WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

ENROLLED
Committee Substitute for
SENATE BILL NO. 570

(By Mr.

PASSED April 8, 1977

In Effect July 1, 1977)
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 570
(MR. BROTHERTON, MR. PRESIDENT, original sponsor)

[Passed April 8, 1977; in effect July 1, 1977.]

AN ACT to repeal section thirteen, article two, chapter forty-nine; to repeal section nine, article two and section thirty, article three, chapter twenty-eight; to amend and reenact sections one, two and eleven, article one; to amend and reenact section nine, article four, all of chapter twenty-five; to amend and reenact sections one, two and three, article one, chapter twenty-six; and to further amend chapter twenty-six by adding thereto a new article, designated article eleven; to amend article five, chapter twenty-eight, by adding thereto two new sections, designated sections twenty-seven-a and twenty-eight; and to amend and reenact sections one, two, three, four, five, six, six-a and seven, article thirteen, chapter sixty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the abolition of the office of commissioner of public institutions; creating the department and commissioner of corrections; transferring certain institutions to the department of health; providing for the appointment of officers and employees by the commissioner of corrections; transferring certain institutions to the department of welfare; providing for revocation of parole of child offender.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two, chapter forty-nine be repealed; that section nine, article two and section thirty, article three, chapter twenty-eight be repealed; that sections one, two and eleven, article one; section nine, article four, all
of chapter twenty-five be amended and reenacted; that sections one, two and three, article one, chapter twenty-six be amended and reenacted; and that chapter twenty-six be further amended by adding thereto a new article, designated article eleven; that article five, chapter twenty-eight be amended by adding thereto two new sections, designated sections twenty-seven-a and twenty-eight; that sections one, two, three, four, five, six, six-a and seven, article thirteen, chapter sixty-two be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

CHAPTER 25. DEPARTMENT OF CORRECTIONS.
ARTICLE 1. ORGANIZATION AND INSTITUTIONS.
§25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bonds.

1. The office of state commissioner of public institutions is hereby abolished, and, except as otherwise provided in this chapter, its powers and authority are transferred to the department of corrections which is hereby established. Whenever in this code reference is made to the state commissioner of public institutions, it shall be construed to mean the department of corrections.

2. The executive and administrative head of the department of corrections shall be a commissioner who shall be appointed, dismissed and paid in accordance with the provisions of section two-a, article seven, chapter six of this code.

3. The commissioner shall take and subscribe to the oath prescribed by the constitution for public officials and shall execute an official bond in a penalty of fifteen thousand dollars, conditioned as required by law. Premiums on such bond shall be paid from appropriations made for the commissioner's office. Such bond shall be approved as to form by the attorney general and as to sufficiency by the governor and, when fully executed and approved, shall be filed in the office of the secretary of state.

4. Nothing herein contained shall be construed so as to give the commissioner of corrections any authority in
the administration, management or control of mental institu-
tions, heretofore transferred to the department of
mental health by an act of the Legislature, regular ses-
tion, one thousand nine hundred fifty-seven.

§25-1-2. Institutions managed by commissioner of corrections;
certain institutions transferred to department of
health and welfare; civil service coverage.

1 The commissioner of corrections shall manage, direct,
control and govern the following penal or correctional
institutions and any others placed under his jurisdiction
or control:

5 West Virginia Penitentiary at Moundsville;
6 West Virginia State Prison for Women at Pence Springs;
7 West Virginia Medium Security Prison at Huttonsville;
8 West Virginia Industrial Home for Girls at Salem;
9 West Virginia Industrial Home for Boys at Grafton;
10 Davis Center (formerly the West Virginia Forestry
Camp for Boys at Davis);
12 Leckie Center (formerly the West Virginia Forestry
Camp for Boys at Leckie); and
14 Anthony Center (formerly the Anthony Correctional
Center).

16 Jurisdiction of and title to the West Virginia Children's
Home at Elkins are hereby transferred to the department
of welfare, which shall be the custodian of all deeds and
other muniments of title to such property and shall cause
such as are susceptible of recordation to be recorded in
the proper offices. Notwithstanding any provision of this
code to the contrary, the West Virginia Children's Home
shall be managed and controlled by a superintendent ap-
pointed by the commissioner of welfare.

25 Jurisdiction of and title to the following institutions
formerly under the jurisdiction of the commissioner of
public institutions are hereby transferred to and vested
in the state board of health or its successor: The Andrew
S. Rowan Memorial Home, Denmar State Hospital, Hope-
mont State Hospital, Pinecrest Hospital, Fairmont Emer-
Emergency Hospital and Welch Emergency Hospital. The board of health or its successor shall be the custodian of all deeds and other muniments of title to such property and shall cause such as are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, each such institution shall be managed and controlled by a superintendent appointed by the director of health.

The commissioner is hereby authorized to establish work and study release units as extensions and subsidiaries of those state institutions under his control and authority. Such work and study release units may be coeducational and shall be managed, directed and controlled as provided for in this article.

Any person employed by the office of public institutions who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six of chapter twenty-nine of this code, remain in the civil service system as a covered employee.

§25-1-11. Officers and employees of corrections institutions.

The commissioner of corrections shall appoint a superintendent or warden for each institution under the control of the department of corrections.

The superintendent or warden of each institution shall have the power to appoint all assistants and employees required for the management of the institution in his charge; but the number of such assistants and employees, and their compensation, shall first be approved by the state commissioner of corrections. It shall be the duty of the commissioner of corrections to investigate any complaint made against the superintendent of any institution, and also against any other officer or employee thereof, if the same has not been investigated.

The commissioner shall fix the salaries or compensation of the officers and employees of the institutions named in section two of this article. The salaries or compensation of all officers and employees of the several insti-
tuitions under the control of the commissioner of corrections shall be paid monthly, to include the last day of each month. The superintendents and other officers and employees of each of such institutions shall be paid salaries commensurate with their duties and responsibilities, but no meals or other emoluments of any kind shall be furnished, given or paid to such superintendents, officers or employees as all or part of their salary; however, such superintendents, officers and employees may be provided meals, household facilities and supplies as may be necessary for them to perform their duties, if such superintendents, officers and employees agree to pay the reasonable cost thereof as established by the commissioner of corrections.

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

§25-4-9. Wages of offenders.
1. The West Virginia commissioner of corrections may provide for the payment of wages to the offenders assigned to centers for the work they perform, which wages shall not exceed two dollars for each day's work performed, the sums earned to be paid to the parents or dependents of the offender or to the offender himself, in such manner and in such proportions as the superintendent directs.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.

ARTICLE 1. CHILDREN'S HOME.

§26-1-1. West Virginia Children's Home.
1. The West Virginia Children's Home, heretofore established, shall be continued, and shall be managed, directed and controlled by the state department of welfare.

§26-1-2. Admission of children.
1. The state department of welfare shall admit to the home children surrendered or otherwise placed in its custody in any manner authorized by law; and the children shall be kept, maintained and educated therein
§26-1-3. Director; establishment of rules.

1 The commissioner of welfare shall appoint a superintendent of the children’s home. The superintendent shall establish and post rules for operation of the home, subject to approval of the commissioner.

ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.

§26-11-1. Management by director of health.

1 The director of health or its successor shall manage, direct, control and govern the Andrew S. Rowan Memorial Home, Denmar Hospital, heretofore established and known as Denmar State Hospital, Hopemont Hospital, heretofore known as Hopemont State Hospital, Pinecrest Hospital, Fairmont Emergency Hospital, and Welch Emergency Hospital and such other state health care facilities as are or may hereafter be created by law.

9 The director shall designate the functions of each facility and prescribe guidelines for the admission of persons thereto, pursuant to rules and regulations promulgated by the board of health, and shall supervise the business, personnel and clinical responsibilities of each facility: Provided, That in prescribing admission guidelines, precedence shall be given to persons unable to pay therefor.

§26-11-2. Supervision of each facility.

1 Each facility provided for in this article shall have a chief executive officer denominated an “administrator”. The administrator shall be the person having the fiscal responsibility of the facility and the authority to manage and administer the financial, business and personnel affairs of the facility under the direction of the director of health. The administrator shall be a college graduate and have a minimum of two years experience in either hospital administration, health services administration or business administration with broad knowledge of accounting and personnel practices as related to the rendering of health and health-related services. Such
qualifications shall not apply to any person who has served in the capacity of a superintendent for at least six consecutive months on the effective date of this section.

Each facility provided for in this article, with the exception of the Andrew S. Roman Memorial Home, shall have a clinical director who shall have the responsibility for decisions involving clinical and medical treatment of patients and who shall be a physician having a license to practice medicine in the state of West Virginia.

§26-11-3. Fees for the maintenance of persons.

Pursuant to rules and regulations promulgated by the board of health, the director of health shall prescribe guidelines for the admission of persons to the facilities provided for in this article, with precedence given to those persons who are unable to pay. The director may establish and charge reasonable fees for the maintenance of persons residing in such facilities who are able to pay.

§26-11-4. Transfer of residents; rules and regulations.

The director of health may transfer residents between the facilities administered by the board of health or its successor, except as otherwise provided by article five, chapter twenty-seven of this code. The director may accept transfer of residents from correctional institutions, subject to the provisions of chapter twenty-eight of this code.

The director shall prescribe guidelines pursuant to rules and regulations promulgated by the board of health as are necessary and proper to regulate the proper maintenance of patients in the facilities administered by the board of health or its successor.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.


Prisoners shall be kept at work under such rules and regulations as may be adopted by the warden with the approval of the commissioner: Provided, That no pris-
oner shall be required to work more than eight hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour, and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction of time equal to double the hours so worked from the term or terms of sentence. This “necessary and essential work” shall be subject to the recommendation by the warden to the commissioner and shall become effective only after approval by the commissioner. Sunday work on jobs approved by the commissioner shall be considered as “necessary and essential work.” A strict accounting of credit records of all overtime earned shall be kept by the person in charge of the unit on which the work is performed and completed; a report shall be rendered to the warden each month, who shall approve all such overtime before it is placed to the credit of the inmate.

The commissioner shall have the power to designate certain fixed overtime hours which he considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless it is attested by the person in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner all commutation earned by such overtime work shall be subject to partial or complete forfeiture. In going to and returning from work prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner upon his admission to the prison shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provision of this section shall be dismissed.
§28-5-28. Commutation for good conduct.

1 In order to encourage prison discipline, a distinction
2 may be made in the treatment of prisoners so as to ex-
3 tend to all such as are orderly, industrious and obedient,
4 comforts and privileges according to their merit. The
5 reward to be bestowed on prisoners for good conduct
6 shall consist of such relaxation of strict prison rules
7 and extension of social privileges as may be consistent
8 with proper discipline. Commutation of time for good
9 conduct, industry and obedience shall be granted by
10 the warden and twenty days per month deduction shall
11 be made from the term or terms of sentences of all
12 prisoners in class I, and ten days per month deduction
13 shall be made from the term or terms of sentences of
14 all prisoners in class II as hereinafter provided, when
15 no charge of misconduct has been sustained against a
16 prisoner. A prisoner under two or more cumulative
17 sentences shall be allowed commutation as if they were
18 all one sentence. For each sustained charge of miscon-
19 duct in violation of any rule known to the prisoner,
20 including escape or attempt to escape, any part or all
21 of the commutation which shall have accrued in favor
22 of the prisoner to the date of said misconduct may be
23 forfeited and taken away by the warden upon the rec-
24 commendation of the classification committee or the dis-
25 ciplinary committee which are hereinafter established
26 unless, in case of escape, the prisoner voluntarily re-
27 turns without expense to the state, such forfeiture shall
28 be set aside by the warden. No overtime allowance or
29 credits, in addition to the commutation of time herein
30 provided for good conduct, may be deducted from the
31 term or terms of sentences with the exception that for
32 extra meritorious conduct on the part of any prisoner,
33 he may be recommended to the board of parole and
34 probation and to the governor for increased commuta-
35 tion or for a pardon or parole.

36 There is hereby established a classification committee
37 composed of the warden, the chaplain, the director of
38 prison industries, the prison physician and an associate
39 warden.
The classification committee, as soon as practicable, shall classify all prisoners according to their industry, conduct and obedience in three classifications: Class I, class II, class III, and reclassify any of such prisoners from time to time as in their opinion the circumstances may require. The warden shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all classifications, changes of classifications and forfeitures of commutation of time and reasons therefor. As soon as practicable, the warden shall change the conduct records of prisoners now in the penitentiary to conform with said conduct record and calendar card.

There is hereby established a disciplinary committee composed of the warden, prison physician and the chaplain. Should any prisoner be removed from any overtime job assignment because of misconduct, an appeal shall lie to the disciplinary committee, and in the event of an adverse decision by the disciplinary committee, the prisoner so removed by reason of misconduct shall have the right to appeal to the commissioner, whose decision shall be final.

When present overtime job assignments carrying more than twenty days per month credit are vacated by the present incumbent for any reason, said job assignment shall not be renewed for a credit of more than twenty days per calendar month.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 13. CORRECTIONS MANAGEMENT.


This article shall be liberally construed, to the end that persons committed to institutions of the state for crime or delinquency shall be afforded individual and group treatment to reestablish their ability to live peaceably and, consistent with the protection of the community, to release such individuals at the earliest possible date, and to establish a just, humane and efficient program, and to avoid duplication and waste of effort and money on the part of public and private agencies.
§62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

1. The commissioner of corrections shall supervise all persons released on probation and placed in the charge of a state probation and parole officer and all persons released on parole under any law of this state. The commissioner shall have exclusive authority to revoke the parole with appropriate due process or to discharge a child from parole (as child is defined in chapter forty-nine of this code). He shall also supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state parolee supervision. The commissioner shall prescribe rules and regulations for the supervision of probationers and parolees under his supervision and control, and shall succeed to all administrative and supervisory powers of the board of probation and parole and the authority of said board of probation and parole in such matters only.

2. The commissioner of corrections shall administer all other laws affecting the custody, control, treatment and employment of persons sentenced or committed to institutions under the supervision of the department or affecting the operation and administration of institutions or functions of the department.

3. The final determination regarding the release of inmates from penal institutions and the final determination regarding revocation of parolees from such institutions pursuant to the provisions of article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall remain within the exclusive jurisdiction of the board of probation and parole.


1. To assist in the accomplishment of the purposes of this article the commissioner may appoint a director of corrections management who shall be duly qualified by education and experience, with a degree in sociology, psychology, social science or some related field, and with a
minimum of three years' experience in the field of correction or a related field.

§62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.

To accomplish the purposes of this article, the commissioner (or the director of corrections management if one is appointed) shall:

a. Exercise general supervision over the administration of the institutions under the jurisdiction of the department;

b. Establish separate subdivisions, to be headed by deputy directors, of adult services, youth services, and other subdivisions as he deems advisable, which may be headed by the same or different deputy directors, which said deputy directors must be graduates of an accredited college or university with a degree in sociology, psychology, social science or a related field;

c. Establish rules and regulations in writing governing all subdivisions and institutions within the department;

d. Establish an in-service training program for personnel of the department;

e. Classify the institutions of the department, varying according to such factors as security features, program, age and sex of inmates, physical stature or size, character of inmates;

f. Establish a system of classification of inmates, through a reception and examination procedure, and in each institution a classification committee and procedure for assignment of inmates within the programs of the institution;

g. Establish, maintain and direct a varied program of education for inmates in all institutions within the department;

h. Supervise the treatment, custody and discipline of all inmates and the maintenance of the institutions and their industries;

i. Establish a system of compensation for inmates of the correctional institutions of the state who perform good and
satisfactory work either within the industrial program or in the servicing and maintenance of the correctional institutions or any other institutions or camps within the state. The commissioner (or the director, with the approval of the commissioner) may establish a graduated scale of compensation to be paid to inmates in accordance with their skill in industry.

The principal officer of any correctional institution, on request of an inmate, may expend up to one half of the money so earned by such inmate on behalf of the family of such inmate. The remainder of the money so earned, after deducting amounts expended as aforesaid, shall be accumulated to the credit of the inmate and be paid to the inmate at such times as may be prescribed by such rules and regulations. Such funds so accumulated on behalf of inmates shall be held by the principal officer of each institution, under a bond approved by the attorney general.

The accumulation of such total funds, not necessary for current distribution, shall be invested, with the approval of the commissioner or the director (as appropriate), through the state sinking fund commission, in short term bonds or treasury certificates or equivalent of the United States. Bonds and certificates so purchased shall remain in the custody of the state treasurer. The earnings from investments so made shall be reported to the principal officer of each institution from time to time, as earned, and shall be credited to the respective accounts of such institutions by the sinking fund commission.

When such earnings are transferred to the respective institutions, they shall be credited by the principal officer to the credit of and for the benefit of the inmates' activities account.


All persons committed by courts of criminal and juvenile jurisdiction for custody in penal, correctional or training institutions under the jurisdiction of the commissioner of corrections shall be committed to an appropriate institution, but the commissioner (or the director
if the commissioner so approves) shall have the authority
to and may order the transfer of any person to any ap-
propriate institution within the department. However,
no person committed as a juvenile shall be held in any
institution except one for training and care of children;
and no one may be transferred to a state prison unless
the crime for which such person is incarcerated was of
the grade which would warrant direct commitment to the
prison.

The commissioner (or the director if the commissioner
so approves) may transfer any prisoner or inmate who
is mentally disturbed and who would more appropriately
be treated in an institution under the jurisdiction of the
department of mental health, to such department, subject
to the approval of the commissioner of the department
of mental health; and may transfer any prisoner or in-
mate to an appropriate mental facility for specialized
medical treatment.

§62-13-6. Compensation of director and employees fixed by
commissioner; traveling and other expenses; pay-
ment of salaries, etc.

The commissioner of corrections shall fix the salaries
of the director, deputy directors and of the other officers
and employees employed pursuant to the provisions of
this article. All persons employed hereunder shall re-
ceive necessary traveling and other expenses. The com-
ensation, salaries, expenses and appropriations provided
for the director of corrections management and the em-
ployees under his jurisdiction shall be paid in the same
manner as are those of other state employees and agen-
cies upon recommendation of the director (if any) and
certification and approval of the commissioner of cor-
rections.

§62-13-6a. Payment of jail fees to county commissions.

The commissioner of corrections is hereby authorized
and directed to pay to the county commission of any
county jail fees incurred by escapees of any West Vir-
ginia center for boys, the West Virginia Industrial Home
for Girls or the West Virginia Industrial School for Boys
when said escapees are confined in said county jails. Said jail fee shall not exceed the sum of four dollars per diem per prisoner.


All other laws or parts of laws inconsistent with this article are hereby repealed to the extent of such inconsistency: Provided, however, That nothing in this article shall be construed to affect in any way the laws relating to juvenile probation. Whenever in the official code of West Virginia the words "board of probation and parole" are used and refer to specific administrative and supervisory functions and duties transferred to the department of corrections by this article, the words shall be construed to mean said department.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1977.

J.C. Dillon, Jr.  
Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Donald L. Fromm  
Speaker House of Delegates

The within is approved this the 26

day of April 1977.  
Governor