subject to section thirteen-f, article two, chapter eighteen of this code, as the commissioner may deem proper.

WV Legislature

§28-1-6. Discharge or parole; arrest and return of paroled boys.

The state commissioner of public institutions shall have authority, under such rules and regulations as the commissioner may prescribe, to grant, on the recommendation of the superintendent, a discharge or parole to any inmate of any of the various facilities; but while such inmate is on parole, and until he is discharged according to law, he shall remain in the legal custody of the commissioner of public institutions and subject at any time to be returned to physical custody, if in the judgment of the commissioner the interests of such paroled inmate will best be served thereby. The written order of said commissioner, countersigned by the superintendent, shall be sufficient warrant for any officer or person named therein to arrest and return to the facility the youth so paroled; and it shall be the duty of any such officer or person to arrest and return such youth to the facility. All actual expenses incurred in returning such youth to the facility shall be paid out of the funds appropriated for the maintenance of the facility.

WV Legislature

§28-1-7. Transfer of boys to and from penitentiary.

In any case where a youth is committed to any youth facility for an offense punishable by confinement in the penitentiary, and it is found by the state commissioner of public institutions that the youth facility is unable to benefit such youth, and that his presence is a detriment or menace to other youths in the institution, or to the general good of the facility, he may be returned to the court by which he was committed to the facility, and such court shall thereupon pass such sentence upon him as to confinement in the penitentiary as may be proper in the premises, or as it might have passed had it not committed him as a youthful offender. The Governor shall have power, when, in the judgment of the warden of the penitentiary and of the superintendent of the facility, it is advisable, to remit the penalty of any offender under the age of eighteen years confined in the penitentiary to a commitment to a youth facility.

WV Legislature

§28-1-8. Offenses relating to youth facilities; penalties; escape; arrest and return.

If any person shall entice or attempt to entice away from any youth facility any youth legally committed to the same, or shall aid or abet any youth to escape therefrom, or shall harbor, conceal or aid or abet in harboring or concealing, any youth who shall have escaped therefrom, or shall, without the permission of the superintendent, give or sell, or aid or abet any other person to give or sell, to any youth in the youth facility, whether on the premises of such institution or otherwise, any money, firearms, intoxicating drinks, tobacco, cigarettes, or other articles whatsoever, or shall in any way cause or influence, or attempt to cause or influence or aid or abet therein, any youth in the youth facility to violate any rule of the institution or to rebel against the government of said facility in any particular, or shall receive by the hands of any such youth anything of value, whether belonging to the state or otherwise, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten, nor more than $100, or be confined not more than twelve months in the county jail, or, in the discretion of the court, both fined and imprisoned. The superintendent, or any of his assistants, or any one authorized in writing by him or any sheriff, constable, policeman or other peace officer, shall have power, and it is hereby made his duty, to arrest any youth, when in his power to do so, who shall have escaped from said facility, and return him thereto.

WV Legislature

§28-1-9.

Repealed.

Acts, 1990 Reg. Sess., Ch. 56.

WV Legislature

§28-1-10.

Repealed.

Acts, 1990 Reg. Sess., Ch. 56.

WV Legislature

§28-1-11.

Repealed.

Acts, 1990 Reg. Sess., Ch. 56.

WV Legislature

§28-2-1.

Repealed.

Acts, 1969 Reg. Sess., Ch. 21.

WV Legislature

§28-2-2.

Repealed.

Acts, 1969 Reg. Sess., Ch. 21.

WV Legislature

§28-3-1. Renaming West Virginia Industrial Home for Youth as Salem Correctional Center; transferring control to Division of Corrections.

(a) Effective July 1, 2013, the West Virginia Industrial Home for Youth shall be known as the Salem Correctional Center. The Salem Correctional Center is hereby transferred to the Division of Corrections.

(b) Commencing July 1, 2013, wherever the "West Virginia Industrial Home for Youth" is referred to in this code, it shall mean the "Salem Correctional Center".

WV Legislature

§28-3-1a.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-1b.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-2.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-3.

Repealed.

Acts, 1980 Reg. Sess., Ch. 30.

WV Legislature

§28-3-4.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-5.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-6.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-7.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-8.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-9.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-10.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-11.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-12.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-13.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-14.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-15.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-16.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-17.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-18.

Repealed.

Acts, 2013 Reg. Sess., Ch. 39.

WV Legislature

§28-3-19.

Repealed.

Acts, 1969 Reg. Sess., Ch. 22.

WV Legislature

§28-3-20.

Repealed.

Acts, 1969 Reg. Sess., Ch. 22.

WV Legislature

§28-3-21.

Repealed.

Acts, 1969 Reg. Sess., Ch. 22.

WV Legislature

§28-3-22.

Repealed.

Acts, 1969 Reg. Sess., Ch. 22.

WV Legislature

§28-4-1.

Repealed.

Acts, 1969 Reg. Sess., Ch. 21.

WV Legislature

§28-4-2.

Repealed.

Acts, 1969 Reg. Sess., Ch. 21.

WV Legislature

§28-5-1.

Repealed.

Acts, 1998 Reg. Sess., Ch. 100.

WV Legislature

§28-5-2.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-3.

Repealed.

Acts, 1999 Reg. Sess., Ch. 61.

WV Legislature

§28-5-3a.

Repealed.

Acts, 1963 Reg. Sess., Ch. 170.

WV Legislature

§28-5-4.

Repealed.

Acts, 1999 Reg. Sess., Ch. 61.

WV Legislature

§28-5-5.

Repealed.

Acts, 1999 Reg. Sess., Ch. 61.

WV Legislature

§28-5-6.

Repealed.

Acts, 2000 Reg. Sess., Ch. 61.

WV Legislature

§28-5-7

Repealed

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

WV Legislature

§28-5-8.

Repealed.

Acts, 2000 Reg. Sess., Ch. 56.

WV Legislature

§28-5-8a

Repealed

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

WV Legislature

§28-5-9.

Repealed.

Acts, 1967 Reg. Sess., Ch. 79.

WV Legislature

§28-5-10.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-11.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-12.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-13.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-14.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-15.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-16.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-17.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-18.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-19.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-20.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-21.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-22.

Repealed.

Acts, 1998 Reg. Sess., Ch. 100.

WV Legislature

§28-5-23

Repealed

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

WV Legislature

§28-5-24

Repealed

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

WV Legislature

§28-5-25.

Repealed.

Acts, 1986 Reg. Sess., Ch. 54.

WV Legislature

§28-5-26.

Repealed.

Acts, 2005 Reg. Sess., Ch. 51.

WV Legislature

§28-5-27

Repealed

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

WV Legislature

§28-5-27a.

Repealed.

Acts, 1939 Reg. Sess., Ch. 24 and 1984 Reg. Sess., Ch. 46.

WV Legislature

§28-5-28.

Repealed.

Acts, 1939 Reg. Sess., Ch. 24 and 1984 Reg. Sess., Ch. 46.

WV Legislature

§28-5-29.

Repealed.

Acts, 1939 Reg. Sess., Ch. 24 and 1984 Reg. Sess., Ch. 46.

WV Legislature

§28-5-30.

Repealed.

Acts, 1939 Reg. Sess., Ch. 24 and 1984 Reg. Sess., Ch. 46.

WV Legislature

§28-5-31. Mentally diseased convicts; treatment; transfer between penal and mental health facilities; penal facility procedures.

(a) No person who is, or was considered to be, mentally ill, intellectually disabled or addicted shall be denied parole or a parole hearing based upon such past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization such person shall be paroled and proceedings instituted pursuant to section four, article five, chapter twenty-seven of this code. Any time spent in such facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to section four, article five, chapter twenty-seven of this code.

(b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill, intellectually disabled or addicted, as those terms are defined in article one, chapter twenty-seven of this code, and in need of treatment, training or other services, the facts relating to such illness, shall be presented to the chief administrative officer of the facility. Such facts may be presented by a correctional officer, member of a correctional institution medical staff, relative, or the convicted person. Immediately upon receipt of such facts, the chief administrative officer shall arrange for psychiatric or psychological examination of the person alleged to be so afflicted. If the report of the examination is to the effect that the individual is mentally ill, intellectually disabled, or addicted and that treatment, training or other services are required which cannot reasonably be provided at the correctional facility, the chief administrative officer shall file within twenty days after presentation of the facts an application for transfer with the clerk of the circuit court of the county of location of the correctional facility. Such application for transfer shall include a statement of the nature of the treatment which the person's condition warrants and the facility to which transfer is sought.

Within ten days of receipt of the application from the chief administrative officer, the mental hygiene commissioner or circuit judge shall appoint counsel for the convicted person if the person is indigent.

The clerk of the circuit court shall forthwith notify the convicted person, by certified mail, return receipt requested, delivered only to addressee, that such application has been filed, enclosing therewith a copy of the application with an explanation of the place and purpose of the transfer and the type of treatment to be afforded, together with the name, address, and telephone number of any appointed counsel. The person shall be afforded reasonable telephone access to his or her counsel. The clerk shall also notify the superintendent or other chief administrative officer of the facility to which transfer is sought. Within fifteen days after receipt of notice, the convicted person, through counsel, shall file a verified return admitting or denying the allegations and informing the court or mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. Counsel shall file the return only after personal consultation with the convicted person. The superintendent of the facility to which transfer is sought shall also file a return within fifteen days of the

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receipt of notice, informing the court or mental hygiene commissioner as to whether the needed treatment or other services can be provided within that facility. If said superintendent objects to receiving the convicted person for treatment or services, the reasons for such objection shall be specified in detail.

If the transfer is opposed by either the convicted person or by the superintendent of the facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to exceed thirty days from the date of the return opposing such transfer, and the clerk shall provide to the convicted person, the superintendent of the facility to which transfer is sought, and the superintendent of the correctional facility, at least ten days' written notice, by certified mail, return receipt requested, of the purpose, time and place of the hearing.

The convicted person shall be present at the hearing, and be afforded an opportunity to testify and to present and cross- examine witnesses. Counsel for the convicted person shall be entitled to copies of all medical reports upon request. The person shall have the right to an examination by an independent expert of the person's choice and testimony from such expert as a medical witness on the person's behalf. The cost of providing such medical expert shall be borne by the state if the person is indigent. The person shall not be required to give testimony which is self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all parties, in accord with the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made available to the person within thirty days, if the same is requested for the purpose of further proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and consideration of the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings of facts as to whether or not (1) the individual is mentally ill, intellectually disabled or addicted; (2) the individual because of mental illness, mental retardation or addiction is likely to cause serious harm to self or others; (3) the individual could not obtain the requisite treatment or training at the correctional facility or another appropriate correctional facility; and (4) the designated facility to which transfer is sought could provide such treatment or training with such security as the court finds appropriate; and, if all such findings are in the affirmative, the circuit court may order the transfer of such person to the appropriate facility. The findings of fact shall be incorporated into the order entered by the circuit court. In all proceedings hereunder, proof of mental condition and of likelihood of serious harm must be established by clear, cogent and convincing evidence, and the likelihood of serious harm must be based upon evidence of recent overt acts.

WV Legislature

§28-5-32.

Repealed.

Acts, 2002 Reg. Sess., Ch. 61.

WV Legislature

§28-5-33. Appointment of committee of convict; bond.

When a person is confined in the penitentiary of this or any other state, or of the United States, under sentence for one year or more, or to suffer death, the estate of such convict in this state, if he have any, both real and personal, shall, on the motion of any party interested, be committed by the county commission of the county in which his estate or some part thereof may be, to a person selected by such county commission, who, after giving bond before the county commission in such penalty as it may prescribe, shall have charge and management of such estate until the convict is discharged from confinement or dies; and upon such motion the county commission shall appoint said committee, although the convict has no estate, either real or personal, located in this state. In the event said convict has no such estate, or his estate does not exceed $1,000, reference to a fiduciary commissioner shall not be necessary. All appointments of committees heretofore made and decrees or judgments heretofore awarded by any court of record in this state against or on behalf of any convict shall not be considered invalid for the reason that the convict had no such estate at the time of the appointment of such committee.

WV Legislature

§28-5-34. When estate committed to sheriff as committee.

If the person so appointed refuse the trust, or fail to give bond as aforesaid, the county court, on like motion, shall, or such court may in the first instance, commit the estate to the sheriff of the county, who shall be the committee, and he and the sureties on his official bond shall be bound for the faithful performance of his trust.

WV Legislature

§28-5-35. Appraisement, inventories and accounts by and compensation of committee.

The committee shall have the estate appraised, return inventories, render accounts of his trust, and be made to account therefor, shall be entitled to compensation for his services, and may forfeit his right thereto, all in the same manner, to the same extent, and within the same time, as if he were an administrator or guardian.

WV Legislature

§28-5-36. Suits by or against convict or committee.

Such committee may sue and be sued in respect to debts due to or from such convict, and respecting all other causes of action for which the convict might sue or be sued had no such incarceration taken place, and shall have the privilege of an administrator as to the right of retaining his own debt. No action or suit shall be instituted by or against such convict after he is incarcerated, and all actions or suits to which he is a party at the time of his incarceration shall abate, and continue so until revived by or against the committee, whose duty it shall be to prosecute or defend, as the case may be. Any judgment recovered against such committee shall be a lien upon the lands of the convict to the same extent as if recovered against the convict before the conviction. But the plaintiff in any action, suit or proceeding against the committee of a convict shall not be examined as a witness in his own behalf in such action, suit or proceeding in respect to any transaction or communication had personally with the convict, unless such committee shall be examined as a witness in his own behalf in respect to such transaction or communication, or such convict personally testifies, or his testimony in respect to such transaction or communication is given in evidence.

WV Legislature

§28-5-37. Maintenance of convict's wife and family.

The committee of any convict who was, at the time of incarceration, a resident of this state shall allow (subject to the claims of creditors) a sufficient maintenance out of the convict's estate for his wife and family, if any; the wife to be entitled, as long as he is confined, to the profits of such portion of his estate as she would have if he had died intestate.

WV Legislature

§28-5-38. Mortgage, lease or sale of real estate of convicts.

If the personal estate of such convict be insufficient for the discharge of his debts, or if such estate, or the residue thereof after payment of the debts, and the rents and profits of the real estate, be insufficient for the maintenance of the wife and family of such convict, when it is proper to make provision for such maintenance, his committee may proceed, as provided in article one, chapter thirty-seven, of this code, to obtain authority to mortgage, lease or sell so much of the real estate of such convict as may be necessary for the purposes aforesaid, or any of them, setting forth in the bill or petition the particulars and the amount of the estate, real and personal, the application which may have been made of any personal estate, and an account of the debts and demands existing against the estate.

WV Legislature

§28-5-39. Disposition of estate on discharge or death of convict.

Every committee of a convict shall deliver such estate as he may be liable for at that time to the convict on his discharge, or to his heirs, devisees or personal representatives, on his death.

WV Legislature

§28-5-40. How estate of nonresident convict paid over to foreign committee.

The committee or other similar fiduciary appointed in any other state for any convict who was a nonresident of this state at the time of his incarceration, and who at such time was possessed of estate within this state, may, in the manner and under the same conditions as are prescribed for the removal of the estate of a nonresident infant in article eleven, chapter forty-four, of this code, have the committee of such convict in this state authorized to pay over such estate to such committee or other similar fiduciary of such other state.

WV Legislature

§28-5A-1.

Repealed.

Acts, 2008 Reg. Sess., Ch. 34.

WV Legislature

§28-5A-2.

Repealed.

Acts, 2008 Reg. Sess., Ch. 34.

WV Legislature

§28-5A-3.

Repealed.

Acts, 2008 Reg. Sess., Ch. 34.

WV Legislature

§28-5A-4.

Repealed.

Acts, 2008 Reg. Sess., Ch. 34.

WV Legislature

§28-5A-5.

Repealed.

Acts, 2008 Reg. Sess., Ch. 34.

WV Legislature

§28-5A-6.

Repealed.

Acts, 1988 Reg. Sess., Ch. 28.

WV Legislature

§28-5A-7.

Repealed.

Acts, 1988 Reg. Sess., Ch. 28.

WV Legislature

§28-5B-1.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-2.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-3.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-4.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-5.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-6.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-7.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-8.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-9.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-10.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-11.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-12.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-13.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-14.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-15.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-16.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-17.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5B-18.

Repealed.

Acts, 2009 Reg. Sess., Ch. 43.

WV Legislature

§28-5C-1. Closure of West Virginia prison for women.

The West Virginia prison for women, a penal institution exclusively for female prisoners, located at Pence Springs, Summers County, West Virginia is hereby closed. The title to all real property at the West Virginia prison for women is hereby transferred to and vested in the public land corporation of West Virginia: Provided, That the public land corporation shall promptly cause an inventory and an appraisal to be made of the real property and shall offer said real property for sale at public auction to be sold for not less than the appraised value, or the land corporation shall lease the real property upon such terms and conditions as it shall deem appropriate. The title to all personal property at the West Virginia prison for women remains vested in the state department of corrections.

WV Legislature

§28-5C-2. Commitment of female felons.

Any adult female found guilty of committing a felony as defined in section one, article eleven, chapter sixty-one, who is not placed on probation in accordance with the provisions of article twelve, chapter sixty-two, shall be committed to the custody of the state department of corrections for the duration of her sentence. The commissioner of the state department of corrections shall, as he deems appropriate, either place female felons in state correctional institutions or contract with any person, corporation, governmental agency or other entity for their incarceration and care.

WV Legislature

§28-6-1.

Repealed.

Acts, 2005 Reg. Sess., Ch. 176.

WV Legislature

§28-6-2.

Repealed.

Acts, 2005 Reg. Sess., Ch. 176.

WV Legislature

§28-7-1. Execution of interstate compact for the supervision of adult offenders.

The Governor of this state is authorized and directed to execute a compact on behalf of the State of West Virginia with any state or states of the United States legally joining therein, in form substantially as follows:

ARTICLE I. PURPOSE.

(a) The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. §112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;

(2) To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and

(3) To equitably distribute the costs, benefits and obligations of the compact among the compacting states.

(c) In addition, this compact will:

(1) Create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact;

(2) Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(3) Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators;

(4) Monitor compliance with rules governing interstate movement of offenders and initiate

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interventions to address and correct noncompliance; and

(5) Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

(d) The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and by-laws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II. DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

(a) "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

(b) "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

(c) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

(d) "Compacting state" means any state which has enacted the enabling legislation for this compact.

(e) "Commissioner" means the voting representative of each compacting state appointed pursuant to article III of this compact.

(f) "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

(g) "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

(h) "Noncompacting state" means any state which has not enacted the enabling legislation for this compact.

(i) "Offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

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(j) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

(k) "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact, substantially affecting interested parties in addition to the interstate commission which shall have the force and effect of law in the compacting states.

(l) "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

(m) "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article III of this compact.

ARTICLE III. THE COMPACT COMMISSION.

(a) The compacting states hereby created the "Interstate Commission for Adult Offender Supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective Legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of Governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the interstate commission shall be ex-officio (nonvoting) members. The interstate commission may provide in its bylaws for such additional, ex-officio, nonvoting members as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(d) The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(e) The interstate commission shall establish an executive committee which shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission

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during periods when the interstate commission is not in session, with the exception of rule making and/or an amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV. THE STATE COUNCIL.

(a) Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups and compact administrators.

(b) Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the Governor in consultation with the Legislature and the judiciary.

(c) In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The interstate commission shall have the following powers:

(1) To adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

(2) To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(3) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the compact commission;

(4) To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

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(5) To establish and maintain offices;

(6) To purchase and maintain insurance and bonds;

(7) To borrow, accept or contract for services of personnel, including, but not limited to, members and their staffs;

(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

(13) To establish a budget and make expenditures and levy dues as provided in article X of this compact;

(14) To sue and be sued;

(15) To provide for dispute resolution among compacting states;

(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

(17) To report annually to the Legislatures, Governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

(18) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

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ARTICLE VI. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Section A. Bylaws.

(a) The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;

(2) Establishing an executive committee and such other committees as may be necessary providing reasonable standards and procedures:

(i) For the establishment of committees; and

(ii) Governing any general or specific delegation of any authority or function of the interstate commission;

(3) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

(4) Establishing the titles and responsibilities of the officers of the interstate commission;

(5) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(6) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

(7) Providing transition rules for "start up" administration of the compact; and

(8) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff.

(b)(1) The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in his or her absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission: Provided, That subject to the availability of budgeted funds, the officers shall be

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reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

(2) The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

Section C. Corporate Records of the Interstate Commission.

(c) The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

Section D. Qualified Immunity, Defense and Indemnification.

(d) (1) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities: Provided, That nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant has a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: Provided, That the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities: Provided, That the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII. ACTIVITIES OF THE INTERSTATE COMMISSION.

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(a) The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's bylaws establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law-enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law-enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principals contained in the "Government in Sunshine Act" 5 U.S.C. §552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;

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(4) Involve accusing any person of a crime, or formally censuring any person;

(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigatory records compiled for law-enforcement purposes;

(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; and

(9) Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

(g) For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call (effective in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(h) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII. RULE MAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states;

(b) Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rule making shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. §551 et seq., and the federal Advisory Committee Act, 5 U.S.C. app. 2, §l et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the Legislatures of the compacting states rejects a rule, by enactment of a statute of resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

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(d) When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;

(2) Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) Provide an opportunity for an informal hearing; and

(4) Promulgate a final rule and its effective date, if appropriate, based on the rule making record.

(e) Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, (as defined in the APA), in the rule making record, the court shall hold the rule unlawful and set it aside.

(f) Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) Notice to victims and opportunity to be heard;

(2) Offender registration and compliance;

(3) Violations/returns;

(4) Transfer procedures and forms;

(5) Eligibility for transfer;

(6) Collection of restitution and fees from offenders;

(7) Data collection and reporting;

(8) The level of supervision to be provided by the receiving state;

(9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and

(10) Mediation, arbitration and dispute resolution.

(g) The existing rules governing the operation of the previous compact superceded by this act shall be null and void twelve months after the first meeting of the interstate commission

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created hereunder.

(h) Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption: Provided, That the usual rule-making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX. OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION.

Section A. Oversight.

(a) (1) The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

(2) The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

(b) (1) The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission on the discharge of its duties and responsibilities.

(2) The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

(3) The interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

Section C. Enforcement.

(c) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII, section B, of this compact.

ARTICLE X. FINANCE.

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(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment organization and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

(c) The interstate commission shall not incur any obligations of any kind prior in securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE XI. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.

(a) Any state, as defined in article II of this compact, is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The Governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

(c) Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII. WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT.

Section A. Withdrawal.

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(a) (1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state: Provided, That a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repeal.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Default.

(b) (1) If the interstate commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules the interstate commission may impose any or all of the following penalties:

(A) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(B) Remedial training and technical assistance as directed by the interstate commission; and

(C) Suspension and termination of membership in the compact.

Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the Governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's Legislature, and the state council.

(2) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by the compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If

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the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the Governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's Legislature and the state council of such termination.

(3) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

(4) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement.

(c) The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules. The interstate commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the Federal District where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

Section D. Dissolution of Compact.

(d) (1) The compact dissolves effective upon the date of the withdrawal or default of the compacting states which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII. SEVERABILITY AND CONSTRUCTION.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or

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provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV. BINDING EFFECT OF COMPACT AND OTHER LAWS.

Section A. Other laws.

(a) (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact.

(b) (1) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commissions may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the Constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereto to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

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§28-7-2. State council for interstate adult offender supervision.

(a) Within thirty days of the effective date of this article, there shall be created a state council for interstate adult offender supervision. Said state council shall be comprised of a total of nine members, to be selected and designated as follows:

(1) Two members designated by the State Legislature, one of whom shall be named and appointed by the speaker of the House, and the other of whom shall be designated by the President of the Senate;

(2) Two members designated by the judiciary, both of whom shall be named and appointed by the chief justice of the Supreme Court of Appeals of West Virginia;

(3) The compact administrator or a designee of the compact administrator;

(4) Four members to be designated and appointed by the Governor, two of whom must be representatives of state agencies dealing with adult corrections, parole or probation, and one of whom must be a representative of a victims' group.

(b) Within sixty days of the effective date of this article, the state council shall meet and designate a commissioner who shall represent the state as the compacting state's voting representative under article III of this compact.

(c) The state council will exercise oversight and advocacy concerning West Virginia's participation in interstate commission activities and rule makings, and engage in other duties and activities as determined by its members, including, but not limited to, the development of policy concerning the operations and procedures for implementing the compact and interstate commission rules within West Virginia.

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§28-7-3. Appointment of compact administrator.

(a) Upon and after the effective date of the interstate compact for adult offender supervision, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like offices of the other party states, shall be responsible for the administration and management of this state's supervision and transfer of adult offenders subject to the terms of this compact, the rules adopted by the interstate commission and the policies adopted by the state council under this compact. Said compact administrator shall serve subject to the will and pleasure of the Governor, and must meet the minimum qualifications for the position of compact administrator, as established by the state council. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state hereunder.

(b) Until such time as the state council has met and established minimum qualifications for the position of compact administrator, the individual or administrator who has been designated by the Governor to act as the compact administrator for the supervision of out-of-state parolees and probationers, pursuant to section one, article six of this chapter, may perform the duties and responsibilities of compact administrator under this article.

(c) Until such time as the state council has met and designated a commissioner to vote on behalf of the State of West Virginia at the interstate commission, the individual or administrator who has been designated to act as the compact administrator for the supervision of out-of-state parolees and probationers, pursuant to section one, article six of this chapter, shall function as the acting commissioner for the State of West Virginia before the interstate commission formed under the new compact.

WV Legislature

§28-7-4. Transfer application fee.

On and after July 1, 2004, the Division of Corrections may charge an application fee set by the division, not to exceed $100, to adult offenders applying for transfer out-of-state under the interstate compact for the supervision of adult offenders. There is created a special revenue account in the State Treasury designated the "Interstate Compact for Adult Offenders Fund". The application fee shall be deposited in this account and expended to offset the cost of operating the interstate compact. All funds not expended at year-end may be retained and carried forward by the division and used by the division for the same purpose.

WV Legislature