WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 2407

(By Delegates Perry, Boggs, Morgan, Ellem and Webster)

Passed April 8, 2009

In Effect Ninety Days from Passage
AN ACT to amend and reenact §25-1-3a and §25-1-3b of the Code of West Virginia, 1931, as amended, all relating to trustee accounts and funds; providing for disposition of certain earnings and personal property of inmates; authorizing uses of moneys in the inmate benefit fund.

Be it enacted by the Legislature of West Virginia:

That §25-1-3a and §25-1-3b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.
(a) The Commissioner of Corrections is authorized to establish at each institution under his or her jurisdiction a "Trustee Fund". The warden or administrator of each institution shall receive and take charge of the money and personal property, as defined by policy, of all inmates in his or her institution and all money or personal property, as defined by policy, sent to the inmates or earned by the inmates as compensation for work performed while they are domiciled there. The warden or administrator shall credit the money and earnings to the inmate entitled to it and shall keep an accurate account of all the money and personal property so received, which account is subject to examination by the Commissioner of Corrections. The warden or administrator shall deposit the moneys in one or more responsible banks in accounts to be designated a "Trustee Fund".

(b) For all inmates, except those serving life without mercy and those the warden determines are likely to serve the remainder of their natural lives in the custody of the Division of Corrections due to their age and the length of their sentences, the warden or administrator shall keep in an account at least ten percent of all money earned during the inmate's incarceration and pay the money to the inmate at the time of the inmate's release. The warden may authorize the inmate to withdraw money from his or her mandatory savings for the purpose of preparing the inmate for reentry into society.

(c) The Commissioner of Corrections may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state toward the cost of his or her incarceration.

(d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs of his or her incarceration,
the commissioner, or his or her designee, shall consider the following:

(A) The offender’s ability to pay;

(B) The nature and extent of the offender’s responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court’s sentence; and

(D) The effect, if any, that reimbursement might have on the offender’s rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed $500 per month unless the offender gives his or her express consent.

(3) The Commissioner of Corrections shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the division for the care and supervision of those individuals in his or her custody.

(e) The chief executive officer of any correctional institution, on request of an inmate, may expend up to one half of the money earned by the inmate on behalf of the family of the inmate if the ten percent mandatory savings has first been set aside and other fees owed by the inmate have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate and be paid to the inmate at times as may be prescribed by rules. The funds so accumulated on behalf of inmates shall be held by the chief executive officer of each institution under a bond approved by the Attorney General.
(f) The warden or administrator shall deliver to the inmate at the time he or she leaves the institution, or as soon as practicable after departure, all personal property, moneys and earnings then credited to the inmate, or in case of the death of the inmate before authorized release from the institution, the warden or administrator shall deliver the property to the inmate’s personal representative. In case a conservator is appointed for the inmate while he or she is domiciled at the institution, the warden or administrator shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate that are in the custody of the warden or administrator.

(g) If any money is credited to a former inmate after remittance of the sum of money as provided in subsection (f), the Commissioner shall notify the former inmate within thirty days of receipt of the money. The former inmate will be afforded the opportunity to collect the money if he or she pays the cost of the transaction. If the former inmate does not claim the money within thirty days of receiving the notice and the sum of money is less than $10, the Commissioner may place the money into the inmate benefit fund.

§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.

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;
62 (15) Any expense related to the installation, operation
63 and maintenance of the inmate telephone system; and
64 (16) For restitution of any negative balance on any
65 inmate's trustee account for inmate medical copay, legal and
66 ancillary related postage, and photocopy fees that are due the
67 State of West Virginia, if the balance is uncollectible from an
68 inmate after one calendar year from an inmate's release on
69 parole or discharge date.
70 (d) The institution shall compile a monthly report that
71 specifically documents inmate benefit fund receipts and
72 expenditures and a yearly report for the previous fiscal year
73 by September 1 of each year and submit the reports to the
74 commissioner.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of April, 2009.