

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

HOUSE BILL No. 4559

(By ~~MR.~~ *Del Ashley + Rowe*)



Passed *March 7,* 1990

In Effect *From* Passage

ENROLLED
H. B. 4559

(By DELEGATES ASHLEY AND ROWE)

[Passed March 7, 1990; in effect from passage.]

AN ACT to amend and reenact section fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter twenty-five of said code by adding thereto a new article, designated article five; and to amend and reenact sections eight, nine, ten and twelve, article five, chapter sixty-one of said code, all relating to disallowing an award from the crime victims compensation fund for any victim if the injury occurred while the victim was confined in any state, county or city jail, prison, private prison or correctional facility; relating to the private prison enabling and contracting act; granting authority to the commissioner of the division of corrections; granting authority to the secretary of the department of public safety; prohibiting the operation of a private prison without the approval of the secretary; prohibiting the construction, modification, lease or alteration of a private prison without the approval of the regional jail authority; granting authority for the state or its political subdivisions to contract with private prisons for correctional services; granting the private prison contractor the ability to contract with foreign authorities for correctional services; allowing private prison contractors to house certain foreign inmates within West Virginia; limitations; requiring the contractor to report to the commissioner of the division of corrections and to appropriate

foreign authorities regarding public information, inspections, crimes, extraordinary or unusual occurrences; mandating that certain records of the private prison be deemed public records; requiring the terms of the contract include provisions for security, discipline, adherence to rules of the commissioner, proper provisions for inmates, requiring the contractor and the contracting agency hold the state and its political subdivisions harmless, requiring the contractor to indemnify the state, requiring the contractor to transport an inmate back to the sending state for parole, furlough or release; allowing the regional jail authority to approve the site of a proposed facility; allowing for an exemption from regional jail authority approval for the Spencer state hospital location; providing for the standards of operation of the facility; requiring that services and programs meet the standards of the jail and correctional facility standards commission; requiring that the prison operations comply with all federal, state and local laws, rules, regulations, or ordinances, building, safety and health codes; providing a mechanism for notices of violations, assessing penalties, providing for a maximum dollar limit for violations and penalties, criteria for determining dollar amount; relating to hearing requirements and informal hearings; providing for a hearing board; providing for access by the contracting agency or the commissioner to the prison facility; creating a special fund; providing for reimbursement of expenses of inspections by the commissioner; requiring annual report; providing for restrictions on the use of the defense of sovereign immunity; providing that certain powers and duties are not delegable to the contractor; providing for community service by inmates; requiring bonding; requiring insurance and the criteria therefor; prohibiting self insurance; requiring indemnification to the state from the contractor; providing for approval of firearms training program; relating to the capture of escapees; providing that nonresident private correctional officers be deemed residents in certain circumstances; relating to employee training requirements and preference; requiring reimbursement to the state and its political subdivisions for expenses incurred

in the recapture of escapees and the detention thereof; defining the offense of aiding escape from a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense of delivering anything to a person in the custody of a jail, prison, private prison, juvenile facility or juvenile detention center with the intent to aid or facilitate or attempt escape therefrom or for forcibly rescuing or attempting to rescue therefrom and providing criminal penalties therefor; defining the offense of delivering money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to an adult or inmate confined in a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor, exceptions; defining the offense of the transportation of alcoholic liquor, nonintoxicating beer, poison, explosive, firearm or other dangerous or deadly weapon or any controlled substance onto the grounds of jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense of delivery of alcoholic liquor, nonintoxicating beer, poison, explosive, firearms or other dangerous or deadly weapon or any controlled substance to a person in the custody of a jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense for the purchase, acceptance as a gift, securing by barter, trade or in any other manner, any article or articles manufactured at or belonging to any jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor, exceptions; defining the offense of persuading, inducing or enticing or attempting to persuade, induce or entice any person confined in a jail, prison, private prison, juvenile facility or juvenile detention center to escape therefrom or to engage or aid in any insubordination to the authority of any jail, prison, private prison, juvenile facility or juvenile detention center and providing criminal penalties therefor; defining the offense for a jailor or other officer

or private correctional officer for permitting escape or refusing to receive custody and providing criminal penalties therefor; defining the offense of breaking or escaping by force, violence, or by any subterfuge, device or deception from a jail or private prison by a convicted or unconvicted prisoner and providing criminal penalties therefor; defining the offense of the abduction or persuading, inducing or enticing escape from a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; defining the offense of concealment or harboring of an inmate or patient from a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; providing for the return of fugitives; defining the offense of trespassing, idling, lounging or loitering on the grounds of state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor; defining the offense of communicating or attempting to communicate, by signals, signs, writings or otherwise with an inmate or patient, or conveying or assisting in any way establishing communication with an inmate or patient of a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor, exceptions; defining the offense of intent to defraud, purchase, accept gifts, secure by barter or trade, or in any other manner, any article of clothing from an inmate or patient of a state benevolent or correctional institution, private prison or mental health facility and providing criminal penalties therefor, exceptions.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that chapter twenty-five of said code be amended by adding thereto a new article designated article five; and that sections eight, nine, ten and twelve, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:

**CHAPTER 14. CLAIMS DUE AND
AGAINST THE STATE.**

**ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF
CRIMES.**

**§14-2A-14. Grounds for denial of claim or reduction of
award; maximum awards; awards for
emotional distress; mental anguish, etc.**

1 (a) Except as provided in subsection (b), section ten
2 of this article, the judge or commissioner shall not
3 approve an award of compensation to a claimant who
4 did not file his application for an award of compensation
5 within two years after the date of the occurrence of the
6 criminally injurious conduct that caused the injury or
7 death for which he is seeking an award of compensation.

8 (b) An award of compensation shall not be approved
9 if the criminally injurious conduct upon which the claim
10 is based was not reported to a law-enforcement officer
11 or agency within seventy-two hours after the occurrence
12 of the conduct, unless it is determined that good cause
13 existed for the failure to report the conduct within the
14 seventy-two hour period.

15 (c) The judge or commissioner shall not approve an
16 award of compensation to a claimant who is the offender
17 or an accomplice of the offender who committed the
18 criminally injurious conduct, nor to any claimant if the
19 award would unjustly benefit the offender or his
20 accomplice. Unless a determination is made that the
21 interests of justice require that an award be approved
22 in a particular case, an award of compensation shall not
23 be made to the spouse of, or to a person living in the
24 same household with, the offender or accomplice of the
25 offender, or to the parent, child, brother or sister of the
26 offender or his accomplice.

27 (d) A judge or commissioner, upon a finding that the
28 claimant or victim has not fully cooperated with
29 appropriate law enforcement agencies, or the claim
30 investigator, may deny a claim, reduce an award of
31 compensation, and may reconsider a claim already
32 approved.

33 (e) An award of compensation shall not be approved

34 if the injury occurred while the victim was confined in
35 any state, county or city jail, prison, private prison or
36 correctional facility.

37 (f) After reaching a decision to approve an award of
38 compensation, but prior to announcing such approval,
39 the judge or commissioner shall require the claimant to
40 submit current information as to collateral sources on
41 forms prescribed by the clerk of the court of claims. The
42 judge or commissioner shall reduce an award of
43 compensation or deny a claim for an award of compen-
44 sation that is otherwise payable to a claimant to the
45 extent that the economic loss upon which the claim is
46 based is or will be recouped from other persons,
47 including collateral sources, or if such reduction or
48 denial is determined to be reasonable because of the
49 contributory misconduct of the claimant or of a victim
50 through whom he claims. If an award is reduced or a
51 claim is denied because of the expected recoupment of
52 all or part of the economic loss of the claimant from a
53 collateral source, the amount of the award or the denial
54 of the claim shall be conditioned upon the claimant's
55 economic loss being recouped by the collateral source:
56 *Provided*, That if it is thereafter determined that the
57 claimant will not receive all or part of the expected
58 recoupment, the claim shall be reopened and an award
59 shall be approved in an amount equal to the amount of
60 expected recoupment that it is determined the claimant
61 will not receive from the collateral source, subject to the
62 limitation set forth in subsection (g) of this section.

63 (g) Except in the case of death, compensation payable
64 to a victim and to all other claimants sustaining
65 economic loss because of injury to that victim shall not
66 exceed thirty-five thousand dollars in the aggregate.
67 Compensation payable to a victim of criminally injur-
68 ious conduct which causes permanent injury may
69 include, in addition to economic loss, an amount up to
70 fifteen thousand dollars for emotional distress and pain
71 and suffering which are proximately caused by such
72 conduct. Compensation payable to all claimants because
73 of the death of the victim shall not exceed fifty thousand
74 dollars in the aggregate, but may include, in addition

75 to economic loss, compensation to the claimants specified
76 in paragraph (2), subdivision (a), section three of this
77 article, for sorrow, mental anguish and solace.

CHAPTER 25. DEPARTMENT OF CORRECTIONS.

ARTICLE 5. PRIVATE PRISONS.

§25-5-1. Short title.

1 This article shall be known as the “The Private Prison
2 Enabling and Contracting Act.”

§25-5-2. Legislative findings and purpose.

1 The Legislature hereby finds that adequate and
2 modern prison facilities are essential to the safety and
3 welfare of the people of this state and other states, and
4 that contracting for portions of governmental services is
5 a viable alternative for this state and its political
6 subdivisions.

7 Further, the Legislature finds that allowing for the
8 establishment of private prison facilities is an economic
9 development opportunity for local communities and will
10 augment the general revenue fund.

§25-5-3. Definitions.

1 As used in this article, unless the context clearly
2 requires a different meaning, the term:

3 (a) “Commissioner” means the commissioner of the
4 division of corrections.

5 (b) “Contracting agency” means the appropriate
6 governmental agency with the authority to enter into a
7 contract with a prison vendor for correctional services.
8 A contracting agency shall include, but not be limited
9 to, the state of West Virginia and its political subdivi-
10 sions, the federal government, any federal agency, one
11 or more of the remaining United States, or a political
12 subdivision of one or more of the remaining United
13 States.

14 (c) “Correctional services” means the following
15 functions, services and activities, when provided within

16 a prison or otherwise:

17 (1) Design and modification or construction of prison
18 facilities;

19 (2) Education, training and jobs programs;

20 (3) Development and implementation of systems for
21 the classification of inmates and management informa-
22 tion systems or other information systems or services;

23 (4) Food services, commissary, medical services,
24 transportation, sanitation or other ancillary services;

25 (5) Counseling, special treatment programs or other
26 programs for special needs;

27 (6) Recreational, religious or other activities; and,

28 (7) Operation of correctional facilities, including
29 management, custody of inmates, and providing
30 security.

31 (d) "Division" means the division of corrections of the
32 department of public safety of West Virginia.

33 (e) "Foreign" in the context of a foreign state or other
34 unit of government means any state or political subdi-
35 vision or the District of Columbia or the federal
36 government or a federal agency other than the state of
37 West Virginia and its political subdivisions.

38 (f) "Inmate" means an individual, sentenced to
39 incarceration by a court or contracting agency.

40 (g) "Prison contractor" or "contractor" or "prison
41 vendor" means any individual, partnership, corporation,
42 unincorporated association or any other nongovernmen-
43 tal entity which is licensed to do business in the state
44 of West Virginia and which has or will enter into a
45 contractual agreement with a contracting agency to
46 provide correctional services.

47 (h) "Prison" or "prison facility" or "facility" means
48 any minimum or medium or maximum adult correc-
49 tional institution operated under the authority of the
50 division or of a political subdivision of this state,
51 whether obtained by purchase, lease, construction,

52 reconstruction, restoration, improvement, alteration,
53 repair, or other means.

54 (i) "Private correctional officer" means any full-time
55 or part-time employee of a prison vendor whose primary
56 responsibility is the supervision, protection, care and
57 control of inmates within a private correctional facility.

58 (j) "Regional jail authority" means the West Virginia
59 regional jail and correctional facility authority created
60 by article twenty, chapter thirty-one of this code.

61 (k) "Secretary" means the secretary of the department
62 of public safety.

63 (l) "State" means the state of West Virginia.

**§25-5-4. Authority of the commissioner of the division of
corrections; authority of secretary of depart-
ment of public safety.**

1 (a) The commissioner of the division of corrections
2 shall promulgate rules, in accordance with chapter
3 twenty-nine-a of this code, to implement the provisions
4 of this article.

5 (b) The commissioner shall have the authority to
6 recommend or to not recommend to the secretary that
7 a prison vendor be granted the privilege of operating a
8 prison facility in this state.

9 (c) The commissioner shall have the authority to issue
10 notices of violations, assess penalties and proceed in the
11 collection of money due the state by private contractors.

12 (d) The secretary of the department of public safety
13 may, upon the recommendation of the commissioner,
14 grant approval for a prison vendor to operate a private
15 prison in this state.

16 (e) The commissioner shall have the authority to
17 accept the custody of and to confine inmates from
18 sentencing authorities located outside the state of West
19 Virginia.

20 (f) The commissioner shall have the authority to
21 expend funds contained in the private prison fund,
22 established pursuant to subdivision (2), subsection (g),

23 section eleven of this article, to cover any and all
24 expenses incurred because of private prison operations
25 within the state.

**§25-5-5. Prohibition of constructing or operating a
correctional facility; exceptions.**

1 (a) No person may operate a private prison facility or
2 provide correctional services in this state without first
3 obtaining the written approval of the secretary.

4 (b) No person may construct, modify, lease, or
5 otherwise alter a private prison facility without first
6 obtaining the written approval of the regional jail
7 authority.

8 (c) Nothing in this section shall impair the right of the
9 state or its political subdivisions to operate a prison
10 facility or provide correctional services.

11 (d) No private contractor may operate a correctional
12 facility in this state for the confinement of maximum
13 security inmates sentenced to a term of incarceration by
14 a foreign court.

**§25-5-6. Authority of the state and its political subdivi-
sions to contract for correctional services.**

1 A contracting agency of this state, its political
2 subdivisions or their designee may contract with a
3 prison contractor for the construction, lease, acquisition,
4 improvement, operation, and management of correc-
5 tional facilities and services.

**§25-5-7. Granting private contractor ability to contract
with foreign contracting agencies.**

1 A private contractor upon the approval of the secre-
2 tary and the regional jail authority may contract for
3 correctional services with foreign contracting agencies
4 provided such contract meets the minimal requirements
5 contained in section nine of this article. Upon approval
6 the facility may receive inmates sentenced to confine-
7 ment by a foreign authority.

§25-5-8. Reporting requirements.

1 The contractor shall prepare the following informa-

2 tion and submit it to the commissioner, as applicable:

3 (1) The prison vendor shall develop and implement a
4 plan for the dissemination of information about the
5 facility to the public, government agencies and the
6 media. This information shall be made available to all
7 persons. All documents and records, except financial
8 records, inmate records and personnel records, main-
9 tained by the prison vendor, shall be deemed public
10 records.

11 (2) The facility shall comply with all applicable laws
12 and regulations of the local and state government
13 regarding sanitation, food service, safety and health.
14 Copies of inspections completed by the appropriate
15 authorities shall be sent by the contractor to the division.

16 (3) The facility shall report for investigation all
17 crimes in connection with the facility to the division of
18 public safety and all other political subdivisions' law
19 enforcement agencies having jurisdiction where the
20 prison is located. A written report shall be made of all
21 extraordinary or unusual occurrences and forwarded to
22 the commissioner. Extraordinary or unusual occurren-
23 ces shall include, but not be limited to:

24 (A) Death of an inmate or staff member;

25 (B) Attempted suicide or suicide;

26 (C) Serious injury, whether accidental or self-
27 inflicted;

28 (D) Attempted escape or escape from confinement;

29 (E) Fire;

30 (F) Riot;

31 (G) Battery, whether by a staff member or inmate;

32 (H) Sexual assaults; and

33 (I) Occurrence of contagious diseases.

§25-5-9. Terms of Contract.

1 Contracts awarded under the provisions of this article
2 shall:

3 (1) Provide for internal and perimeter security to
4 protect the public, staff members and inmates.

5 (2) Impose discipline on inmates only in accordance
6 with the rules promulgated by the commissioner.

7 (3) Provide for proper food, clothing, housing, and
8 medical care for inmates.

9 (4) Require that a contractor shall adhere to the rules
10 promulgated by the commissioner.

11 (5) Require that the contractor and the contracting
12 agency, shall indemnify, defend and hold harmless the
13 state, its agencies, political subdivisions, and the
14 employees and other contractors of the state, its agencies
15 and political subdivisions from any claim or cause of
16 action which arises from any act or omission by the
17 contractor or any of the contractor's employees or
18 subcontractors.

19 (6) Require the contractor to indemnify the state or
20 its political subdivisions for any monies the state or its
21 political subdivisions may expend for claims against the
22 state or its political subdivisions pursuant to section
23 seventeen of this article.

24 (7) Require a foreign contracting agency to transport
25 an inmate back to the contracting agency's state for
26 parole, furlough or release.

§25-5-10. Site selection.

1 (a) The regional jail authority shall approve the site
2 for the proposed facility. Approval shall be in accor-
3 dance with legislative rules promulgated in accordance
4 with chapter twenty-nine-a of this code. One such
5 legislative rule shall establish criteria for identifying
6 and evaluating potential sites for private prisons and
7 shall provide for a public hearing or hearings to allow
8 reasonable participation in the selection process by the
9 citizens of the area to be affected by the construction
10 and operation of a private prison.

11 (b) Notwithstanding the provisions of subsection
12 (a) of this section, the Legislature hereby approves the
13 site at the former Spencer state hospital for a private

14 prison facility: *Provided*, That the contractor shall
15 comply with the remaining provisions of this article:
16 *Provided, however*, That the contractor shall not be
17 required to comply with subsection (b) of section five of
18 this article: *Provided further*, That the contractor shall
19 not be required to obtain the approval of the regional
20 jail authority as required by section seven of this article.

§25-5-11. Standards of operation; violations.

1 (a) The facility shall be staffed at all times. The
2 staffing pattern shall be adequate to insure intense
3 supervision of inmates and maintenance of security
4 within the facility. The staffing pattern shall address
5 the facility's operations and programs, transportation
6 and security needs. In determining security need,
7 considerations shall include, but not be limited to, the
8 proximity of the facility to neighborhoods and schools.

9 (b) The facility shall provide the following services
10 and programs which shall be consistent with the
11 standards of the jail and correctional facilities standards
12 commission:

- 13 (1) Health and medical services;
- 14 (2) Food services;
- 15 (3) Mail, telephone use, and visitation;
- 16 (4) Access to legal services and legal materials;
- 17 (5) Vocational training;
- 18 (6) Educational programs;
- 19 (7) Counseling services including personal counseling;
- 20 (8) Drug and alcohol counseling; and
- 21 (9) Sanitation services.

22 (c) In addition to the requirements of subsections
23 (a) and (b) of this section, all facilities governed by this
24 article shall be designed, constructed and at all times
25 maintained and operated in accordance with standards
26 and rules of the jail and correctional facility standards
27 commission pursuant to section nine, article twenty,
28 chapter thirty-one of the code of West Virginia, as

29 amended: *Provided*, That any more stringent require-
30 ments mandated by the commissioner shall be complied
31 with.

32 (d) All facilities governed by this article shall at all
33 times comply with all applicable federal and state
34 constitutional standards, all applicable federal laws and
35 rules and regulations, state laws and rules and local
36 ordinances, building, safety and health codes.

37 (e) If any of the requirements of subsection (d) of this
38 section have not been complied with, the commissioner
39 may cause a notice of violation to be served upon the
40 contractor or his duly authorized agent. A copy of the
41 notice shall be handed to the contractor or his duly
42 authorized agent in person or served by United States
43 certified mail, return receipt requested, addressed to the
44 contractor at the permanent address shown on the
45 application for approval to operate a prison facility. The
46 notice shall specify in what respects the contractor has
47 failed to comply with subsection (d) and shall specify a
48 reasonable time for abatement of the violation not to
49 exceed fifteen days. If the contractor has not abated the
50 violation within the time specified in the notice, or any
51 reasonable extension thereof, which extension is not to
52 exceed seventy-five days, the commissioner shall assess
53 a penalty as hereinafter provided. If a violation is not
54 abated within the time specified or any extension
55 thereof, a mandatory civil penalty of not less than five
56 hundred dollars per day per violation shall be assessed
57 until the violation is abated.

58 (f) Any contractor who violates any part of subsection
59 (d) may also be assessed an additional civil penalty in
60 the discretion of the commissioner. The penalty shall not
61 exceed five hundred dollars per day. Each day of
62 continuing violation may be deemed a separate violation
63 for purposes of penalty assessments. In determining the
64 amount of the penalty, the commissioner shall consider
65 the contractor's history of previous violations at the
66 particular facility, the seriousness of the violation,
67 including any hazard to the health or safety of the
68 public, whether the contractor was negligent, and the
69 demonstrated good faith of the contractor in attempting

70 to achieve timely compliance after notification of the
71 violation.

72 (g)(1) Upon the issuance of a notice or order pursuant
73 to this section, the commissioner shall, within thirty
74 days, set a proposed penalty assessment and notify the
75 contractor in writing of such proposed penalty assess-
76 ment. The proposed penalty assessment must be paid in
77 full within thirty days of receipt thereof or, if the
78 contractor desires to contest the violation, an informal
79 conference with the commissioner may be requested
80 within fifteen days or a formal hearing before three
81 members of the regional jail authority, who are ap-
82 pointed by the secretary to hear cases pursuant to this
83 article, may be requested within thirty days. The notice
84 of proposed penalty assessment shall advise the contrac-
85 tor of the right to an informal conference or a formal
86 hearing pursuant to this section. When an informal
87 conference is requested, the contractor shall have fifteen
88 days from receipt of the commissioner's decision
89 resulting therefrom to request a formal hearing before
90 three members of the regional jail authority.

91 (A) When an informal conference is held, the commis-
92 sioner shall have authority to affirm, modify or vacate
93 the notice, order or proposed penalty assessment.

94 (B) Formal hearings shall be subject to the provisions
95 of article five, chapter twenty-nine-a of this code.
96 Following the hearing, the three regional jail authority
97 members may affirm, modify or vacate the notice, order
98 or proposed penalty assessment and, when appropriate,
99 incorporate an assessment order requiring that the
100 assessment and costs of the proceedings be paid.

101 (2) Civil penalties under this section may be recovered
102 by the commissioner in the circuit court in the county
103 where the facility is located or in the circuit court of
104 Kanawha County. Civil penalties collected under this
105 article shall be deposited with the state treasurer to the
106 credit of the division of corrections in a special revenue
107 fund to be known as the "Private Prison Fund," which
108 is hereby created.

§25-5-12. Access by contracting agency, commissioner;

reimbursement of expenses; report by commissioner.

1 (a) The commissioner shall cause to be made such
2 inspections of prison facilities as are necessary to
3 effectively enforce the requirements of this article. The
4 commissioner or his authorized representative or a
5 contracting agency shall have access to all areas of the
6 facility and to inmates and staff at all times. The
7 contractor shall provide to the commissioner any and all
8 data, reports, and other materials that the commissioner
9 determines are necessary to carry out inspections
10 pursuant to this article.

11 (b) The contractor shall reimburse the division of
12 corrections for expenses incurred for inspections. Such
13 reimbursement shall be payable to the division of
14 corrections.

15 (c) The commissioner shall report on the performance
16 of contractors operating within this state, no less
17 frequently than annually, until the year one thousand
18 nine hundred ninety-three and thereafter as requested
19 by either the Speaker of the House of Delegates, the
20 President of the Senate, the regional jail authority or the
21 Governor. Upon such request, the report shall be
22 submitted to the Speaker of the House of Delegates, to
23 the President of the Senate, to the regional jail authority
24 and to the Governor.

§25-5-13. Sovereign immunity.

1 The sovereign immunity of the state shall not extend
2 to the contractor or its insurer.

§25-5-14. Powers and duties not delegable to contractor.

1 (a) No contract for correctional services may autho-
2 rize, allow or imply a delegation of the authority or
3 responsibility of the contracting agency to a prison
4 contractor for any of the following:

5 (1) Developing or implementing procedures for
6 calculating inmate release and parole eligibility dates;

7 (2) Developing or implementing procedures for
8 calculating and awarding good time;

9 (3) Approving inmates for work release;

10 (4) Approving the type of work inmates may perform
11 and the wages or good time, if any, which may be given
12 to inmates engaging in such work;

13 (5) Granting, denying or revoking good time; and,

14 (6) Recommending that the contracting state's parole
15 authority either deny or grant parole, although the
16 contractor may submit written reports that have been
17 prepared in the ordinary course of business.

18 (b) Notwithstanding the provisions of subsection
19 (a) of this section, the contractor may use inmates for
20 community service upon the request and approval of the
21 political subdivision where the prison is located.

§25-5-15. Bonding requirements.

1 A contractor shall give a performance bond payable
2 to the state of West Virginia, in a form satisfactory to
3 the commissioner, executed by a surety company
4 qualified to do business in this state and in the penal
5 sum, as determined by the commissioner, in an amount
6 not less than one hundred thousand dollars. The bond
7 shall be conditioned on the contractor performing all the
8 requirements of this article and the rules promulgated
9 hereunder.

§25-5-16. Insurance.

1 (a) The contractor shall provide an adequate policy of
2 insurance specifically including insurance for civil
3 rights claims as determined by a risk management or
4 actuarial firm with demonstrated experience in public
5 liability for state governments. In determining the
6 adequacy of the policy, such risk management or
7 actuarial firm shall determine whether:

8 (1) The insurance is adequate to protect the state, its
9 political subdivisions or other contracting agencies from
10 actions by a third party against the contractor;

11 (2) The insurance is adequate to protect the state, its
12 political subdivisions or contracting agencies against
13 claims arising as a result of any occurrence; and,

14 (3) The insurance is adequate to satisfy other require-
15 ments specified by the risk management or actuarial
16 firm.

17 (b) The insurance contract shall contain a provision
18 that the state, its political subdivisions and contracting
19 agencies are named insureds, and that the state, its
20 political subdivisions and contracting agencies shall be
21 sent any notice of cancellation.

22 (c) The contractor shall not self-insure.

§25-5-17. Liability; indemnification.

1 A contractor which has been approved to operate a
2 facility pursuant to this article shall indemnify, defend
3 and hold harmless the state, its officers, agents, and
4 employees, and any local government entity in the state
5 having jurisdiction over the facility or ownership of the
6 facility from:

7 (1) Any claims or losses for services rendered by the
8 contractor or person performing or supplying services
9 in connection with the performance of the contract;

10 (2) Any claims or losses to any person injured or
11 damaged by the wilful or negligent acts of the contrac-
12 tor, its officers or employees in the operation of a private
13 prison or in the performance of the contract;

14 (3) Any claims or losses resulting to any person
15 injured or damaged by the private contractor, its
16 officers or employees by the publication, translation,
17 reproduction, delivery, performance, use or disposition
18 of any data processed under the contract in a manner
19 not authorized by the contract, or by federal or state
20 regulations or statutes;

21 (4) Any failure of the contractor, its officers or
22 employees to adhere to West Virginia laws, including
23 but not limited to labor laws and minimum wage laws;

24 (5) Any constitutional, federal, state or civil rights
25 claim brought against the state related to the prison
26 facility;

27 (6) Any claims, losses, demands or causes of action

28 arising out of the contractors activities in this state; and

29 (7) Any attorney's fees or court costs arising from any
 30 habeas corpus actions or other inmate suits which may
 31 arise, including, but not limited to, attorney's fees for
 32 the state's representation as well as for any court
 33 appointed representation of any inmate as well as the
 34 costs of any special judge who may be appointed to hear
 35 such actions.

§25-5-18. Firearms; capture of escapees; nonresident private correctional officers.

1 (a) Private correctional officers of a private contrac-
 2 tor shall be authorized to carry and use firearms in the
 3 course of their employment only after completing a
 4 training course, approved by the commissioner, in the
 5 use of firearms in accordance with rules promulgated
 6 by the division.

7 (b) Upon notification by the contractor of an escape
 8 from the facility or a disturbance at the facility, the
 9 state shall use all reasonable means to recapture
 10 escapees or quell any disturbance.

11 (c) When acting within the scope of their normal
 12 employment at the private prison facility, nonresident
 13 private correctional officers shall be deemed residents
 14 for purposes of section eleven, article six, chapter sixty-
 15 one of this code.

§25-5-19. Employee training requirements; preference.

1 (a) All employees of a facility operated pursuant to
 2 this article shall receive training in a program approved
 3 by the commissioner. All training expenses shall be the
 4 responsibility of the contractor.

5 (b) West Virginia residents shall be given a hiring
 6 preference for positions at the facilities permitted to
 7 operate in accordance with this article.

§25-5-20. Reimbursement to state and its subdivisions.

1 Any cost incurred by the state or its political subdi-
 2 visions relating to the apprehension of an escapee or the
 3 quelling of a disturbance at the facility shall be

4 chargeable to and borne by the contractor. The contrac-
5 tor shall also reimburse the state or its political
6 subdivisions for all reasonable costs incurred relating to
7 the temporary detention of the escapee following
8 recapture.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody, imprisoned or in detention; penalties.

1 (a) Where any adult or juvenile is lawfully detained
2 in custody or as an inmate or prisoner in any jail, prison
3 or private prison or as a resident of any juvenile facility
4 or juvenile detention center, if any other person shall
5 deliver anything into the jail, prison, private prison,
6 facility or juvenile detention center or other place of
7 custody of such adult or juvenile with the intent to aid
8 or facilitate such adult's or juvenile's escape or attempt-
9 ed escape therefrom, or if such other person shall
10 forcibly rescue or attempt to rescue such adult or
11 juvenile therefrom, such other person is guilty of a
12 felony, and, upon conviction thereof, shall be confined in
13 the penitentiary not less than one nor more than five
14 years.

15 (b) Where any adult or juvenile is lawfully detained
16 in custody or as an inmate or prisoner in any jail, prison
17 or private prison or as a resident of any juvenile facility
18 or juvenile detention center, if any other person shall
19 deliver any money or other thing of value, any written
20 or printed matter, any article of merchandise, food or
21 clothing, any medicine, utensil or instrument of any
22 kind to such adult or juvenile without the express
23 authority and permission of the jailer, warden, private
24 correctional officer or other supervising officer and with
25 knowledge that such adult or juvenile is so lawfully
26 detained, such other person is guilty of a misdemeanor,
27 and, upon conviction thereof, shall be fined not less than
28 fifty dollars nor more than five hundred dollars and
29 imprisoned in the county jail not less than three nor

30 more than twelve months: *Provided*, That nothing herein
31 shall preclude an attorney or any of his or her employees
32 from supplying to such detainee any written or printed
33 material which pertains to that attorney's representa-
34 tion of said detainee.

35 (c) If any person transports any alcoholic liquor,
36 nonintoxicating beer, poison, explosive, firearm or other
37 dangerous or deadly weapon or any controlled substance
38 as defined by chapter sixty-a of this code onto the
39 grounds of any jail or prison, or private prison or
40 juvenile facility or detention center within this state and
41 is unauthorized by law to do so, or is unauthorized by
42 the administration of said jail or prison, or private
43 prison or juvenile facility or detention center, such
44 person is guilty of a felony, and, upon conviction thereof,
45 shall be fined not less than one thousand nor more than
46 five thousand dollars or imprisoned in the penitentiary
47 not less than one year nor more than five years, or, in
48 the discretion of the court, be confined in the county jail
49 not more than one year and shall be fined not more than
50 five hundred dollars.

51 (d) If any person delivers any alcoholic liquor,
52 nonintoxicating beer, poison, explosive, firearm or other
53 dangerous or deadly weapon, or any controlled sub-
54 stance as defined by chapter sixty-a of this code to an
55 inmate or prisoner in any jail, prison or private prison
56 or to any resident of any juvenile facility or juvenile
57 detention center within this state and is unauthorized by
58 law to do so, or is unauthorized by the administration
59 of said jail or prison, or private prison or juvenile
60 facility or detention center, such person is guilty of a
61 felony, and, upon conviction thereof, shall be fined not
62 less than one thousand nor more than five thousand
63 dollars or imprisoned in the penitentiary not less than
64 one year nor more than five years.

65 (e) Whoever purchases, accepts as a gift, or secures by
66 barter, trade or in any other manner, any article or
67 articles manufactured at or belonging to any jail, prison,
68 or private prison, juvenile facility or juvenile detention
69 center from any inmate, prisoner or resident detained
70 therein is guilty of a misdemeanor, and, upon conviction

71 thereof, shall be fined not less than fifty dollars nor
72 more than five hundred dollars and imprisoned in the
73 county jail not less than three nor more than twelve
74 months: *Provided*, That this subsection (e) shall not
75 apply to articles specially manufactured in such jail,
76 prison, or private prison, juvenile facility or juvenile
77 detention center under the authorization of the admin-
78 istration of such jail, prison, private prison, juvenile
79 facility or juvenile detention center for sale inside or
80 outside of such jail, prison, private prison, juvenile
81 facility or juvenile detention center.

82 (f) Whoever persuades, induces or entices or attempts
83 to persuade, induce or entice, any person who is an
84 inmate or prisoner in any jail, prison, private prison or
85 resident of any juvenile facility or juvenile detention
86 center to escape therefrom or to engage or aid in any
87 insubordination to the authority of such jail, prison,
88 private prison, juvenile facility or juvenile detention
89 center is guilty of a misdemeanor, and, upon conviction
90 thereof, shall be fined not less than fifty dollars nor
91 more than five hundred dollars and imprisoned in the
92 county jail not less than three nor more than twelve
93 months.

**§61-5-9. Permitting escape; refusal of custody of prisoner;
penalties.**

1 If a jailor or other officer, or private correctional
2 officer aid or voluntarily suffer a prisoner convicted or
3 charged with felony to escape from his custody, he shall
4 be deemed guilty of a felony, and, upon conviction, shall
5 be confined in the penitentiary not less than one nor
6 more than five years. If any such jailer or other officer,
7 or private correctional officer negligently, but not
8 voluntarily, suffer a person convicted of or charged with
9 felony, or voluntarily or negligently suffer a person
10 convicted of or charged with an offense not a felony, to
11 escape from his custody, or willfully refuse to receive
12 into his custody any person lawfully committed thereto,
13 he shall be guilty of a misdemeanor, and, upon convic-
14 tion, shall be confined in jail not less than six months,
15 or be fined not exceeding one thousand dollars, or both
16 such fine and confinement.

§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.

1 (a) Any person confined in jail on conviction of a
2 criminal offense, who escapes therefrom by force,
3 violence, or by any subterfuge, device or deception,
4 shall, if previously sentenced to confinement in the
5 penitentiary, be guilty of a felony, and, upon conviction,
6 shall be confined in the penitentiary for not less than
7 one nor more than five years; and if he be previously
8 sentenced to confinement in jail, he shall be guilty of a
9 misdemeanor, and, upon conviction, shall be confined in
10 jail one year.

11 (b) If any person be lawfully confined in jail or
12 private prison and not sentenced on conviction of a
13 criminal offense, shall escape therefrom by any means,
14 such person shall, (i) if he be confined upon a charge
15 of a felony, be guilty of an additional felony, and, upon
16 conviction thereof, shall be confined in the penitentiary
17 not less than one nor more than five years, or (ii) if he
18 be confined upon a charge of a misdemeanor, be guilty
19 of an additional misdemeanor, and, upon conviction
20 thereof, shall be confined in jail one year.

21 (c) If any person is lawfully confined in a private
22 prison and escapes therefrom by force, violence, or by
23 any subterfuge, device or deception, he or she shall be
24 guilty of a felony, and, upon conviction, shall be
25 imprisoned for not less than one nor more than five
26 years.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

1 Except where otherwise provided, whoever abducts
2 any person who is an inmate or patient of any state
3 benevolent or correctional institution, private prison or
4 mental health facility shall be guilty of a felony, and,
5 upon conviction thereof, shall be imprisoned in the
6 penitentiary for not less than one nor more than five
7 years. Whoever persuades, induces or entices, or
8 attempts to persuade, induce or entice, any person who

9 is an inmate or patient of any such institution, private
10 prison or facility to escape therefrom, or whoever
11 conceals or harbors any such person, knowing him or
12 her to have run away from any such institution, private
13 prison or facility, shall be guilty of a misdemeanor, and,
14 upon conviction thereof, shall be fined not less than one
15 hundred nor more than one thousand dollars, and in
16 addition thereto, in the discretion of the court, may be
17 imprisoned in the county jail not less than one nor more
18 than six months.

19 Any fugitive from any state benevolent or correctional
20 institution, private prison or mental health facility, may,
21 on the order of the superintendent or other officer of
22 such institution or facility, be arrested and returned to
23 such institution or facility, or to any officer or agent
24 thereof, by any sheriff, police officer or other person,
25 and may also be arrested and returned by any officer
26 or agent of such institution, private prison or facility.

27 Whoever trespasses, idles, lounges or loiters upon the
28 grounds of any other state benevolent or correctional
29 institution, private prison or mental health facility or
30 communicates, or attempts to communicate, by signals,
31 signs, writings or otherwise with any inmate or patient
32 of such institution, private prison or facility, or conveys
33 or assists in any way in establishing communication
34 between an inmate or patient of such institution, private
35 prison or facility and any person or persons outside
36 thereof, except as authorized by the rules or regulations
37 in force by the authority governing the same, shall be
38 guilty of a misdemeanor, and, upon conviction, shall be
39 fined not less than twenty nor more than five hundred
40 dollars, or imprisoned not less than ten nor more than
41 thirty days in the county jail, or both, in the discretion
42 of the court or magistrate. Whoever, with intent to
43 defraud, purchases, accepts as a gift, or secures by
44 barter or trade, or in any other manner, any article of
45 clothing from an inmate or patient of any state benev-
46 olent or correctional institution, private prison or mental
47 health facility issued to him or her, by any officer of
48 such institution or facility, or by any private correc-
49 tional officer of such private prison for his or her use,

50 or, with such intent, secures any other article or articles
51 belonging to any inmate or patient of such institution,
52 private prison or facility or to such institution, private
53 prison or facility from an inmate or patient thereof,
54 shall be guilty of a misdemeanor, and, upon conviction
55 thereof, shall be fined a sum not less than double the
56 value of such articles, except that in no case shall the
57 fine be less than one hundred dollars. Magistrates shall
58 have jurisdiction of all misdemeanors included in this
59 paragraph, concurrently with the circuit court.

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

Fredrick L. Perkins
Chairman Senate Committee

Barry V. Kelly
Chairman House Committee

Originating in the House.

Takes effect from passage.

Harold E. Brown
Clerk of the Senate

Donald L. Jopp
Clerk of the House of Delegates

Scott Brudette
President of the Senate

Wesley C. Calver
Speaker of the House of Delegates

The within *is approved* this the *19th*
day of *March* 1990.

Caston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/90

Time 2:36 PM

RECEIVED
1990 MAR 19 PM 4:48
OFFICE OF THE GOVERNOR
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

3/19/90

THIS DATE