

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971

ENROLLED

SENATE BILL NO. 45

(By Mr. HOLLIDAY AND MR. SHARPE)

PASSED FEBRUARY 12, 1971

In Effect NINETY DAYS FROM Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE 2-19-71

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**Senate Bill No. 45**

(By MR. HOLLIDAY and MR. SHARPE)

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[Passed February 12, 1971; in effect ninety days from passage.]

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AN ACT to amend and reenact section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one through eleven, inclusive, article one, chapter twenty-eight of said code, all relating to the commitment of youthful male offenders; forestry camps and other facilities for youthful offenders; lateral transfer of inmates and the authority of the state commissioner of public institutions.

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

That section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, be amended and reenacted; and that sections one through eleven, inclusive, article one, chapter twenty-eight of said code be amended and reenacted, all to read as follows:

**CHAPTER 25. COMMISSIONER OF PUBLIC INSTITUTIONS.**

**ARTICLE 4. FORESTRY CAMPS FOR HOUSING YOUTHFUL  
MALE LAW OFFENDERS.**

**§25-4-7. Physical and mental examination of offenders.**

1 Before the judge of any court of original jurisdiction  
2 or juvenile court can transfer a youthful offender to the  
3 custody of the commissioner of public institutions to  
4 be assigned to a forestry camp, such offender shall be  
5 given a complete medical examination by a doctor  
6 designated by the commissioner of public institutions,  
7 and the offender must be free of any communicable  
8 disease or other physical defects which would prohibit  
9 him from participating in the program of the forestry  
10 camp. In the event there is a question concerning the  
11 mental status of an offender, he shall be given an exami-  
12 nation by a competent psychiatrist designated by the  
13 commissioner of public institutions to determine whether

14 he is fit to participate in the program of the forestry  
15 camp.

16 Any offender who is found to have a communicable  
17 disease, is feeble-minded, psychotic, mentally ill, or has  
18 a history of homosexual activities, or arsonist tenden-  
19 cies, shall not be eligible for assignment to a forestry  
20 camp.

21 Nothing contained in this section shall prohibit the  
22 free transfer of any male youth from one youth facility  
23 to another youth facility in the manner provided in  
24 article one, chapter twenty-eight of this code.

**CHAPTER 28. STATE CORRECTIONAL AND  
PENAL INSTITUTIONS.**

**ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.**

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

1 The state commissioner of public institutions shall be  
2 exclusively charged with the care, training and reforma-  
3 tion of male youths of the state committed to his custody.  
4 All state facilities and institutions for such purpose shall  
5 be managed and controlled as prescribed in article one,  
6 chapter twenty-five of this code.

**§28-1-2. Commitment; age limits.**

1 Any male youth between the ages of ten and eighteen  
2 years shall be committed to the custody of the state  
3 commissioner of public institutions:

4 (a) By any juvenile or domestic relations court of  
5 competent jurisdiction for any of the causes, and in the  
6 manner prescribed in article two, chapter forty-nine of  
7 the code of West Virginia, one thousand nine hundred  
8 thirty-one, as amended and reenacted by chapter one,  
9 acts of the Legislature of West Virginia, first extra-  
10 ordinary session, one thousand nine hundred thirty-six,  
11 pertaining to delinquent children.

12 (b) By any court of record of competent jurisdiction  
13 of this state or of the United States for the districts of  
14 West Virginia in the manner prescribed in the next  
15 succeeding section of this article: *Provided, however,* That  
16 any male youth who has been adjudged delinquent and  
17 placed on probation by a court of competent jurisdiction  
18 prior to his eighteenth birthday may be committed to the  
19 custody of the state commissioner of public institutions  
20 for any act or omission amounting to a violation of any

21 condition of his probation which said act or omission  
22 occurred prior to the expiration of the period of his pro-  
23 bation and prior to the attainment of his twenty-first  
24 birthday.

25 But no youth shall be committed to such school as an  
26 inmate thereof, who is of unsound mind, or imbecilic, or  
27 idiotic, or epileptic, or afflicted with tuberculosis. Before  
28 committing a boy to the custody of the state commis-  
29 sioner of public institutions, the court committing him  
30 shall cause him to be examined by a full-time county  
31 health physician duly authorized to practice medicine  
32 in this state, or if there be no full-time county health  
33 physician, then by some physician duly authorized to  
34 practice medicine in this state designated by the juvenile  
35 court for that purpose, in order to ascertain whether such  
36 boy is sound in mind, or whether he is an imbecile, or an  
37 idiot, or afflicted with tuberculosis, epilepsy, syphilis,  
38 gonorrhoea or any other infectious disease, and as to any  
39 other particulars deemed necessary by the juvenile court  
40 as may be prescribed in the rules and regulations of the  
41 state commissioner of public institutions.

42 In the event there is no full-time health officer in the  
43 county or if there be one and the county health depart-  
44 ment is not adequately equipped or staffed to give the  
45 mental or physical examinations required in cases, in  
46 the opinion of the juvenile court, needing specialized  
47 diagnostic services, the juvenile court may order the child  
48 to receive such physical or mental examinations from a  
49 duly qualified physician designated by the juvenile court,  
50 and it shall be the duty of the county court and the  
51 county court shall pay for such examinations and services  
52 upon receipt of an itemized statement along with the  
53 written order and approval of the juvenile court. Such  
54 examination shall be made in private. The physician  
55 making such examination shall make out a statement  
56 respecting the particulars named in the form prescribed  
57 by the state health department and the state commis-  
58 sioner of public institutions, which certificate of the  
59 physician shall accompany the commitment. If it shall  
60 appear from such examination or otherwise that the boy  
61 is of unsound mind, or is imbecilic, or idiotic, or epileptic,  
62 or is afflicted with tuberculosis, epilepsy, syphilis, gonor-

63 rhea or has any infectious disease, he shall not be com-  
64 mitted to the custody of the state commissioner of public  
65 institutions, except as hereinafter provided; and the state  
66 commissioner of public institutions shall not receive any  
67 boy into his custody unless the commitment is accom-  
68 panied by a certificate of health, signed by such physician,  
69 showing that he is not of unsound mind and is not an  
70 imbecile, or idiot, nor afflicted with tuberculosis, epilepsy,  
71 syphilis, gonorrhoea, or any other infectious disease. If,  
72 upon such examination, it shall appear that the boy is  
73 suffering with tuberculosis, or a venereal disease, in any  
74 stage, the judge committing such boy shall make an  
75 order committing him to the custody of the state com-  
76 missioner of public institutions, and shall make an addi-  
77 tional order directing that he first be transferred to one  
78 of the state hospitals for tuberculosis, in case he is found  
79 to have tuberculosis, and in case he is found to be infected  
80 with any venereal disease, then to the Fairmont emer-  
81 gency hospital or the Welch emergency hospital for  
82 observation, treatment and detention, pending such treat-  
83 ment until cured of such venereal disease or rendered

84 completely noninfectious therefrom, after which time he  
85 shall be transferred to the custody of the state com-  
86 missioner of public institutions and be kept as provided  
87 by law: *Provided, however,* That any such boy who is  
88 feeble-minded shall be sent to the Colin Anderson center,  
89 or if there is no room in the center, then to one of the  
90 state hospitals for the insane, and not to Fairmont emer-  
91 gency hospital or Welch emergency hospital. It shall  
92 be the duty of the superintendents of the hospitals at  
93 Fairmont and Welch to receive into said hospitals all  
94 boys who may be committed thereto as provided herein,  
95 and to detain, care for, and treat such boys until cured  
96 or rendered completely noninfectious, and as soon there-  
97 after as convenient arrange to transfer them to the  
98 custody of the state commissioner of public institutions,  
99 except as herein provided.

100 The said commissioner of public institutions shall pro-  
101 vide such suitable buildings or equipment at the said  
102 hospitals as may be necessary to carry out the provisions  
103 of this section including the expenses of transferring the  
104 boys and for their care and treatment at said hospitals.

105 It shall be the duty of the clerk of the committing  
106 court, upon the commitment of a boy who is infected  
107 with a venereal disease to the said hospitals, as provided  
108 herein, to notify the director of the bureau of venereal  
109 diseases of West Virginia of the fact, giving the name,  
110 age and address of the boy, and the disease from which  
111 he is suffering; and it shall be the duty of the superinten-  
112 dent of the hospital receiving such boy to notify the  
113 director when any boy is received and when he is trans-  
114 ferred to the custody of the state commissioner of public  
115 institutions.

116 In the case of boys found to be afflicted with venereal  
117 disease but who have been rendered noninfectious, but  
118 who have not by treatment as herein provided been  
119 completely cured, the further treatment of such boys  
120 shall be continued by a competent doctor at the facility  
121 wherein such boys are committed, following the direc-  
122 tions given by the superintendent of the Fairmont emer-  
123 gency hospital or the Welch emergency hospital; and the  
124 decision of the superintendent of Fairmont emergency  
125 hospital or Welch emergency hospital that any boy is

126 noninfectious and admissible to the custody of the state  
127 commissioner of public institutions may be questioned  
128 only by appeal to the state director of health of the state  
129 of West Virginia, who, in such a case, shall make due  
130 investigation and shall order such boy returned to the  
131 Fairmont emergency hospital or Welch emergency hos-  
132 pital for further treatment or order that such boy have  
133 his treatment continued at the facility to which he is  
134 committed by the state commissioner of public institu-  
135 tions; and in all such cases where treatment is given or  
136 continued at such facility, careful records shall be kept  
137 for each boy under treatment showing the dates of treat-  
138 ment and the progress of the case.

**§28-1-3. Commitment of boy convicted in state or federal court  
of crime punishable by imprisonment.**

1 Whenever any male youth under the age of eighteen  
2 years shall have been convicted in any court of record  
3 of this state of a felony, or of a misdemeanor punishable  
4 by imprisonment, the judge of such court, in his discre-  
5 tion, instead of sentencing such youth to be confined in  
6 the penitentiary or the county jail, may order him to be

7 removed to and confined in the custody of the state com-  
8 missioner of public institutions, there to remain until he  
9 shall have attained the age of twenty-one years, unless  
10 sooner discharged or paroled by the state commissioner  
11 of public institutions. Any male youth, under eighteen  
12 years of age, convicted in any of the courts of the United  
13 States for the districts of West Virginia of any offense  
14 punishable by imprisonment, may also be received into  
15 the custody of the state commissioner of public institu-  
16 tions upon such regulations and terms as to his mainte-  
17 nance and support as may be prescribed by the state com-  
18 missioner of public institutions and assented to by the  
19 proper authorities of the United States.

20 The state commissioner of public institutions shall have  
21 the authority to receive any youthful offender com-  
22 manded to his custody into any facility under his control  
23 for the detention and rehabilitation of youthful offenders  
24 and may, from time to time as he deem proper, transfer  
25 such youths from any such facility to any other such  
26 facility.

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

1 As soon as practicable after a youth, on any account, is  
2 committed to the custody of the state commissioner of  
3 public institutions, the papers in the case shall be mailed  
4 to the superintendent of the receiving youth facility, and  
5 such youth shall remain in the custody of the court pro-  
6 nouncing such commitment until he be delivered to an  
7 officer of the receiving youth facility, who shall be sent  
8 without delay and duly authorized by the superintendent  
9 to conduct such youth by the most direct and convenient  
10 route to said facility; but no youth committed to any  
11 facility shall be lodged in any jail or lockup, if he be  
12 under the age of sixteen years. The superintendent of a  
13 facility shall, insofar as is consistent with the safe con-  
14 veyance of youths to the facility, cause as many youths  
15 as may be committed from the same or several counties  
16 to be conducted to the facility at the same time. The ex-  
17 pense incurred in conducting a youth to a youth facility,  
18 including transportation and other necessary traveling  
19 expenses of the youth and of his conductor, shall be paid  
20 by the county court out of the treasury of the county

21 from which the youth was committed to the facility, and  
22 a written statement of such necessary expenditures, fully  
23 itemized and sworn to by the officer making such ex-  
24 penditures, and attested by the superintendent of the  
25 facility, when presented to any county court, shall be a  
26 bill against such court, to be paid to the receiving facility  
27 and credited to that fund of the facility from which  
28 the original expenditure was made; but when two or  
29 more youths shall be so conducted from more than one  
30 county, the necessary expenditure on the personal ac-  
31 count of the conductor shall be apportioned among the  
32 counties concerned in due proportion to the mileage  
33 traveled by the youths from their respective counties.

**§28-1-5. Rules and regulations.**

1 The state commissioner of public institutions shall have  
2 authority to make such rules and regulations for the  
3 management and government of the facilities for youth-  
4 ful offenders under his control, and the instruction, dis-  
5 cipline, training, employment and disposition of the boys  
6 and their transportation to and from the various fa-

7 cilities, not contrary to law, as the commissioner may  
8 deem proper.

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

1 The state commissioner of public institutions shall have  
2 authority, under such rules and regulations as the com-  
3 missioner may prescribe, to grant, on the recommen-  
4 dation of the superintendent, a discharge or parole to  
5 any inmate of any of the various facilities; but while  
6 such inmate is on parole, and until he is discharged  
7 according to law, he shall remain in the legal custody  
8 of the commissioner of public institutions and subject  
9 at any time to be returned to physical custody, if in the  
10 judgment of the commissioner the interests of such  
11 paroled inmate will best be served thereby. The written  
12 order of said commissioner, countersigned by the super-  
13 intendent, shall be sufficient warrant for any officer or  
14 person named therein to arrest and return to the facility  
15 the youth so paroled; and it shall be the duty of any  
16 such officer or person to arrest and return such youth  
17 to the facility. All actual expenses incurred in return-

18 ing such youth to the facility shall be paid out of the  
19 funds appropriated for the maintenance of the facility.

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

1 In any case where a youth is committed to any youth  
2 facility for an offense punishable by confinement in the  
3 penitentiary, and it is found by the state commissioner  
4 of public institutions that the youth facility is unable  
5 to benefit such youth, and that his presence is a detri-  
6 ment or menace to other youths in the institution, or  
7 to the general good of the facility, he may be returned  
8 to the court by which he was committed to the facility,  
9 and such court shall thereupon pass such sentence upon  
10 him as to confinement in the penitentiary as may be  
11 proper in the premises, or as it might have passed had  
12 it not committed him as a youthful offender. The gov-  
13 ernor shall have power, when, in the judgment of the  
14 warden of the penitentiary and of the superintendent  
15 of the facility, it is advisable, to remit the penalty of  
16 any offender under the age of eighteen years confined  
17 in the penitentiary to a commitment to a youth facility.

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

1 If any person shall entice or attempt to entice away  
2 from any youth facility any youth legally committed to  
3 the same, or shall aid or abet any youth to escape there-  
4 from, or shall harbor, conceal or aid or abet in harboring  
5 or concealing, any youth who shall have escaped there-  
6 from, or shall, without the permission of the superin-  
7 tendent, give or sell, or aid or abet any other person to  
8 give or sell, to any youth in the youth facility, whether  
9 on the premises of such institution or otherwise, any  
10 money, firearms, intoxicating drinks, tobacco, cigarettes,  
11 or other articles whatsoever, or shall in any way cause  
12 or influence, or attempt to cause or influence or aid or  
13 abet therein, any youth in the youth facility to violate  
14 any rule of the institution or to rebel against the gov-  
15 ernment of said facility in any particular, or shall receive  
16 by the hands of any such youth anything of value,  
17 whether belonging to the state or otherwise, such per-  
18 son shall be guilty of a misdemeanor, and, upon con-  
19 viction thereof, shall be fined not less than ten, nor more

20 than one hundred dollars, or be confined not more than  
21 twelve months in the county jail, or, in the discretion  
22 of the court, both fined and imprisoned. The superin-  
23 tendent, or any of his assistants, or any one authorized  
24 in writing by him, or any sheriff, constable, policeman  
25 or other peace officer, shall have power, and it is hereby  
26 made his duty, to arrest any youth, when in his power  
27 to do so, who shall have escaped from said facility, and  
28 return him thereto.

**§28-1-9. Payment by counties of cost of detention of boys—**

**Reimbursement.**

1 The county court of every county shall pay into the  
2 state treasury the sum of fifty dollars a year on account  
3 of each youth from the county who shall be received  
4 into the custody of the state commissioner of public  
5 institutions on proper commitment. But in all cases of  
6 youths received into such custody, the parent, if of suf-  
7 ficient means, or the guardian, where the youth has suf-  
8 ficient estate, shall annually reimburse the county the  
9 amount paid into the state treasury, by virtue of this  
10 section, on account of such youth, and the county court

11 of such county shall have the right to recover the same  
12 of such parent or guardian in any court of competent  
13 jurisdiction.

**§28-1-10. Same—Preparation of inmate lists for billing purposes; application of county funds in state treasury.**

1 The superintendent of each youth facility shall, before  
2 the tenth day of January in each year, prepare and certify  
3 to the auditor and the state commissioner of public in-  
4 stitutions each a list by counties of all such youths as  
5 are mentioned in the preceding section, who were kept  
6 in each facility during the preceding year or any part of  
7 it, showing as to each youth what part of the year he was  
8 so kept in the facility. On receiving such list the auditor  
9 shall charge to each county fifty dollars on account of  
10 each youth from such county who was kept in such  
11 facility during the preceding year, and a proportionate  
12 amount on account of each youth kept for any part of  
13 such year less than the whole. Any money in the treasury  
14 of the state to the credit of any such county, from what-  
15 ever source arising, and not appropriated to pay any  
16 other debt of the county to the state, shall be applied

17 so far as necessary, to the payment of the sums so  
18 charged. If any sum in the treasury due the county  
19 shall not be sufficient to pay the whole amount so charged  
20 against it, such sum shall be applied as a credit on the  
21 amount charged, and the balance shall remain a charge  
22 against the county.

**§28-1-11. Same--Determination of payments due from coun-  
ties; levy; compelling payment.**

1 Within ten days after receiving such list the auditor  
2 shall certify to the county court of such county a list of  
3 the youths from the county in such facility, stating the  
4 length of the term during the year each youth was in  
5 such facility, as shown by the list certified by the super-  
6 intendent, the amount due from the county on his ac-  
7 count, and the total amount due on account of all. He  
8 shall credit on such statement whatever amount has been  
9 applied as a payment thereon from any funds of the  
10 county in the treasury. Such statement shall be a receipt  
11 to the county for any amount so credited, and shall be  
12 a bill for any amount still appearing to be due from the  
13 county. Unless the bill shall have been paid by the ap-

14 plication of funds of the county in the state treasury,  
15 the county court shall at its next levy term provide for  
16 the payment of the same, or such part as may not have  
17 been paid, and cause the amount to be paid into the state  
18 treasury. If the amount so due from any county be not  
19 paid in a reasonable time after such levy term, the auditor  
20 may, in the name of the state, apply to the circuit court  
21 of the county for a mandamus to require the county  
22 court to provide for and to pay for the same, or he may  
23 proceed in the name of the state by any other appropriate  
24 remedy to recover the same.

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

*Russell G. Bean*  
 Chairman Senate Committee

*Phyllis Rutledge*  
 Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

*Stewart Myers*  
 Clerk of the Senate

*V. A. Blankenship*  
 Clerk of the House of Delegates

*Edmond*  
 President of the Senate

*Ivor H. Boonshy*  
 Speaker House of Delegates

The within *approved* this the *17th*  
 day of *February*, 1971.

*Hubert H. Hanes, Jr.*  
 Governor

PRESENTED TO THE  
GOVERNOR

Date 2/16/71

Time 2:20 p.m.

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

FEB 19 9 30 AM '71

RECEIVED