

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1941



ENROLLED

HOUSE BILL No. 203

(By Mr. Speaker, Mr. Arnold)



PASSED February 25, 1941

In Effect ninety days from Passage

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AN ACT to repeal section one, article seven, and to amend and reenact articles one, two and three; section six, article four; sections one and fourteen, article five; article six; and sections seven, twenty-six, twenty-seven and twenty-eight, article seven, all in chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and all relating to child welfare.

*Be it enacted by the Legislature of West Virginia:*

That section one, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that articles one, two and three; section six, article four; sections one and fourteen, article five; article six; and sections seven, twenty-six, twenty-seven and twenty-eight, article seven; all in chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**Article 1. Purposes; Definitions.**

Section 1. *Purpose.*—The purpose of this chapter is to  
2 provide a comprehensive system of child welfare through-  
3 out the state.

4 The child welfare service of the state shall be admin-  
5 istered by the state department of public assistance and  
6 the several county departments in accordance with the  
7 provisions of this chapter.

8 The state department of public assistance is designated  
9 as the agency to cooperate with the children's bureau of  
10 the United States Department of Labor in extending  
11 and improving child welfare services, to comply with reg-  
12 ulations of the children's bureau, and to receive and ex-  
13 pend federal funds for these services.

Sec. 2. *Children.*—"Child" means any minor who is  
2 crippled or any minor under the age of eighteen years  
3 who because of lack of a home, inadequate care, neglect,  
4 illegitimate birth, mental or physical disability or unde-  
5 sirable or delinquent conduct is in need of services, pro-  
6 tection, or care.

Sec. 3. *Neglected Child*.—"Neglected Child" means a

2 child under the age of eighteen years who:

3 (1) Is destitute, homeless, or abandoned.

4 (2) Has not proper parental care or guardianship.

5 (3) Habitually begs or receives alms.

6 (4) By reason of neglect, cruelty, or disrepute on the  
7 part of parents, guardians, or other persons in whose care  
8 the child may be, is living in an improper place.

9 (5) Is in an environment warranting the appointment  
10 of a guardian under this article.

Sec. 4. *Delinquent Child*.—"Delinquent Child" means a

2 person under the age of eighteen years who:

3 (1) Violates a law or municipal ordinance.

4 (2) Commits an act which if committed by an adult  
5 would be a crime not punishable by death or life im-  
6 prisonment.

7 (3) Is incorrigible, ungovernable, or habitually dis-  
8 obedient and beyond the control of his parent, guardian,  
9 or other custodian.

10 (4) Is habitually truant.

11 (5) Without just cause and without the consent of his

12 parent, guardian, or other custodian, repeatedly deserts  
13 his home or place of abode.

14 (6) Engages in an occupation which is in violation of  
15 law.

16 (7) Associates with immoral or vicious persons.

17 (8) Frequents a place the existence of which is in vio-  
18 lation of law.

19 (9) Deports himself so as to wilfully injure or endan-  
20 ger the morals or health of himself or others.

Sec. 5. *Definitions.*—For the purposes of this chapter:

2 (1) "State Department" means the State Department of  
3 Public Assistance.

4 (2) "State Board" means the State Advisory Board.

5 (3) "Director" means the Director of the State Depart-  
6 ment of Public Assistance.

7 (4) "County Department of Public Assistance" means  
8 the county director, the county council, and the employees  
9 and appointees of the county council.

10 (5) "Child Welfare Agency" means any agency or in-  
11 stitution maintained by a municipality or county, or any  
12 agency or institution maintained by a person, firm, corpor-

13 ation, association or organization to receive children for  
14 care and maintenance or for placement in a family home,  
15 or any institution that provides care for unmarried  
16 mothers and their children.

**Article 2. State and County Responsibilities for the Protection  
and Care of Children.**

Section 1. *Care for Children Committed to the State  
Department.*—It shall be the responsibility of the state  
department to provide care for neglected children who are  
committed to its care for custody or guardianship. The  
state department may provide care for such children in  
family homes meeting required standards, at board or  
otherwise, through a licensed child welfare agency, or in  
a state institution providing care for dependent or neg-  
lected children. The department in placing any child in  
the care of a family or a child welfare agency shall select  
as far as practicable a family holding the same religious  
belief as the parents or relatives of the child or a child  
welfare agency conducted under religious auspices of the  
same belief as the parents or relatives.

Sec. 2. *Duration of Custody or Guardianship.*—A child

2 committed to the state department for guardianship, after  
3 termination of parental rights, shall remain in the care  
4 of the department until he attains the age of twenty-one  
5 years, or is married, or is adopted, or guardianship is relin-  
6 quished through the court.

7 A child committed to the state department for custody  
8 shall remain in the care of the department until he attains  
9 the age of twenty-one years, or until he is discharged be-  
10 cause he is no longer in need of care.

Sec. 3. *Development of Standards of Child Care.*—The  
2 state department shall be responsible for the development  
3 of desirable standards for the care of children. To this  
4 end, it shall cooperate with, advise and assist all child  
5 welfare agencies, including state institutions, which care  
6 for neglected, delinquent, or mentally or physically handi-  
7 capped children, and shall supervise all such agencies.  
8 The department, in cooperation with the State Depart-  
9 ment of Health and with child welfare agencies, shall  
10 formulate and make available standards of child care and  
11 services for children, to which all child welfare agencies  
12 must conform.

*Sec. 4. License for Maintaining Child Welfare Agencies.*

2 —No person, firm, corporation, association, organization,  
3 municipality or county may establish or maintain a child  
4 welfare agency unless licensed to do so by the state de-  
5 partment. A county court may, however, subject to the  
6 licensing authority of the state department, continue to  
7 maintain any existing child shelter heretofore established  
8 and operated by it, or may, in the case of any child shelter  
9 under construction on or before the effective date of this  
10 act, complete the construction, equip and maintain such  
11 shelter, and may make the appropriations necessary for  
12 any of these purposes. Application for such license shall  
13 be made on forms provided by the department and in the  
14 manner prescribed. Before issuing a license, the depart-  
15 ment shall investigate the activities and standards of care  
16 of the applicant. If satisfied as to the need for the agency,  
17 as to the financial stability, equipment, good character and  
18 intent of the applicant, and that the services are conducive  
19 to the welfare of children, a license shall be issued.

20 A provisional license may be issued to any agency whose  
21 services are needed but which is temporarily unable to



22 conform to all the provisions of the established standards  
23 of care. All licenses shall be in force for one year from  
24 the date of issuance unless revoked as authorized by sec-  
25 tion seven of this article, and shall be reissued annually  
26 on application of the agency.

27 Each license shall specify in general terms the kind of  
28 child welfare work the licensee is authorized to under-  
29 take, the number of children that can be received and  
30 their ages and sex, and if authorized to place and super-  
31 vise children in family homes, the area that the agency is  
32 equipped to serve.

Sec. 5. *Supervision, Records and Reports.*—In order to  
2 improve standards of child care, the state department  
3 shall cooperate with the governing boards of child wel-  
4 fare agencies, assist the staffs of such agencies through  
5 advice on progressive methods and procedures of child  
6 care and improvement of the service rendered and assist  
7 in the development of community plans of child care. The  
8 State Department of Health, or its duly authorized agent,  
9 may visit any child welfare agency to advise the agency  
10 on matters affecting the health of children and to inspect

11 the sanitation of the buildings used for their care. Each  
12 child welfare agency shall keep such records regarding  
13 each child under its control and care as the state depart-  
14 ment may prescribe and shall report to the department,  
15 whenever requested, such facts as may be required with  
16 reference to such children, upon blanks furnished by the  
17 department. All records regarding children and all facts  
18 learned about children and their parents or relatives shall  
19 be regarded as confidential and shall be properly safe-  
20 guarded by the agency and the state department.

Sec. 6. *Approval of Articles of Incorporation.*—A child  
2 welfare agency shall not be incorporated in this State  
3 unless the articles of incorporation have first been ex-  
4 amined and approved by the state department. Proposed  
5 amendments to such articles of incorporation shall like-  
6 wise be subject to the examination and approval of the  
7 state department.

Sec. 7. *Revocation of License.*—The state department  
2 may revoke the license of any child welfare agency in  
3 case the licensee shall have wilfully and substantially  
4 violated any provision of this article or has failed to main-

5   tain the established standards of care and service. No li-  
6   cense of a child welfare agency shall be revoked or its  
7   renewal refused unless the holder of the license shall have  
8   notice in writing of the grounds of the proposed revoca-  
9   tion or refusal. If such revocation or refusal is protested,  
10   a hearing shall be held, upon at least thirty days' written  
11   notice, and opportunity shall be given for presentation of  
12   testimony and cross-examination of witnesses.

Sec. 8. *Violation*.—Whenever the state department shall  
2   be advised, or shall have reason to believe, that any per-  
3   son is conducting or maintaining a child welfare agency  
4   without a license as required by this act, it shall have an  
5   investigation made, and if the person is conducting a child  
6   welfare agency, it shall either issue a license or take ac-  
7   tion to prevent continued operation of the agency.

Sec. 9. *Unsupervised Foster Homes*.—Any family home,  
2   not under the supervision of a county department of pub-  
3   lic assistance or of a child welfare agency, in which one  
4   or more children under eighteen years of age, separated  
5   from parents or guardian and not related by blood or mar-  
6   riage to the person maintaining the home, are received,

7   cared for and maintained for compensation, or otherwise,  
8   shall be considered an unsupervised foster home. No per-  
9   son shall conduct an unsupervised foster home without a  
10  certificate from the state department.

*Sec. 10. Certificate for Unsupervised Foster Home.*—It  
2   shall be the duty of the state department in cooperation  
3   with the State Department of Health to establish reason-  
4   able minimum standards for foster-home care to which all  
5   certified foster homes must conform. No unsupervised  
6   foster home shall be certified until an investigation of the  
7   home and its standards of care has been made by the state  
8   department or by a licensed child-welfare agency serving  
9   as its representative. Any such home that conforms to  
10  the established standards of care and to the prescribed  
11  rules shall receive a certificate from the state department,  
12  which shall be in force for one year from the date of issu-  
13  ance and which may be renewed unless revoked because of  
14  wilful violation of the provisions of this chapter. The  
15  certificate shall show the name of the persons authorized  
16  to conduct the home, its exact location and the number of  
17  children that may be received and cared for at one time.

18 No certified foster home shall receive for care more chil-  
19 dren than are specified in the certificate.

Sec. 11. *Visits; Records.*—The state department or its  
2 authorized agent shall visit every certified foster home  
3 as often as is necessary to assure that proper care is given  
4 to the children. Every certified foster home shall main-  
5 tain a record of the children received which shall include  
6 such facts in regard to the children and their care and  
7 shall be in such form and manner as are prescribed by the  
8 state department.

Sec. 12. *Removal of Child from Undesirable Foster*  
2 *Home.*—If at any time the state department shall find a  
3 child in an unsupervised foster home where the child is  
4 subject to undesirable influences or lacks proper or wise  
5 care and management, it shall notify the county depart-  
6 ment of the county in which the child is living to take  
7 necessary action to remove the child and arrange for his  
8 care.

Sec. 13. *Parole to State Department.*—Children paroled  
2 from the state industrial schools and homes and children  
3 paroled from institutions for mental defectives shall be

4 paroled to the state department. Thereafter, the state  
5 department shall, notwithstanding any other provision  
6 of this code, have exclusive supervisory control over every  
7 child so paroled and shall have exclusive authority to re-  
8 voke the parole or to discharge the child from parole.  
9 Upon the revocation of any parole and the return of the  
10 parolee to the institution from which he was paroled, all  
11 authority over the parolee, originally vested in such insti-  
12 tution, shall again become operative.

Sec. 14. *Admission to School for Deaf and Blind Chil-*  
2 *dren.*—The state department shall require the county de-  
3 partments to investigate applications for admission to  
4 the state schools for deaf and blind children.

5 If the state department finds that a child should be ad-  
6 mitted to a state school it shall certify the case to the  
7 principal for admission. The principal shall admit a child  
8 to the school only upon the certification of the state de-  
9 partment.

Sec. 15. *Placement of Children from Other States.*—An  
2 institution or organization incorporated under the laws  
3 of another state shall not place a child in a private home

4 in this state without the approval of the state department,  
5 and the agency so placing the child shall arrange for  
6 supervision of the child through its own staff or through  
7 a licensed child welfare agency in this state, and shall  
8 maintain responsibility for the child until he is adopted  
9 or discharged from care with the approval of the state  
10 department.

Sec. 16. *County Responsibility for Child Care.*—The  
2 county departments of public assistance are authorized  
3 to provide care, support and protective services for chil-  
4 dren who are handicapped by dependency, neglect, illegiti-  
5 mate birth, mental or physical disability or who for other  
6 reasons are in need of public service. The county  
7 departments of public assistance are hereby authorized  
8 and empowered in their discretion to accept children for  
9 care from their parent or parents, guardian or relatives  
10 and to accept the custody of children committed to their  
11 care by courts exercising juvenile jurisdiction.

12 The county departments of public assistance shall pro-  
13 vide care in special boarding homes for children needing  
14 detention pending disposition by a court having juven-

15 ile jurisdiction or temporary care following such court  
16 action.

**Article 3. Private Institutions and Organizations.**

Section 1. *Private Child Welfare Agencies.*—Whenever  
2 a child welfare agency licensed to place children for  
3 adoption shall have been given the permanent care, cus-  
4 tody and guardianship of any child and the rights of the  
5 parents of such child shall have been terminated by order  
6 of a court of competent jurisdiction or by a legally ex-  
7 ecuted relinquishment of parental rights, the child welfare  
8 agency may consent to the adoption of such child pur-  
9 suant to the statutes regulating adoption proceedings.

10 The parents or the surviving parent of a child or the  
11 mother of an illegitimate child may relinquish the child  
12 to a child welfare agency licensed to place children for  
13 adoption by a written statement signed before two wit-  
14 nesses and acknowledged before a representative of the  
15 child welfare agency. No such relinquishment shall be  
16 valid unless a copy be filed in the office of the state depart-  
17 ment and the relinquishment approved by the depart-  
18 ment. Except in proceedings for adoption, no parent may



19 otherwise voluntarily assign or transfer to another his  
20 rights and duties with respect to the permanent care, cus-  
21 tody and control of a child under eighteen years of age.

Sec. 2. *Approval of Incorporation.*—Before issuing a  
2 charter for the incorporation of any organization having  
3 as its purpose the receipt of children for care or for place-  
4 ment in family homes, the Secretary of State shall pro-  
5 vide a copy of the petition, together with any other in-  
6 formation in his possession pertaining to the proposed  
7 corporation, to the state department and no charter for any  
8 such corporation shall be issued unless the state depart-  
9 ment shall first certify to the Secretary of State that it  
10 has investigated the need for the services proposed and  
11 the merits of the proposed charitable corporation and rec-  
12 ommends the issuance thereof; applications for amend-  
13 ments of any existing charter shall be similarly referred  
14 and shall be granted only upon similar approval.

#### **Article 4. Crippled Children.**

##### *Section 6. County Departments to Render Services.—*

2 County departments shall cooperate with the state de-  
3 partment in rendering the services provided by this article.

4 They shall perform for the state department such investi-  
5 gations, case supervision, and other services as the depart-  
6 ment may request.

**Article 5. Juvenile Courts.**

Section 1. *What Courts Have Juvenile Jurisdiction.*—The  
2 circuit court of the county shall have original jurisdiction  
3 in proceedings brought by petition under this article. If,  
4 however, a court of record in addition to the circuit court,  
5 has been or is subsequently created in a county, proceed-  
6 ings under this article shall be held in the additional court  
7 with right of appeal to the circuit court as follows:  
8 (1) The domestic relations court, or if there is none,  
9 (2) The court of common pleas or intermediate court  
10 having chancery jurisdiction, or if there is none,  
11 (3) The criminal court.

Sec. 14. *Disposition by Court.*—With a view to the wel-  
2 fare and interest of the child and of the state, the court  
3 or judge may, after the proceedings, make any of the fol-  
4 lowing dispositions:  
5 (1) Treat the child as a neglected child, in which case  
6 the provisions of article six of this chapter shall apply.

7     (2) Order the child placed under the supervision of a  
8     probation officer.

9     (3) If the child be over sixteen years of age at the time  
10    of the commission of the offense the court may, if the  
11    proceedings originated as a criminal proceeding in a court  
12    other than a juvenile court, enter an order transferring  
13    the case back to the court of origin, or to any court in the  
14    county having criminal jurisdiction; or if the case origin-  
15    ated on petition in juvenile court, the court may enter an  
16    order showing its refusal to take jurisdiction and permit  
17    the child to be proceeded against in accordance with the  
18    the laws of the state governing the commission of crimes  
19    or violation of municipal ordinances.

20    (4) Commit the child to an industrial home or correc-  
21    tional institution for minors.

22    (5) Commit the child to any public or private institu-  
23    tion or agency permitted by law to care for children.

24    (6) Commit the child to the care and custody of some  
25    suitable person who shall be appointed guardian of the  
26    person and custodian of the child.

27     (7) Enter any other order which seems to the court to  
28     be to the best interests of the child.

**Article 6. Procedure in Neglect Cases.**

*Section 1. Neglected Children; Petition to Juvenile*

2     *Court.*—If the state department, or a reputable person,  
3     believes that a child is neglected, the department or the  
4     person may present a petition setting forth the facts to  
5     the juvenile court in the county in which the child re-  
6     sides, or to the judge of such court in vacation. The pe-  
7     tition shall be verified by the oath of some credible per-  
8     son having knowledge of the facts. Upon the filing of the  
9     petition, the court or judge shall set a time and place for  
10    a hearing.

*Sec. 2. Hearing.*—Notice of the time and place of hear-  
2    ing shall be served upon the person having custody of the  
3    child and shall be given to the state department. The per-  
4    son having custody of the child, a parent or other person  
5    standing in loco parentis, a relative, or any other person  
6    having knowledge of the circumstances may appear and  
7    be heard.

*Sec. 3. Temporary Custody.*—Until a hearing can be

2 held upon the petition, the court or judge may order that  
3 the child be delivered into the custody of a county de-  
4 partment, or into such other custody as the court or judge  
5 may deem proper.

Sec. 4. *Commitment to State Department.*—If the court  
2 finds that the interests and welfare of the child may best  
3 be served by the state department, it may commit the child  
4 to the custody and guardianship of the state department.

5 Before the commitment the court shall supply to the  
6 state department all its information concerning the his-  
7 tory, physical condition, and present situation of the child,  
8 its parents, and forebears. This information shall be upon  
9 the form provided by the state department. At its discre-  
10 tion, the state department may accept or refuse to accept  
11 a child for commitment.

Sec. 5. *Dispositions Other Than Commitment to the*  
2 *State Department.*—In any case of a neglected child the  
3 court may:

4 (1) Return the child to his own home under super-  
5 vision of the county department;

6     (2) Commit the child to the custody of the county de-  
7     partment or a licensed private child welfare agency;

8     (3) When necessary for the welfare of the child ter-  
9     minate the parental rights and responsibilities of the par-  
10    ent or parents of the child and commit the child to  
11    the permanent care and guardianship of the state depart-  
12    ment or of a licensed private child welfare agency;

13    (4) Appoint a suitable relative of the child as guardian  
14    of the person of the child.

#### **Article 7. General Provisions.**

Section 7. *Contributing to Delinquency or Neglect of a*  
2    *Child; Penalty.*—A person who by any act or omission  
3    contributes to, encourages or tends to cause the delin-  
4    quency or neglect of any child shall be guilty of a mis-  
5    demeanor, and upon conviction thereof shall be fined not  
6    to exceed five hundred dollars, or imprisoned in the county  
7    jail for a period not exceeding one year, or both.

Sec. 26. *Duty of Prosecuting Attorney.*—The prosecut-  
2    ing attorney shall render to the county department, with-  
3    out additional compensation, such legal services as the  
4    council may require.

Sec. 27. *Duty of County Superintendent of Schools.*—

2 The superintendent of schools of the county shall, with-  
3 out additional compensation, cooperate with and render  
4 such assistance to the county department as the council  
5 may require.

Sec. 28. *Proceeding by the County Department.*—A

2 county department shall have the authority to institute,  
3 in the name of the state, proceedings incident to the per-  
4 formance of its duties under the provisions of this chap-  
5 ter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*G. H. M. Komer*  
Chairman Senate Committee

*Leon Rice*  
Chairman House Committee

Originated in the *House of Delegates*

Takes effect *ninety days from* passage.

*Alvan Watkins*  
Clerk of the Senate

*Jeff*  
Clerk of the House of Delegates

*Byron W. Randolph*  
President of the Senate

*Malcolm R. Arnold*  
Speaker House of Delegates

The within *approved* this the *8th*  
day of *March*, 1941

*Matthew M. Neely*  
Governor.

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Filed in the office of the Secretary of State  
of West Virginia. MAR 10 1941

Wm. S. O'BRIEN,  
Secretary of State