WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED
Sen. Sub. for Sen. Sub. for
SENATE BILL NO. 108
(By Senators Bully and Slatnik)

PASSED March 7, 1992
In Effect 20 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.

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

(b) "Secretary" means the secretary of the department of health and human resources.

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

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

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

A child committed to the department for guardianship, after termination of parental rights, shall remain in the care of the department until he or she attains the age of eighteen years, or is married, or is adopted
or guardianship is relinquished through the court.

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


The department is responsible for the development of desirable standards for the care of children. To this end, it shall cooperate with, advise and assist all child welfare agencies, including state institutions, which care for neglected, delinquent or mentally or physically handicapped children, and shall supervise all such agencies. The department, in cooperation with child welfare agencies, shall formulate and make available standards of child care and services for children, to which all child welfare agencies must conform.

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

In order to improve standards of child care, the department shall cooperate with the governing boards of child welfare agencies, assist the staffs of the agencies through advice on progressive methods and procedures of child care and improvement of the service rendered and assist in the development of community plans of child care. The department, or its duly authorized agent, may visit any child welfare agency to advise the agency on matters affecting the health of children and to inspect the sanitation of the buildings used for their care. Each child welfare agency shall keep such records regarding each child under its control and care as the department may prescribe, and shall report to the department, whenever requested, such facts as may be required with reference to the children, upon blanks furnished by the department. All records regarding children and all facts learned about children and their parents or relatives shall be regarded as confidential and shall be properly safeguarded by the agency and the department.
§49-2-6. Same — Approval of articles of incorporation.

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


1 Any family home, not under the supervision of the department or of a child welfare agency, in which one or more neglected children under the care of the department and under eighteen years of age, separated from parents or guardian and not related by blood or marriage to the person maintaining the home, are received, cared for and maintained for compensation, or otherwise, is an unsupervised foster home. No person shall conduct an unsupervised foster home without a certificate from the department.

§49-2-8. Same — Certificate.

1 It is the duty of the department to establish reasonable minimum standards for foster-home care to which all certified foster homes must conform. No unsupervised foster home shall be certified until an investigation of the home and its standards of care has been made by the department or by a licensed child welfare agency serving as the department’s representative. Any home that conforms to the established standards of care and to the prescribed rules shall receive a certificate from the department, which shall be in force for one year from the date of issuance and which may be renewed unless revoked because of willful violation of the provisions of this chapter. The certificate shall show the name of the persons authorized to conduct the home, its exact location and the number of children that may be received and cared for at one time. No certified foster home shall receive for care more children than are specified in the certificate.
§49-2-9. Same — Visits; records.

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

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

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

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

Children paroled from state institutions and homes for juveniles shall be paroled to the department. Thereafter, unless the court which committed the child otherwise provides, the department shall, notwithstanding any other provision of this code, have supervisory control over every child so paroled, and shall have authority to revoke the parole or to discharge the child from parole. Upon the revocation of any parole and the return of the parolee to the institution from which he or she was paroled, all authority over the parolee, originally vested in such institution, again becomes operative.


If at any time the department is of the opinion that a child in a foster care home is lacking the proper care and supervision, it may terminate the foster care arrangement: Provided, That unless the foster parents have agreed in writing or unless the department is returning a child to its natural parents, the department must apply to the circuit court for termination of a foster care arrangement involving a child who has
resided in a foster home for a period in excess of eighteen months. In such a case the court may terminate the foster care arrangement only if it finds that the child is lacking the proper care and supervision or a meaningful relationship with the foster parents and that the department has a more suitable long-term arrangement for care and custody.

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

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


The department is hereby authorized and empowered to provide care, support and protective services for children who are handicapped by dependency, neglect, single parent status, mental or physical disability, or who for other reasons are in need of public service. The department is also hereby authorized and empowered in its discretion to accept children for care from their parent or parents, guardian, custodian or relatives and to accept the custody of children committed to its care by courts exercising juvenile jurisdiction. The department or any county office of the department is also hereby authorized and empowered in its discretion to accept temporary custody of children for care from any law-enforcement officer in an emergency situation.

The department shall provide care in special boarding homes for children needing detention pending disposition by a court having juvenile jurisdiction or temporary care following such court action.

Within one hundred eighty days of the date of the
signatures to a voluntary placement agreement, after receipt of physical custody, the department shall file with the court a petition for review of the placement, stating the child's situation and the circumstance that gives rise to the voluntary placement. If the department intends to extend the voluntary placement agreement, the department shall file with the court a copy of the child's case plan. The court shall appoint an attorney for the child, who shall also receive a copy of the case plan. The court shall schedule a hearing and shall give notice of the time and place and right to be present at the hearing to: The child's attorney; the child, if twelve years of age or older; the child’s parents or guardians; the child’s foster parents; and any other persons as the court may in its discretion direct. The child's presence at the hearing may be waived by the child’s attorney at the request of the child or if the child would suffer emotional harm. At the conclusion of the proceedings, but no later than one hundred eighty days after the date of the signatures to the voluntary placement agreement, the court shall enter an order determining whether or not continuation of the voluntary placement is in the best interests of the child; specifying under what conditions the child’s placement shall continue; and specifying whether or not the department has made reasonable efforts to reunify the family.


From funds appropriated to the department, the secretary shall establish a system of assistance for facilitating the adoption of children who are dependents of the department or a child welfare agency licensed to place children for adoption, legally free for adoption and in special circumstances either because they:

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

(b) Are special needs children because:

(1) They have a physical or mental disability;
(2) They are emotionally disturbed;
(3) They are older children;
(4) They are a part of a sibling group;
(5) They are a member of a racial or ethnic minority; or
(6) They have any combination of these conditions.

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

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

(i) The eligibility of an adoptive parent for grants or assistance from the federal government, including the timelines for applying for services, including federal subsidies under the provisions of Title 42 USC Sections 511, et seq;

(ii) The availability of support groups, including advocacy and parental groups; and

(iii) The availability of other agencies or programs which may provide services for the adoptive parent.
Whenever significant emotional ties have been established between a child and his or her foster parents, and the foster parents seek to adopt the child, the child shall be certified as eligible for a subsidy conditioned upon his or her adoption under applicable adoption procedures by the foster parents.

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

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

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

In order to be eligible to be listed on the registry, a prospective adoptive parent shall apply in writing to the secretary. The application shall clearly state the desire, willingness and intent of the prospective adoptive parent to adopt a child, including his or her preference for a child with a specific disability or in special circumstances. The secretary may request additional information from a prospective adoptive
parent. For good cause shown, the secretary may refuse to list the name of a prospective adoptive parent on the registry and the secretary may remove the name of a prospective adoptive parent from the registry.

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

A child in special circumstances may not be placed for adoption by the department or a child welfare agency licensed to place children for adoption with a parent not listed on the registry unless there are no parents listed on the registry who are eligible to adopt the child or the secretary has waived this requirement for good cause.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved the day of April, 1992.

Governor