WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

HOUSE BILL No. 203

(By Mr. Speaker, Mr. Amsel)

PASSED February 25, 1941

In Effect ninety days from Passage
ENROLLED

House Bill No. 203
(By Mr. Speaker, Mr. Arnold)

[Passed February 25, 1941; in effect ninety days from passage.]

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article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that articles one, two and three; section six, article four; sections one and fourteen, article five; article six; and sections seven, twenty-six,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 provide a comprehensive system of child welfare throughout the state.

The child welfare service of the state shall be administered by the state department of public assistance and the several county departments in accordance with the provisions of this chapter.

The state department of public assistance is designated as the agency to cooperate with the children's bureau of the United States Department of Labor in extending and improving child welfare services, to comply with regulations of the children's bureau, and to receive and expend federal funds for these services.

Sec. 2. Children.—"Child" means any minor who is crippled or any minor under the age of eighteen years who because of lack of a home, inadequate care, neglect, illegitimate birth, mental or physical disability or undesirable or delinquent conduct is in need of services, protection, or care.
Sec. 3. *Neglected Child.*—"Neglected Child" means a child under the age of eighteen years who:

1. Is destitute, homeless, or abandoned.
2. Has not proper parental care or guardianship.
3. Habitually begs or receives alms.
4. By reason of neglect, cruelty, or disrepute on the part of parents, guardians, or other persons in whose care the child may be, is living in an improper place.
5. Is in an environment warranting the appointment of a guardian under this article.

Sec. 4. *Delinquent Child.*—"Delinquent Child" means a person under the age of eighteen years who:

1. Violates a law or municipal ordinance.
2. Commits an act which if committed by an adult would be a crime not punishable by death or life imprisonment.
3. Is incorrigible, ungovernable, or habitually disobedient and beyond the control of his parent, guardian, or other custodian.
4. Is habitually truant.
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) Frequent 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-
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 neglected 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
committed to the state department for guardianship, after
termination of parental rights, shall remain in the care
of the department until he attains the age of twenty-one
years, or is married, or is adopted, or guardianship is relin-
quished through the court.
A child committed to the state department for custody
shall remain in the care of the department until he attains
the age of twenty-one years, or until he is discharged be-
cause he is no longer in need of care.

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

No person, firm, corporation, association, organization, municipality or county may establish or maintain a child welfare agency unless licensed to do so by the state department. A county court may, however, subject to the licensing authority of the state department, continue to maintain any existing child shelter heretofore established and operated by it, or may, in the case of any child shelter under construction on or before the effective date of this act, complete the construction, equip and maintain such shelter, and may make the appropriations necessary for any of these purposes. Application for such license shall be made on forms provided by the department and in the manner prescribed. Before issuing a license, the department shall investigate the activities and standards of care of the applicant. If satisfied as to the need for the agency, as to the financial stability, equipment, good character and intent of the applicant, and that the services are conducive to the welfare of children, a license shall be issued.

A provisional license may be issued to any agency whose services are needed but which is temporarily unable to
conform to all the provisions of the established standards of care. All licenses shall be in force for one year from the date of issuance unless revoked as authorized by section seven of this article, and shall be reissued annually on application of the agency.

Each license shall specify in general terms the kind of child welfare work the licensee is authorized to undertake, the number of children that can be received and their ages and sex, and if authorized to place and supervise children in family homes, the area that the agency is equipped to serve.

Sec. 5. Supervision, Records and Reports.—In order to improve standards of child care, the state department shall cooperate with the governing boards of child welfare agencies, assist the staffs of such agencies through advice on progressive methods and procedures of child care and improvement of the service rendered and assist in the development of community plans of child care. The State Department of Health, or its duly authorized agent, may visit any child welfare agency to advise the agency on matters affecting the health of children and to inspect
the sanitation of the buildings used for their care. Each
child welfare agency shall keep such records regarding
each child under its control and care as the state depart-
ment may prescribe and shall report to the department,
whenever requested, such facts as may be required with
reference to such children, upon blanks furnished by the
department. All records regarding children and all facts
learned about children and their parents or relatives shall
be regarded as confidential and shall be properly safe-
guarded by the agency and the state department.

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

Sec. 7. Revocation of License.—The state department
may revoke the license of any child welfare agency in
case the licensee shall have wilfully and substantially
violated any provision of this article or has failed to main-
tain the established standards of care and service. No li-
cense of a child welfare agency shall be revoked or its
renewal refused unless the holder of the license shall have
notice in writing of the grounds of the proposed revoca-
tion or refusal. If such revocation or refusal is protested,
a hearing shall be held, upon at least thirty days' written
notice, and opportunity shall be given for presentation of
testimony and cross-examination of witnesses.

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

Sec. 9. Unsupervised Foster Homes.—Any family home,
ot under the supervision of a county department of pub-
lic assistance or of a child welfare agency, in which one
or more children under eighteen years of age, separated
from parents or guardian and not related by blood or mar-
riage to the person maintaining the home, are received,
cared for and maintained for compensation, or otherwise, shall be considered an unsupervised foster home. No person shall conduct an unsupervised foster home without a certificate from the state department.

Sec. 10. Certificate for Unsupervised Foster Home.—It shall be the duty of the state department in cooperation with the State Department of Health to establish reasonable minimum standards for foster-home care to which all certified foster homes must conform. No unsupervised foster home shall be certified until an investigation of the home and its standards of care has been made by the state department or by a licensed child-welfare agency serving as its representative. Any such home that conforms to the established standards of care and to the prescribed rules shall receive a certificate from the state department, which shall be in force for one year from the date of issuance and which may be renewed unless revoked because of wilful violation of the provisions of this chapter. The certificate shall show the name of the persons authorized to conduct the home, its exact location and the number of children that may be received and cared for at one time.
Sec. 11. Visits; Records.—The state department or its authorized agent shall visit every certified foster home as often as is necessary to assure that proper care is given to the children. Every certified foster home shall maintain a record of the children received which shall include such facts in regard to the children and their care and shall be in such form and manner as are prescribed by the state department.

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

Sec. 13. Parole to State Department.—Children paroled from the state industrial schools and homes and children paroled from institutions for mental defectives shall be
paroled to the state department. Thereafter, the state department shall, notwithstanding any other provision of this code, have exclusive supervisory control over every child so paroled and shall have exclusive authority to revoke the parole or to discharge the child from parole.

Upon the revocation of any parole and the return of the parolee to the institution from which he was paroled, all authority over the parolee, originally vested in such institution, shall again become operative.

Sec. 14. Admission to School for Deaf and Blind Children.—The state department shall require the county departments to investigate applications for admission to the state schools for deaf and blind children.

If the state department finds that a child should be admitted to a state school it shall certify the case to the principal for admission. The principal shall admit a child to the school only upon the certification of the state department.

Sec. 15. Placement of Children from Other States.—An institution or organization incorporated under the laws of another state shall not place a child in a private home.
in this state without the approval of the state department, and the agency so placing the child shall arrange for supervision of the child through its own staff or through a licensed child welfare agency in this state, and shall maintain responsibility for the child until he is adopted or discharged from care with the approval of the state department.

Sec. 16. County Responsibility for Child Care.—The county departments of public assistance are authorized to provide care, support and protective services for children who are handicapped by dependency, neglect, illegitimate birth, mental or physical disability or who for other reasons are in need of public service. The county departments of public assistance are hereby authorized and empowered in their discretion to accept children for care from their parent or parents, guardian or relatives and to accept the custody of children committed to their care by courts exercising juvenile jurisdiction.

The county departments of public assistance shall provide care in special boarding homes for children needing detention pending disposition by a court having juven-
Article 3. Private Institutions and Organizations.

Section 1. Private Child Welfare Agencies.—Whenever a child welfare agency licensed to place children for adoption shall have been given the permanent care, custody and guardianship of any child and the rights of the parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency may consent to the adoption of such child pursuant to the statutes regulating adoption proceedings.

The parents or the surviving parent of a child or the mother of an illegitimate child may relinquish the child to a child welfare agency licensed to place children for adoption by a written statement signed before two witnesses and acknowledged before a representative of the child welfare agency. No such relinquishment shall be valid unless a copy be filed in the office of the state department and the relinquishment approved by the department. Except in proceedings for adoption, no parent may
otherwise voluntarily assign or transfer to another his
rights and duties with respect to the permanent care, cus-
tody and control of a child under eighteen years of age.

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


Section 6. County Departments to Render Services.—
County departments shall cooperate with the state de-
partment in rendering the services provided by this article.
They shall perform for the state department such investiga-
gations, case supervision, and other services as the depart-
ment may request.

Article 5. Juvenile Courts.

Section 1. What Courts Have Juvenile Jurisdiction.—The circuit court of the county shall have original jurisdiction in proceedings brought by petition under this article. If, however, a court of record in addition to the circuit court, has been or is subsequently created in a county, proceedings under this article shall be held in the additional court with right of appeal to the circuit court as follows:

(1) The domestic relations court, or if there is none,

(2) The court of common pleas or intermediate court having chancery jurisdiction, or if there is none,

(3) The criminal court.

Sec. 14. Disposition by Court.—With a view to the wel-
fare and interest of the child and of the state, the court or judge may, after the proceedings, make any of the fol-
lowing dispositions:

(1) Treat the child as a neglected child, in which case the provisions of article six of this chapter shall apply.
(2) Order the child placed under the supervision of a probation officer.

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

(4) Commit the child to an industrial home or correctional institution for minors.

(5) Commit the child to any public or private institution or agency permitted by law to care for children.

(6) Commit the child to the care and custody of some suitable person who shall be appointed guardian of the person and custodian of the child.
(7) Enter any other order which seems to the court to be to the best interests of the child.

Article 6. Procedure in Neglect Cases.

Section 1. Neglected Children; Petition to Juvenile Court.—If the state department, or a reputable person, believes that a child is neglected, the department or the person may present a petition setting forth the facts to the juvenile court in the county in which the child resides, or to the judge of such court in vacation. The petition shall be verified by the oath of some credible person having knowledge of the facts. Upon the filing of the petition, the court or judge shall set a time and place for a hearing.

Sec. 2. Hearing.—Notice of the time and place of hearing shall be served upon the person having custody of the child and shall be given to the state department. The person having custody of the child, a parent or other person standing in loco parentis, a relative, or any other person having knowledge of the circumstances may appear and be heard.

Sec. 3. Temporary Custody.—Until a hearing can be
held upon the petition, the court or judge may order that
the child be delivered into the custody of a county de-
partment, or into such other custody as the court or judge
may deem proper.

Sec. 4. Commitment to State Department.—If the court
finds that the interests and welfare of the child may best
be served by the state department, it may commit the child
to the custody and guardianship of the state department.
Before the commitment the court shall supply to the
state department all its information concerning the his-
tory, physical condition, and present situation of the child,
its parents, and forebears. This information shall be upon
the form provided by the state department. At its discre-
tion, the state department may accept or refuse to accept
a child for commitment.

Sec. 5. Dispositions Other Than Commitment to the
State Department.—In any case of a neglected child the
court may:
(1) Return the child to his own home under super-
vision of the county department;
(2) Commit the child to the custody of the county department or a licensed private child welfare agency;

(3) When necessary for the welfare of the child terminate the parental rights and responsibilities of the parent or parents of the child and commit the child to the permanent care and guardianship of the state department or of a licensed private child welfare agency;

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


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

Sec. 26. Duty of Prosecuting Attorney.—The prosecuting attorney shall render to the county department, without additional compensation, such legal services as the 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.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 8th day of April, 1941.

Governor.

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

Wm. S. O'Brien,
Secretary of State