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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

Com. Sub. for Com. Sub. for
SENATE BILL NO. 108

(By Senators Boley and Blatnick)

PASSED March 7, 1992

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 108

(SENATORS BOLEY AND BLATNIK, *original sponsors*)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state's responsibilities for the protection and care of children; defining terms; requiring the department to care for neglected children; duration of custody or guardianship of children committed to the department; requiring the department to develop standards of child care; assisting and advising child welfare agencies providing for recordkeeping and the confidentiality of the records; approval of articles of incorporation by the department; requiring certificates for unsupervised foster homes; requiring the department to establish minimum standards for certification; requiring the department to visit certified foster homes; removal of children from undesirable foster homes; parole of children to the department; procedure for removal of children from foster homes; the placement of children from other states; the

state's responsibility for child care; subsidized adoptions; requiring the department to inform a prospective adoptive parent of available services for children in special circumstances; and requiring the department to establish a registry of prospective adoptive parents of children in special circumstances.

Be it enacted by the Legislature of West Virginia:

That article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-1. Definitions.

1 (a) "Department" means the department of health
2 and human resources.

3 (b) "Secretary" means the secretary of the depart-
4 ment of health and human resources.

§49-2-2. Care for children committed to the department.

1 It is the responsibility of the department to provide
2 care for neglected children who are committed to its
3 care for custody or guardianship. The department may
4 provide care for the children in family homes meeting
5 required standards, at board or otherwise, through a
6 licensed child welfare agency or in a state institution
7 providing care for dependent or neglected children.
8 The department in placing any child in the care of a
9 family or a child welfare agency shall select, as far as
10 practicable, a family holding the same religious belief
11 as the parents or relatives of the child or a child
12 welfare agency conducted under religious auspices of
13 the same belief as the parents or relatives.

§49-2-3. Duration of custody or guardianship of children committed to department.

1 A child committed to the department for guardian-
2 ship, after termination of parental rights, shall remain
3 in the care of the department until he or she attains
4 the age of eighteen years, or is married, or is adopted

5 or guardianship is relinquished through the court.

6 A child committed to the department for custody
7 shall remain in the care of the department until he or
8 she attains the age of eighteen years or until he or she
9 is discharged because he or she is no longer in need of
10 care.

§49-2-4. Development of standards of child care.

1 The department is responsible for the development
2 of desirable standards for the care of children. To this
3 end, it shall cooperate with, advise and assist all child
4 welfare agencies, including state institutions, which
5 care for neglected, delinquent or mentally or physi-
6 cally handicapped children, and shall supervise all
7 such agencies. The department, in cooperation with
8 child welfare agencies, shall formulate and make
9 available standards of child care and services for
10 children, to which all child welfare agencies must
11 conform.

§49-2-5. Same — Supervision, records and reports.

1 In order to improve standards of child care, the
2 department shall cooperate with the governing boards
3 of child welfare agencies, assist the staffs of the
4 agencies through advice on progressive methods and
5 procedures of child care and improvement of the
6 service rendered and assist in the development of
7 community plans of child care. The department, or its
8 duly authorized agent, may visit any child welfare
9 agency to advise the agency on matters affecting the
10 health of children and to inspect the sanitation of the
11 buildings used for their care. Each child welfare
12 agency shall keep such records regarding each child
13 under its control and care as the department may
14 prescribe, and shall report to the department, when-
15 ever requested, such facts as may be required with
16 reference to the children, upon blanks furnished by
17 the department. All records regarding children and all
18 facts learned about children and their parents or
19 relatives shall be regarded as confidential and shall be
20 properly safeguarded by the agency and the
21 department.

§49-2-6. Same — Approval of articles of incorporation.

1 A child welfare agency shall not be incorporated in
2 this state unless its articles of incorporation have first
3 been examined and approved by the department.
4 Proposed amendments to articles of incorporation are
5 also subject to the examination and approval of the
6 department.

§49-2-7. Unsupervised foster homes — Generally.

1 Any family home, not under the supervision of the
2 department or of a child welfare agency, in which one
3 or more neglected children under the care of the
4 department and under eighteen years of age, separ-
5 ated from parents or guardian and not related by
6 blood or marriage to the person maintaining the home,
7 are received, cared for and maintained for compensa-
8 tion, or otherwise, is an unsupervised foster home. No
9 person shall conduct an unsupervised foster home
10 without a certificate from the department.

§49-2-8. Same — Certificate.

1 It is the duty of the department to establish reason-
2 able minimum standards for foster-home care to
3 which all certified foster homes must conform. No
4 unsupervised foster home shall be certified until an
5 investigation of the home and its standards of care has
6 been made by the department or by a licensed child
7 welfare agency serving as the department's represent-
8 ative. Any home that conforms to the established
9 standards of care and to the prescribed rules shall
10 receive a certificate from the department, which shall
11 be in force for one year from the date of issuance and
12 which may be renewed unless revoked because of
13 willful violation of the provisions of this chapter. The
14 certificate shall show the name of the persons autho-
15 rized to conduct the home, its exact location and the
16 number of children that may be received and cared
17 for at one time. No certified foster home shall receive
18 for care more children than are specified in the
19 certificate.

§49-2-9. Same — Visits; records.

1 The department or its authorized agent shall visit
2 every certified foster home as often as is necessary to
3 assure that proper care is given to the children. Every
4 certified foster home shall maintain a record of the
5 children received, which shall include such facts in
6 regard to the children and their care, and shall be in
7 such form and manner as are prescribed by the
8 department.

§49-2-10. Same — Removal of child from undesirable foster home.

1 If at any time the department shall find a child in
2 an unsupervised foster home where the child is
3 subject to undesirable influences or lacks proper or
4 wise care and management, it shall take necessary
5 action to remove the child and arrange for his or her
6 care.

§49-2-11. Parole of certain children to department.

1 Children paroled from state institutions and homes
2 for juveniles shall be paroled to the department.
3 Thereafter, unless the court which committed the
4 child otherwise provides, the department shall, not-
5 withstanding any other provision of this code, have
6 supervisory control over every child so paroled, and
7 shall have authority to revoke the parole or to dis-
8 charge the child from parole. Upon the revocation of
9 any parole and the return of the parolee to the
10 institution from which he or she was paroled, all
11 authority over the parolee, originally vested in such
12 institution, again becomes operative.

§49-2-12. Procedure for removal of child from foster home.

1 If at any time the department is of the opinion that
2 a child in a foster care home is lacking the proper care
3 and supervision, it may terminate the foster care
4 arrangement: *Provided*, That unless the foster parents
5 have agreed in writing or unless the department is
6 returning a child to its natural parents, the depart-
7 ment must apply to the circuit court for termination
8 of a foster care arrangement involving a child who has

9 resided in a foster home for a period in excess of
10 eighteen months. In such a case the court may termi-
11 nate the foster care arrangement only if it finds that
12 the child is lacking the proper care and supervision or
13 a meaningful relationship with the foster parents and
14 that the department has a more suitable long-term
15 arrangement for care and custody.

§49-2-13. Placing children from other states in private homes of state.

1 An institution or organization incorporated under
2 the laws of another state shall not place a child in a
3 private home in the state without the approval of the
4 department, and the agency placing the child shall
5 arrange for supervision of the child through its own
6 staff or through a licensed child welfare agency in this
7 state and shall maintain responsibility for the child
8 until he or she is adopted or discharged from care with
9 the approval of the department.

§49-2-14. State responsibility for child care.

1 The department is hereby authorized and empow-
2 ered to provide care, support and protective services
3 for children who are handicapped by dependency,
4 neglect, single parent status, mental or physical
5 disability, or who for other reasons are in need of
6 public service. The department is also hereby autho-
7 rized and empowered in its discretion to accept
8 children for care from their parent or parents, guard-
9 ian, custodian or relatives and to accept the custody of
10 children committed to its care by courts exercising
11 juvenile jurisdiction. The department or any county
12 office of the department is also hereby authorized and
13 empowered in its discretion to accept temporary
14 custody of children for care from any law-enforcement
15 officer in an emergency situation.

16 The department shall provide care in special board-
17 ing homes for children needing detention pending
18 disposition by a court having juvenile jurisdiction or
19 temporary care following such court action.

20 Within one hundred eighty days of the date of the

21 signatures to a voluntary placement agreement, after
 22 receipt of physical custody, the department shall file
 23 with the court a petition for review of the placement,
 24 stating the child's situation and the circumstance that
 25 gives rise to the voluntary placement. If the depart-
 26 ment intends to extend the voluntary placement
 27 agreement, the department shall file with the court a
 28 copy of the child's case plan. The court shall appoint
 29 an attorney for the child, who shall also receive a copy
 30 of the case plan. The court shall schedule a hearing
 31 and shall give notice of the time and place and right
 32 to be present at the hearing to: The child's attorney;
 33 the child, if twelve years of age or older; the child's
 34 parents or guardians; the child's foster parents; and
 35 any other persons as the court may in its discretion
 36 direct. The child's presence at the hearing may be
 37 waived by the child's attorney at the request of the
 38 child or if the child would suffer emotional harm. At
 39 the conclusion of the proceedings, but no later than
 40 one hundred eighty days after the date of the signa-
 41 tures to the voluntary placement agreement, the court
 42 shall enter an order determining whether or not
 43 continuation of the voluntary placement is in the best
 44 interests of the child; specifying under what conditions
 45 the child's placement shall continue; and specifying
 46 whether or not the department has made reasonable
 47 efforts to reunify the family.

§49-2-15. Subsidized adoption.

1 From funds appropriated to the department, the
 2 secretary shall establish a system of assistance for
 3 facilitating the adoption of children who are depen-
 4 dents of the department or a child welfare agency
 5 licensed to place children for adoption, legally free for
 6 adoption and in special circumstances either because
 7 they:

8 (a) Have established emotional ties with prospective
 9 adoptive parents while in their care; or

10 (b) Are special needs children because:

11 (1) They have a physical or mental disability;

- 12 (2) They are emotionally disturbed;
- 13 (3) They are older children;
- 14 (4) They are a part of a sibling group;
- 15 (5) They are a member of a racial or ethnic minor-
16 ity; or
- 17 (6) They have any combination of these conditions.

18 The department shall provide assistance in the form
19 of subsidies or other services to parents who are found
20 and approved for adoption of a child certified as
21 eligible for subsidy by the department, but before the
22 final decree of adoption is entered, there must be a
23 written agreement between the family entering into
24 the subsidized adoption and the department. Adoption
25 subsidies in individual cases may commence with the
26 adoption placement and will vary with the needs of
27 the child as well as the availability of other resources
28 to meet the child's needs. The subsidy may be for
29 special services only or for money payments, and
30 either for a limited period or for a long term or for
31 any combination of the foregoing. The specific finan-
32 cial terms of the subsidy shall be included in the
33 agreement between the department and the adopting
34 parents. The amount of the time-limited or long-term
35 subsidy may in no case exceed that which would be
36 allowable from time to time for the child under foster
37 family care, or, in the case of a special service, the
38 reasonable fee for the service rendered.

39 The department shall inform a prospective adoptive
40 parent of the following:

- 41 (i) The eligibility of an adoptive parent for grants or
42 assistance from the federal government, including the
43 timelines for applying for services, including federal
44 subsidies under the provisions of Title 42 USC Sections
45 511, et seq;
- 46 (ii) The availability of support groups, including
47 advocacy and parental groups; and
- 48 (iii) The availability of other agencies or programs
49 which may provide services for the adoptive parent.

50 Whenever significant emotional ties have been
 51 established between a child and his or her foster
 52 parents, and the foster parents seek to adopt the child,
 53 the child shall be certified as eligible for a subsidy
 54 conditioned upon his or her adoption under applicable
 55 adoption procedures by the foster parents.

56 In all other cases, after reasonable efforts have been
 57 made without the use of subsidy and no appropriate
 58 adoptive family has been found for the child, the
 59 department shall certify the child as eligible for a
 60 subsidy in the event of adoption.

61 If the child is the dependent of a voluntary licensed
 62 child-placing agency, that agency shall present to the
 63 department evidence of significant emotional ties
 64 between the child and his or her foster parents or
 65 evidence of inability to place the child for adoption. In
 66 no event shall the value of the services and assistance
 67 provided by the department under an agreement
 68 pursuant to this section exceed the value of assistance
 69 available to foster families in similar circumstances.
 70 All records regarding subsidized adoptions are confi-
 71 dential, however, records regarding the payment of
 72 public funds for subsidized adoptions shall be available
 73 for public inspection provided they do not directly or
 74 indirectly identify any child or persons receiving funds
 75 for the child.

76 Effective the first day of July, one thousand nine
 77 hundred ninety-two, the department shall develop and
 78 implement a statewide registry of prospective adoptive
 79 parents who have expressly notified the department of
 80 a desire, willingness and intent to adopt a child in
 81 special circumstances.

82 In order to be eligible to be listed on the registry, a
 83 prospective adoptive parent shall apply in writing to
 84 the secretary. The application shall clearly state the
 85 desire, willingness and intent of the prospective
 86 adoptive parent to adopt a child, including his or her
 87 preference for a child with a specific disability or in
 88 special circumstances. The secretary may request
 89 additional information from a prospective adoptive

90 parent. For good cause shown, the secretary may
91 refuse to list the name of a prospective adoptive
92 parent on the registry and the secretary may remove
93 the name of a prospective adoptive parent from the
94 registry.

95 The bureau shall maintain the registry and make it
96 available to child welfare agencies licensed to place
97 children for adoption.

98 A child in special circumstances may not be placed
99 for adoption by the department or a child welfare
100 agency licensed to place children for adoption with a
101 parent not listed on the registry unless there are no
102 parents listed on the registry who are eligible to adopt
103 the child or the secretary has waived this requirement
104 for good cause.

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

Lomer Leck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Parsell Robinson
.....
Clerk of the Senate

Donald L. Hopp
.....
Clerk of the House of Delegates

Keith Bandette
.....
President of the Senate

Bob Zell
.....
Speaker House of Delegates

The within is *disapproved* *1st* day of *April*, 1992.

Yaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/92

Time 3:40 pm