WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 674

(By Senator Wooton)

PASSED April 12, 2001
In Effect from Passage
AN ACT to amend and reenact section two, article nine, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section three; to amend and reenact sections eight-a and nine-a, article twenty, chapter thirty-one of said code; to amend and reenact sections two and three, article two-b, chapter forty-nine of said code; and to amend and reenact section two, article six-a of said chapter, all relating to juvenile detention and correctional facilities and child welfare facilities; providing for promulgation of standards by a date certain for the physical plant, structure, operation and maintenance of detention and correctional facilities by the juvenile facility standards commission; authorizing an emergency rule relating to licensing and accreditation of juvenile detention
and correctional facilities; providing a grandfather clause mandating inspections to ascertain compliance with said standards by the governor's committee on crime, delinquency and correction; providing for specific application of, and exemption from, the child welfare licensing jurisdiction of the commissioner of human services; authorizing promulgation of an emergency rule relating to ascertaining jurisdiction for licensing purposes; and providing that employees of the division of juvenile services must report child abuse and neglect.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.


1 The governor's committee on crime, delinquency and correction shall annually visit and inspect jails, detention facilities, correctional facilities, facilities which may hold juveniles involuntarily or any other juvenile facility which may temporarily house juveniles on a voluntary or involuntary basis for the purpose of compliance with standards promulgated by the juvenile facilities standards commission, pursuant to section nine-a, article twenty, chapter thirty-one of this code and with the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.
§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.

The governor's committee on crime, delinquency and correction shall ascertain the compliance of juvenile detention and juvenile correctional facilities operated by or under contract with the division of juvenile services, created pursuant to section two, article five-e, chapter forty-nine of this code, with standards for the structure, physical plant, operation and maintenance of the facilities, promulgated by the juvenile facility standards commission, pursuant to section nine-a, article twenty, chapter thirty-one of this code: Provided, That such review shall not include educational programs in such facilities.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

(a) A juvenile facilities standards commission consisting of fourteen members is hereby created. The governor shall appoint two citizen members who are experienced and knowledgeable in the field of law enforcement; two citizen members who are experienced and knowledgeable in the field of juvenile development; one educator; one health care professional; and one lay member. Each of these appointed members shall serve for a term of three years and be eligible for reappointment. The secretary of the department of military affairs and public safety shall be a nonvoting member, ex officio, and shall serve as the commission's chairman. The state fire marshal, the chairman of the juvenile justice subcommittee of the governor's committee on crime, delinquency and correction, a child care licensing specialist from the department of health and human resources, designated by the secretary thereof, and a representative from the administrative office of the supreme court of appeals, designated by the
director of that office, shall be nonvoting members, ex
officio. The director of the division of juvenile services
and the executive director of the regional jail and correc-
tional facility authority shall be nonvoting members, ex
officio, and shall serve in an advisory capacity.

(b) Members of the commission shall serve without
compensation, but may be reimbursed by the division of
juvenile services for reasonable and necessary expenses
incurred in the performance of their duties. The division
of juvenile services shall provide the commission with
secretarial and other necessary services.

c) A vacancy among the appointed members of the
commission shall be filled, within thirty days, in the same
manner as the original appointment. A quorum consists of
four of the seven voting members.

§31-20-9a. Juvenile facilities standards commission; purpose;
powers; and duties.

The purpose of the commission is to assure that proper
minimum standards and procedures are developed for the
structure and physical plant of juvenile detention and
juvenile correctional facilities and their operation, mainte-

ance and management. To this end, the commission shall:

(1) Develop standards for the structure and physical
plant, maintenance and operation of juvenile detention
and correctional facilities. These standards shall include,
but not be limited to, requirements assuring adequate
space, lighting and ventilation; fire protection equipment
and procedures; provision of specific personal hygiene
articles; bedding, furnishings and clothing; food services;
apropriate staffing and training; sanitation, safety and
hygiene; isolation and suicide prevention; appropriate
medical, dental, behavioral and other health services;
indoor and outdoor exercise; appropriate vocational and
educational opportunities; rules and discipline; religious
services; vocational programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation.

(2) Propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code, including, without limitation, the minimum standards for juvenile detention and correctional facilities as provided in subdivision (1) of this section not later than the first day of December, two thousand one.

(3) Develop a process for reviewing and updating these rules and standards as necessary to assure that they conform to current law.

(4) Report periodically to the authority to advise and recommend actions to be taken by the authority, if necessary, to implement proper standards in the state's juvenile detention and correctional facilities.

The commission is hereby directed to promulgate an emergency rule, pursuant to the provisions of article three, chapter twenty-nine-a of this code, relating to licensing and accreditation for juvenile detention facilities and juvenile correctional facilities: Provided, That such emergency rule shall make provision for grandfathering existing juvenile detention facilities and juvenile correctional facilities into the licensing and accreditation scheme.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.


1 As used in this article, unless the context otherwise requires:

3 "Approval" means a finding by the commissioner that a facility operated by the state has met the require-
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ments set forth in the rules promulgated pursuant to this article.

(b) “Certificate of approval” means a statement of the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(c) “Certificate of license” means a statement issued by the commissioner authorizing an individual, corporation, partnership, voluntary association, municipality or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.

(d) “Certificate of registration” means a statement issued by the commissioner to a family day care home upon receipt of a self-certification statement of compliance with the rules promulgated pursuant to the provisions of this article.

(e) “Certification” means a statement issued by the commissioner to a family day care facility upon satisfactory inspection, approval and certification that the facility has complied with the applicable rules promulgated by the commissioner.

(f) “Child” means any person under eighteen years of age.

(g) “Child care” means responsibilities assumed and services performed in relation to a child’s physical, emotional, psychological, social and personal needs and the consideration of the child’s rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the division of juvenile services, created under section two, article five-e of this article.

(h) “Child-placing agency” means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The
function of a child-placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child-placing agency may also include the supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

(i) “Child welfare agency” means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes, or any facility that provides care for unmarried mothers and their children: Provided, That the term does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the division of juvenile services, created under section two, article five-e of this chapter, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

(j) “Commissioner” means the commissioner of human services.

(k) “Day care center” means a facility operated by a child welfare agency for the care of thirteen or more children on a nonresidential basis.

(l) “Department” means the department of health and human resources.

(m) “Facility” means a place or residence, including personnel, structures, grounds and equipment, used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose: Provided, That the term does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with
the division of juvenile services, created pursuant to
section two, article five-e of this chapter, for the secure
housing or holding of juveniles committed to its custody.

(n) "Family day care home" means a facility which is
used to provide nonresidential child care for compensation
in other than the child's own home. The provider may care
for four to six children, including children who are living
in the household, who are under six years of age. No more
than two of the total number of children may be under
twenty-four months of age.

(o) "Family day care facility" means any facility which
is used to provide nonresidential child care for compensa-
tion for seven to twelve children, including children who
are living in the household, who are under six years of age.
No more than four of the total number of children may be
under twenty-four months of age.

(p) "Foster family group home" means a private resi-
dence which is used for the care on a residential basis of
six, seven or eight children who are unrelated by blood,
marriage or adoption to any adult member of the house-
hold.

(q) "Foster family home" means a private residence
which is used for the care on a residential basis of no more
than five children who are unrelated by blood, marriage or
adoption to any adult member of the household.

(r) "Group home" means any facility, public or private,
which is used to provide residential child care for ten or
fewer children.

(s) "Group home facility" means any facility, public or
private, which is used to provide residential care for eleven
or more children: Provided, That the term does not
include any juvenile detention facility or juvenile correc-
tional facility operated by or under contract with the
division of juvenile services, created pursuant to section
two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(t) "License" means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

(u) "Registration" means the process by which a family day care home self-certifies compliance with the rules promulgated pursuant to this article.

(v) "Residential child care" or "child care on a residential basis" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis: Provided, That the term does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the division of juvenile services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(w) "Rule" means a statement issued by the commissioner of the standard to be applied in the various areas of child care.

(x) "Variance" means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

(y) "Waiver" means a declaration that a certain rule is inapplicable in a particular circumstance.

§49-2B-3. Licensure, certification, approval and registration requirements.

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child care facility, a child-placing agency or a day care center shall obtain a license from the department.
(b) Any residential child care facility, day care center or any child-placing agency operated by the state shall obtain approval of its operations from the commissioner: Provided, That this requirement does not apply to any juvenile detention facility or juvenile correctional facility operated by or under contract with the division of juvenile services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day care home which operates in this state, including family day care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state department of education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;
(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them; or

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the division of juvenile services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(f) The commissioner is hereby authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

When any medical, dental or mental health professional, christian science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, member of the clergy, circuit court judge, family law master, employee of the division of juvenile services or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances or cause a report to be made to the state department of human services: Provided, That in any case where
the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the division of public safety and any law-enforcement agency having jurisdiction to investigate the complaint: *Provided, however,* That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency, or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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Governor
PRESENTED TO THE
GOVERNOR
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