WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

Senate Bill No. 263
(By Senators Love, Green, Hunter, McKenzie, White and Minard)

[Passed March 6, 2008; in effect ninety days from passage.]
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(BY SENATORS LOVE, GREEN, HUNTER, MCKENZIE, WHITE AND MINARD)

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AN ACT to amend and reenact §25-1-3, §25-1-3b, §25-1-11a and §25-1-11c of the Code of West Virginia, 1931, as amended; and to amend and reenact §25-4-4 of said code, all relating generally to the Division of Corrections; updating the statutory list of correctional facilities over which the commissioner has control; providing that the commissioner is authorized to contract with the McDowell County Commission to house and incarcerate inmates at the Stevens Correctional Center; removing the commissioner's authority to serve on the Commission for Distribution of Surplus Food; providing that when a commissary in a division facility is operated by a vendor,
the negotiated commission paid by the vendor is to be deposited into the facility's inmate benefit fund; clarifying that wardens and administrators of correctional facilities are subject to the direction of the commissioner; specifying that all employees of the Division of Corrections are responsible for enforcing rules and laws necessary for the control and management of correctional units; modifying duties of those employees designated as correctional peace officers; and providing that wardens of centers for housing young adult offenders have the same powers and duties as other wardens of correctional facilities.

_Be it enacted by the Legislature of West Virginia:_

That §25-1-3, §25-1-3b, §25-1-11a and §25-1-11c of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §25-4-4 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.**

**§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units.**

1 The Commissioner of Corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his or her jurisdiction or control:

5 Mount Olive Correctional Complex;

6 Huttonsville Correctional Center;
Anthony Correctional Center;
Denmar Correctional Center;
Pruntytown Correctional Center;
Northern West Virginia Correctional Center;
St. Marys Correctional Center;
Lakin Correctional Center;
Ohio County Correctional Center;
Beckley Correctional Center; and
Martinsburg Correctional Center.

The Commissioner of Corrections is authorized to contract with the county commission of McDowell County to house and incarcerate inmates at the Stevens Correctional Center consistent with all requirements and standards governing the Division of Corrections.

Jurisdiction of and title to the West Virginia Children's Home at Elkins are hereby transferred to the Department of Health and Human Resources, which is the custodian of all deeds and other muniments of title to the property and shall record those that are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, the West Virginia Children's Home shall be managed and controlled by a superintendent appointed by the Commissioner of the Division of Human Services.
The commissioner is authorized to establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. The work and study release units may be coeducational and shall be managed, directed and controlled as provided in this article.

Any person employed by the Office of Public Institutions who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six, chapter twenty-nine of this code, remain in the civil service system as a covered employee.

§25-1-3b. Inmate benefit funds.

(a) The Commissioner of Corrections shall establish an inmate benefit fund for each of the institutions under his or her jurisdiction. The inmate benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated in state correctional facilities and for the benefit of victims.

(b) There is continued a special revenue account in the State Treasury for each inmate benefit fund established by the commissioner. Moneys received by an institution for deposit in an inmate benefit fund shall be deposited with the State Treasurer to be credited to the special revenue account created for the institution's inmate benefit fund. Moneys in a special revenue account established for an inmate benefit fund may be expended by the institution for the purposes set forth in this section. Moneys to be deposited into an inmate benefit fund consist of:
(1) All profit from the exchange or commissary operation and if the commissary is operated by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the Division of Corrections by the vendor;

(2) All net proceeds from vending machines used for inmate visitation;

(3) All proceeds from contracted inmate telephone commissions;

(4) Any funds that may be assigned by inmates or donated to the institution by the general public or an inmate service organization on behalf of all inmates;

(5) Any funds confiscated considered contraband; and

(6) Any unexpended balances in individual inmate trustee funds if designated by the inmate upon his or her discharge from the institution.

c) The inmate benefit fund may only be used for the following purposes at correctional facilities:

(1) Open-house visitation functions or other nonroutine inmate functions;

(2) Holiday functions which may include decorations and gifts for children of inmates;

(3) Cable television service;

(4) Rental of video cassettes;
(5) Payment of video license;

(6) Recreational supplies, equipment or area surfacing;

(7) Reimbursement of employee wages for overtime incurred during open-house visitations and holiday functions;

(8) Postsecondary education classes;

(9) Reimbursement of a pro rata share of inmate work compensation;

(10) Household equipment and supplies in day rooms or units as approved by chief executive officers of institutions, excluding supplies used in the daily maintenance and sanitation of the unit;

(11) Christmas or other holidays gift certificates for each inmate to be used at the exchange or commissary;

(12) Any expense associated with the operation of the fund;

(13) Expenditures necessary to properly operate an automated inmate family and victim information notification system;

(14) Any expense for improvement of the facility which will benefit the inmate population that is not otherwise funded; and

(15) Any expense related to the installation, operation and maintenance of the inmate telephone system.
(d) The institution shall compile a monthly report that specifically documents inmate benefit fund receipts and expenditures and a yearly report for the previous fiscal year by the first day of September of each year and submit the reports to the commissioner.

§25-1-11a. Duties of wardens and administrators; bond; residence.

The warden or administrator is the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. He or she is in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the Commissioner of Corrections: Provided, That the Commissioner of Corrections may authorize the warden or administrator to establish an imprest fund in accordance with the provisions of section two, article two, chapter twelve of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the warden or administrator. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee. The warden or administrator shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the Commissioner of Corrections. The warden or administrator shall have the custody and control of all
the real and personal property at the correctional institution, subject to the orders of the Commissioner of Corrections. The warden or administrator shall be bonded by the Board of Risk and Insurance Management.

§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.

(a) The warden or administrator of the correctional institutions or units shall, in the manner provided in section eleven of this article, hire all assistants and employees required for the management of the correctional institutions or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates, to prevent escapes and to remove all persons convicted and sentenced to the custody of the Division of Corrections, from the place confined to a correctional institution, all of whom shall be under the control of the warden. The commissioner may issue a certificate authorizing any correctional employee who has successfully completed the division’s training program for firearms certification, which shall be the equivalent of that required of deputy sheriffs, to carry firearms and concealed weapons while on duty. Any correctional employee authorized by the commissioner has the right, without a state license, to carry firearms and concealed weapons while on duty. Each correctional employee, authorized by the commissioner, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon when performing his or her official duties as a correctional employee, bearing the official signature of the commissioner and warden.
or administrator. The right is extended to a correctional employee during the time the employee travels from place to place within the state for the purpose of removing prisoners from jails to a correctional institution of the Division of Corrections, during the time the employee is pursuing and apprehending escaped inmates and during any other time the employee is performing official duties as a correctional employee. No correctional employee has the right to carry a firearm or concealed weapon for any other purpose or during any other time, including when traveling to and from the employee's residence and a correctional institution, unless the employee has obtained a state license in the manner prescribed in article seven, chapter sixty-one of this code.

(b) All employees of the Division of Corrections are responsible for enforcing rules and laws necessary for the control and management of correctional units and the maintenance of public safety that is within the scope of responsibilities of the Division of Corrections.

(c) The Commissioner of Corrections may designate correctional employees as correctional peace officers who have the authority:

(1) To detain persons for violations of state law committed on the property of any state correctional institution;

(2) To conduct investigations regarding criminal activity occurring within a correctional facility; and

(3) To execute criminal process or other process in furtherance of these duties.
ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-4. Warden.

Each center shall be under the direction of a warden who shall have the minimum qualification of a college degree with a major in criminal justice or a related field and the powers and duties as described in sections eleven and eleven-a, article one of this chapter. The warden shall be paid an annual salary to be fixed by the Commissioner of Corrections. The warden, subject to the authority of the commissioner, has the responsibility for the overall operation of the center.

At each center the warden shall administer programming which shall include the following components:

(1) A work program;

(2) An educational program in accordance with section thirteen-f, article two, chapter eighteen of this code;

(3) A recreational program; and

(4) A counseling program with an emphasis on substance abuse and life skills.
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 ..................... approved this
the ................ Day of ................., 2008.

Governor
PRESENTED TO THE GOVERNOR

MAR 4 2008

Time 11:25 AM