WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4531

(By Delegates Brown, Miley, Hatfield, Guthrie, Lawrence, Poore and Caputo)

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Passed March 13, 2010

In Effect Ninety Days From Passage
AN ACT to amend and reenact §25-1-16 of the Code of West Virginia, 1931, as amended; to further amend said code by adding thereto a new section, designated §31-20-30a; and to amend and reenact §49-5E-6 of said code, all relating to the proper care of inmates in state institutions or facilities; authorizing the transfer of inmates with mental health needs; authorizing the transfer of inmates for medical reasons under appropriate supervision; providing criteria, standards and limitations relating to the proper treatment of pregnant inmates; authorizing restraint of pregnant inmates when necessary; and providing criteria, standards and limitations relating to the proper treatment of pregnant juveniles in the custody of the Division of Juvenile Services.

Be it enacted by the Legislature of West Virginia:

That §25-1-16 of the Code of West Virginia, 1931, as amended be amended and reenacted; that said code be amended by adding
CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-16. Transfer of inmates of state institutions or facilities.

1 The State Commissioner of Corrections shall have authority to cause the transfer of any inmate from any correctional facility to any other state or federal institution or facility which is better equipped for the care or treatment of such inmate, or for other good cause or reason.

6 Whenever an inmate committed to the custody of corrections becomes mentally ill and his or her needs cannot be properly met within the correctional facility, the commissioner shall proceed in accordance with section thirty-one, article five, chapter twenty-eight of this code.

11 Whenever an inmate committed to the custody of corrections needs medical attention, other than mental health care, not available at said prison, the warden or administrator of said correctional facility shall immediately notify the Commissioner of Corrections who, after proper investigation, shall cause the transfer of said inmate to a facility properly equipped to render the medical attention necessary. Such inmate, while receiving treatment in said hospital, shall be under an appropriate level of supervision at all times and shall forthwith be returned to his or her correctional facility upon release from said facility.

22 In providing for arranging for the necessary medical and other care and treatment of a pregnant inmate, the warden or
administrator of the correctional facility shall take reasonable
measures to assure that pregnant inmates will not be restrained
after reaching the second trimester of pregnancy until the end
of the pregnancy: *Provided, That if the inmate, based upon
her classification, discipline history, or other factors deemed
relevant by the warden or administrator poses a threat of
escape, or to the safety of herself, the public, staff or the
fetus, the inmate may be restrained in a manner reasonably
necessary: *Provided, however, That prior to directing the
application of restraints and where there is no threat to the
safety of the inmate, the public, staff or the fetus, the warden,
administrator or designee shall consult with an appropriate
health care professional to assure that the manner of restraint
will not pose an unreasonable risk of harm to the inmate or
the fetus.

CHAPTER 31. CORPORATIONS.

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

§31-20-30a. Mechanical restraints during pregnancy.

In providing or arranging for the necessary medical and
other care and treatment of inmates committed to the
Regional Jail Authority's custody, the authority shall assure
that pregnant inmates will not be restrained after reaching the
second trimester of pregnancy until the end of the pregnancy:
*Provided, That if the inmate, based upon her classification,
discipline history, or other factors deemed relevant by the
authority poses a threat of escape, or to the safety of herself,
the public, staff or the fetus, the inmate may be restrained in
a manner reasonably necessary. *Provided, however, That
prior to directing the application of restraints and where there
is no threat to the safety of the inmate, the public, staff or the
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13 fetus, the director or designee shall consult with an appropriate
14 health care professional to assure that the manner of restraint
15 will not pose an unreasonable risk of harm to the inmate or
16 the fetus.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-6. Medical and other treatment of juveniles in custody
of the division; coordination of care and claims
processing and administration by the department;
authorization of certain cooperative agreements.

(a) Notwithstanding any other provision of law to the
contrary, the director, or his or her designee, is hereby
authorized to consent to the medical or other treatment of any
juvenile in the legal or physical custody of the director or the
division.

(b) In providing or arranging for the necessary medical
and other care and treatment of juveniles committed to the
division’s custody, the director shall utilize service providers
who provide the same or similar services to juveniles under
existing contracts with the Department of Health and Human
Resources. In order to obtain the most advantageous
reimbursement rates, to capitalize on an economy of scale
and to avoid duplicative systems and procedures, the
department shall administer and process all claims for
medical or other treatment of juveniles committed to the
division’s custody.

(c) In providing or arranging for the necessary medical
other care and treatment of juveniles committed to the
division’s custody, the director shall assure that pregnant
inmates will not be restrained after reaching the second
trimester of pregnancy until the end of the pregnancy: Provided, That if the inmate, based upon her classification, discipline history or other factors deemed relevant by the director poses a threat of escape, or to the safety of herself, the public, staff, or the unborn child, the inmate may be restrained in a manner reasonably necessary: Provided, however, That prior to directing the application of restraints and where there is no threat to the safety of the inmate, the public, staff or the fetus, the director or designee shall consult with an appropriate health care professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the inmate or the fetus.

(d) For purposes of implementing the mandates of this section, the director is hereby authorized and directed to enter into any necessary agreements with the Department of Health and Human Resources. Any such agreement shall specify, at a minimum, for the direct and incidental costs associated with such care and treatment to be paid by the Division of Juvenile Services.
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 ___

day of ___ , 2010.

Governor