

SB 411 S

FILED

2007 MAR 27 PM 5: 03

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

COMMITTEE SUBSTITUTE
FOR

ENROLLED
Senate Bill No. 411

(SENATORS KESSLER, OLIVERIO, FOSTER, GREEN,
MINARD, STOLLINGS, WELLS, BARNES, HALL
AND YODER, *original sponsors*)

[Passed March 7, 2007; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §25-1B-1, §25-1B-2, §25-1B-3, §25-1B-4, §25-1B-5, §25-1B-6 and §25-1B-7, all relating to creation of the West Virginia Correctional Center Nursery Act; defining terms; establishing eligibility requirements and terms of participation; providing for termination from the

program; authorizing collection of child support; requiring assignment of child support to the Division of Corrections; requiring a portion of child support and other moneys collected on behalf of a mother or child to be saved and given to the mother upon her release; creating the Correctional Center Nursery Fund; authorizing the Division of Corrections to accept grants, gifts and other moneys; authorizing expenditures from the fund; and allowing voluntary regulation of the program.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §25-1B-1, §25-1B-2, §25-1B-3, §25-1B-4, §25-1B-5, §25-1B-6 and §25-1B-7, all to read as follows:

ARTICLE 1B. WEST VIRGINIA CORRECTIONAL CENTER NURSERY ACT.

§25-1B-1. Authorization; definitions.

1 (a) The Division of Corrections may establish a
2 correctional center nursery in one or more of the
3 correctional centers for women operated by the division.
4 The program would allow eligible inmates and children
5 born to them while in the custody of the division to
6 reside together in the institution. In establishing this
7 program, neither the inmate's participation in the
8 program nor any provision of this article shall affect,
9 modify or interfere with the inmate's custodial rights to
10 the child nor does it establish legal custody of the child
11 with the division.

12 (b) As used in this article:

13 (1) "Correctional Center Nursery Program" means the

14 program authorized by this article.

15 (2) "Public assistance" means all forms of assistance,
16 including monetary assistance from any public source
17 paid either to the mother or child or any other person on
18 behalf of the child.

19 (3) "Support" means the payment of money, including
20 interest:

21 (A) For a child or spouse ordered by a court of
22 competent jurisdiction, whether the payment is ordered
23 in an emergency, temporary, permanent or modified
24 order, the amount of unpaid support shall bear simple
25 interest from the date it accrued, at a rate of ten dollars
26 upon one hundred dollars per annum, and
27 proportionately for a greater or lesser sum, or for a
28 longer or shorter time;

29 (B) To third parties on behalf of a child or spouse,
30 including, but not limited to, payments to medical,
31 dental or educational providers, payments to insurers
32 for health and hospitalization insurance, payments of
33 residential rent or mortgage payments, payments on an
34 automobile or payments for day care; or

35 (C) For a mother, ordered by a court of competent
36 jurisdiction, for the necessary expenses incurred by or
37 for the mother in connection with her confinement or of
38 other expenses in connection with the pregnancy of the
39 mother.

40 (4) "Support order" means an award of support by
41 order of a court of competent jurisdiction.

§25-1B-2. Eligible inmates.

1 An inmate is eligible to participate in the Correctional
2 Center Nursery Program if she is pregnant at the time
3 she is delivered into the custody of the Division of
4 Corrections; she gives birth on or after the date the
5 program is implemented; and she and the child meet
6 any other criteria established by the division.
7 Placement into the nursery program shall be by internal
8 classification of the division. A sentencing court is
9 without jurisdiction to order a placement of an inmate
10 into the nursery program.

§25-1B-3. Terms of participation.

1 To participate in the Correctional Center Nursery
2 Program, each eligible inmate selected by the division
3 shall agree in writing to:

4 (1) Comply with any educational, counseling or other
5 requirements established for the program by the
6 Division of Corrections;

7 (2) If eligible, have the child participate in the
8 Medicaid program or a health insurance program;

9 (3) Accept the normal risks of child bearing;

10 (4) Abide by any court decisions regarding the
11 allocation of parental rights and responsibilities with
12 respect to the child;

13 (5) Assign to the division any rights to support from
14 any other person; and

15 (6) Specify with whom the child is to be placed in the
16 event the inmate's participation in the program is
17 terminated for a reason other than release from
18 imprisonment.

§25-1B-4. Termination of inmate's participation in program.

1 An inmate's participation in the Correctional Center
2 Nursery Program may be terminated by the division if
3 one of the following occurs:

4 (a) The inmate fails to comply with the agreement
5 entered into under section three of this article;

6 (b) The inmate's child becomes seriously ill, cannot
7 meet medical criteria established by the division for the
8 program or otherwise cannot safely participate in the
9 program;

10 (c) A court of competent jurisdiction issues an order
11 that designates a person other than the inmate as the
12 child's custodial parent and legal custodian;

13 (d) A court of competent jurisdiction grants custody of
14 the child to a person other than the inmate;

15 (e) An order is issued granting shared parenting of the
16 child;

17 (f) An order regarding the child is issued granting
18 temporary, permanent, or legal custody of the child to
19 a person other than the inmate, or to a public children
20 services agency or private child placing agency; or

21 (g) The inmate is released from imprisonment.

§25-1B-5. Collection of child support.

1 (a) The rights to support assigned by any inmate shall
2 constitute an obligation of the person who is responsible
3 for providing the support to the division for the support
4 provided the inmate and child pursuant to the
5 Correctional Center Nursery Program. The Bureau of
6 Child Support Enforcement shall collect support
7 payments made pursuant to the assignment and forward
8 them to the division.

9 (b) The division may receive the following:

10 (1) Money that is assigned or donated on behalf of,
11 and public assistance provided to, a specific inmate or
12 child participating in the Correctional Center Nursery
13 Program; and

14 (2) Money or other property assigned or donated to
15 establish and maintain the Correctional Center Nursery
16 Program.

17 (c) Ten percent of the moneys described in this section
18 shall be placed in the mandatory savings account of the
19 mother for whom the money was received. The
20 remaining moneys shall be used for items not covered
21 by other program funds.

**§25-1B-6. Program support; Correctional Center Nursery
Fund.**

1 The division shall obtain sufficient resources to
2 initiate and maintain the Correctional Center Nursery
3 Program if the program is established. The division
4 may accept gifts, grants, property, funds, money,

5 interest on investment of the fund, materials, labor,
6 supplies or services from the United States of America
7 or from any governmental unit or any person,
8 foundation, firm or corporation to support the program.
9 All moneys collected shall be deposited in a special
10 revenue account, designated the Correctional Center
11 Nursery Fund, which is hereby created. Expenditures
12 from the fund shall be for the purposes set forth in this
13 article and are not authorized from collections but are
14 to be made only in accordance with appropriation by
15 the Legislature and in accordance with the provisions of
16 article two, chapter eleven-b of this code: *Provided,*
17 That for the fiscal year ending the thirtieth day of June,
18 two thousand eight, expenditures are authorized from
19 collections rather than pursuant to appropriation by the
20 Legislature. If there are sufficient moneys in the fund,
21 they shall be invested by the West Virginia Investment
22 Management Board in accordance with the provisions
23 of article six, chapter twelve of this code.

§25-1B-7. Voluntary regulation.

1 Notwithstanding any other provision of this code to
2 the contrary, neither the Correctional Center Nursery
3 Program nor the division, with respect to the program,
4 is subject to any regulation, licensing or oversight by
5 the Department of Health and Human Resources unless
6 the division and the Department of Health and Human
7 Resources agree to voluntary regulation, licensing or
8 oversight.

Enr. Com. Sub. for S. B. No. 411] 8


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


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Chairman Senate Committee

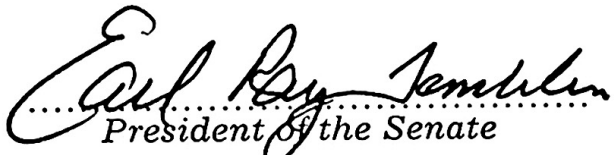

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Chairman House Committee

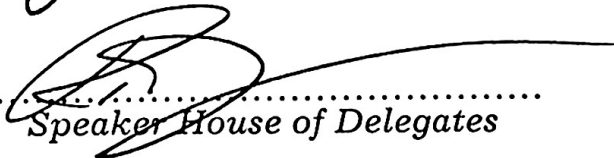
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this
the 27th Day of March, 2007.


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Governor

PRESENTED TO THE
GOVERNOR

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