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2001 APR 30 P 4:44

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

Regular Session, 2001

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**ENROLLED**

Committee Substitute for

**SENATE BILL NO.** 674

(By Senator Wooten)

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**PASSED** April 12, 2001

**In Effect** from **Passage**

FILED

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 674**

(SENATOR WOOTON, *original sponsor*)

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[Passed April 12, 2001; in effect from passage.]

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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

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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.**

**§15-9-2. Facility inspection.**

1 The governor's committee on crime, delinquency and  
2 correction shall annually visit and inspect jails, detention  
3 facilities, correctional facilities, facilities which may hold  
4 juveniles involuntarily or any other juvenile facility which  
5 may temporarily house juveniles on a voluntary or invol-  
6 untary basis for the purpose of compliance with standards  
7 promulgated by the juvenile facilities standards commis-  
8 sion, pursuant to section nine-a, article twenty, chapter  
9 thirty-one of this code and with the Juvenile Justice and  
10 Delinquency Prevention Act of 1974, as amended.

**§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.**

1 The governor's committee on crime, delinquency and  
2 correction shall ascertain the compliance of juvenile  
3 detention and juvenile correctional facilities operated by  
4 or under contract with the division of juvenile services,  
5 created pursuant to section two, article five-e, chapter  
6 forty-nine of this code, with standards for the structure,  
7 physical plant, operation and maintenance of the facilities,  
8 promulgated by the juvenile facility standards commis-  
9 sion, pursuant to section nine-a, article twenty, chapter  
10 thirty-one of this code: *Provided*, That such review shall  
11 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.**

1 (a) A juvenile facilities standards commission consisting  
2 of fourteen members is hereby created. The governor shall  
3 appoint two citizen members who are experienced and  
4 knowledgeable in the field of law enforcement; two citizen  
5 members who are experienced and knowledgeable in the  
6 field of juvenile development; one educator; one health  
7 care professional; and one lay member. Each of these  
8 appointed members shall serve for a term of three years  
9 and be eligible for reappointment. The secretary of the  
10 department of military affairs and public safety shall be a  
11 nonvoting member, ex officio, and shall serve as the  
12 commission's chairman. The state fire marshal, the  
13 chairman of the juvenile justice subcommittee of the  
14 governor's committee on crime, delinquency and correc-  
15 tion, a child care licensing specialist from the department  
16 of health and human resources, designated by the secre-  
17 tary thereof, and a representative from the administrative  
18 office of the supreme court of appeals, designated by the

19 director of that office, shall be nonvoting members, ex  
20 officio. The director of the division of juvenile services  
21 and the executive director of the regional jail and correc-  
22 tional facility authority shall be nonvoting members, ex  
23 officio, and shall serve in an advisory capacity.

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

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

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

1 The purpose of the commission is to assure that proper  
2 minimum standards and procedures are developed for the  
3 structure and physical plant of juvenile detention and  
4 juvenile correctional facilities and their operation, mainte-  
5 nance and management. To this end, the commission shall:

6 (1) Develop standards for the structure and physical  
7 plant, maintenance and operation of juvenile detention  
8 and correctional facilities. These standards shall include,  
9 but not be limited to, requirements assuring adequate  
10 space, lighting and ventilation; fire protection equipment  
11 and procedures; provision of specific personal hygiene  
12 articles; bedding, furnishings and clothing; food services;  
13 appropriate staffing and training; sanitation, safety and  
14 hygiene; isolation and suicide prevention; appropriate  
15 medical, dental, behavioral and other health services;  
16 indoor and outdoor exercise; appropriate vocational and  
17 educational opportunities; rules and discipline; religious

18 services; vocational programs; library services; visitation,  
19 mail and telephone privileges; and other standards neces-  
20 sary to assure proper operation.

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

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

30 (4) Report periodically to the authority to advise and  
31 recommend actions to be taken by the authority, if neces-  
32 sary, to implement proper standards in the state's juvenile  
33 detention and correctional facilities.

34 The commission is hereby directed to promulgate an  
35 emergency rule, pursuant to the provisions of article three,  
36 chapter twenty-nine-a of this code, relating to licensing  
37 and accreditation for juvenile detention facilities and  
38 juvenile correctional facilities: *Provided*, That such  
39 emergency rule shall make provision for grandfathering  
40 existing juvenile detention facilities and juvenile correc-  
41 tional facilities into the licensing and accreditation  
42 scheme.

## **CHAPTER 49. CHILD WELFARE.**

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

#### **§49-2B-2. Definitions.**

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

3 (a) "Approval" means a finding by the commissioner  
4 that a facility operated by the state has met the require-

5 ments set forth in the rules promulgated pursuant to this  
6 article.

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

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

17 (d) "Certificate of registration" means a statement  
18 issued by the commissioner to a family day care home  
19 upon receipt of a self-certification statement of compli-  
20 ance with the rules promulgated pursuant to the provi-  
21 sions of this article.

22 (e) "Certification" means a statement issued by the  
23 commissioner to a family day care facility upon satisfac-  
24 tory inspection, approval and certification that the facility  
25 has complied with the applicable rules promulgated by the  
26 commissioner.

27 (f) "Child" means any person under eighteen years of  
28 age.

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

36 (h) "Child-placing agency" means a child welfare  
37 agency organized for the purpose of placing children in  
38 private family homes for foster care or for adoption. The

39 function of a child-placing agency may include the  
40 investigation and certification of foster family homes and  
41 foster family group homes as provided in this chapter. The  
42 function of a child-placing agency may also include the  
43 supervision of children who are sixteen or seventeen years  
44 old and living in unlicensed residences.

45 (i) "Child welfare agency" means any agency or facility  
46 maintained by the state or any county or municipality  
47 thereof, or any agency or facility maintained by an indi-  
48 vidual, firm, corporation, association or organization,  
49 public or private, to receive children for care and mainte-  
50 nance or for placement in residential care facilities,  
51 including, without limitation, private homes, or any  
52 facility that provides care for unmarried mothers and their  
53 children: *Provided*, That the term does not include juvenile  
54 detention facilities or juvenile correctional facilities  
55 operated by or under contract with the division of juvenile  
56 services, created under section two, article five-e of this  
57 chapter, nor any other facility operated by that division  
58 for the secure housing or holding of juveniles committed to  
59 its custody.

60 (j) "Commissioner" means the commissioner of human  
61 services.

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

65 (l) "Department" means the department of health and  
66 human resources.

67 (m) "Facility" means a place or residence, including  
68 personnel, structures, grounds and equipment, used for the  
69 care of a child or children on a residential or other basis  
70 for any number of hours a day in any shelter or structure  
71 maintained for that purpose: *Provided*, That the term does  
72 not include any juvenile detention facility or juvenile  
73 correctional facility operated by or under contract with



74 the division of juvenile services, created pursuant to  
75 section two, article five-e of this chapter, for the secure  
76 housing or holding of juveniles committed to its custody.

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

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

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

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

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

102 (s) "Group home facility" means any facility, public or  
103 private, which is used to provide residential care for eleven  
104 or more children: *Provided*, That the term does not  
105 include any juvenile detention facility or juvenile correc-  
106 tional facility operated by or under contract with the  
107 division of juvenile services, created pursuant to section

108 two, article five-e of this chapter, for the secure housing or  
109 holding of juveniles committed to its custody.

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

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

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

127 (w) "Rule" means a statement issued by the commis-  
128 sioner of the standard to be applied in the various areas of  
129 child care.

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

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

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

1 (a) Any person, corporation or child welfare agency,  
2 other than a state agency, which operates a residential  
3 child care facility, a child-placing agency or a day care  
4 center shall obtain a license from the department.

5 (b) Any residential child care facility, day care center or  
6 any child-placing agency operated by the state shall obtain  
7 approval of its operations from the commissioner: *Pro-*  
8 *vided*, That this requirement does not apply to any juvenile  
9 detention facility or juvenile correctional facility operated  
10 by or under contract with the division of juvenile services,  
11 created pursuant to section two, article five-e of this  
12 chapter, for the secure housing or holding of juveniles  
13 committed to its custody. The facilities and placing  
14 agencies shall maintain the same standards of care appli-  
15 cable to licensed facilities, centers or placing agencies of  
16 the same category.

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

21 (d) Every family day care home which operates in this  
22 state, including family day care homes approved by the  
23 department for receipt of funding, shall obtain a certifi-  
24 cate of registration from the department.

25 (e) This section does not apply to:

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

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

36 (3) Summer recreation camps operated for children  
37 attending sessions for periods not exceeding thirty days;

38 (4) Hospitals or other medical facilities which are  
39 primarily used for temporary residential care of children  
40 for treatment, convalescence or testing;

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

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

48 (f) The commissioner is hereby authorized to issue an  
49 emergency rule relating to conducting a survey of existing  
50 facilities in this state in which children reside on a tempo-  
51 rary basis in order to ascertain whether they should be  
52 subject to licensing under this article or applicable licens-  
53 ing provisions relating to behavioral health treatment  
54 providers.

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

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

1 When any medical, dental or mental health professional,  
2 christian science practitioner, religious healer, school  
3 teacher or other school personnel, social service worker,  
4 child care or foster care worker, emergency medical  
5 services personnel, peace officer or law-enforcement  
6 official, member of the clergy, circuit court judge, family  
7 law master, employee of the division of juvenile services or  
8 magistrate has reasonable cause to suspect that a child is  
9 neglected or abused or observes the child being subjected  
10 to conditions that are likely to result in abuse or neglect,  
11 such person shall immediately, and not more than forty-  
12 eight hours after suspecting this abuse, report the circum-  
13 stances or cause a report to be made to the state depart-  
14 ment of human services: *Provided*, That in any case where

15 the reporter believes that the child suffered serious  
16 physical abuse or sexual abuse or sexual assault, the  
17 reporter shall also immediately report, or cause a report to  
18 be made, to the division of public safety and any law-  
19 enforcement agency having jurisdiction to investigate the  
20 complaint: *Provided, however,* That any person required  
21 to report under this article who is a member of the staff of  
22 a public or private institution, school, facility or agency  
23 shall immediately notify the person in charge of such  
24 institution, school, facility or agency, or a designated  
25 agent thereof, who shall report or cause a report to be  
26 made. However, nothing in this article is intended to  
27 prevent individuals from reporting on their own behalf.

28 In addition to those persons and officials specifically  
29 required to report situations involving suspected abuse or  
30 neglect of children, any other person may make a report if  
31 such person has reasonable cause to suspect that a child  
32 has been abused or neglected in a home or institution or  
33 observes the child being subjected to conditions or circum-  
34 stances that would reasonably result in abuse or neglect.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *27th*  
*April*  
Day of ....., 2001.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/14/01

Time 5:10 pm