

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3189**

BY DELEGATES WALKER, EVANS, THOMPSON, PUSHKIN,

FLUHARTY AND YOUNG

[Introduced March 16, 2021; Referred to the  
Committee on Veterans' Affairs and Homeland  
Security then the Judiciary]

1 A BILL to amend and reenact §49-2-1003 of the Code of West Virginia, 1931, as amended; and  
2 to amend §49-4-721 of the said code, all relating to establishing requirements for confining  
3 juveniles in juvenile facilities; placing limitations on when in room confinement; providing  
4 requirements for confinement rooms; providing what services juveniles in confinement  
5 shall have along with further limitations and conditions; and providing these provisions do  
6 not mandate fencing or similar structures at any juvenile facility.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

### **§49-2-1003. Rehabilitative facilities for status offenders; requirements; educational instruction.**

1 (a) The Department of Health and Human Resources shall establish and maintain one or  
2 more rehabilitative facilities to be used exclusively for the lawful custody of status offenders. Each  
3 facility will be a nonsecure facility having as its purpose the rehabilitation of status offenders. The  
4 facility will have a bed capacity for not more than 20 juveniles and shall minimize the institutional  
5 atmosphere and prepare the juvenile for reintegration into the community.

6 (b) Rehabilitative programs and services shall be provided by or through each facility and  
7 may include, but not be limited to, medical, educational, vocational, social and psychological  
8 guidance, training, counseling, substance abuse treatment and other rehabilitative services. The  
9 Department of Health and Human Resources shall provide to each status offender committed to  
10 the facility a program of treatment and services consistent with the individualized program of  
11 rehabilitation developed for the juvenile. In the case of any other juvenile residing at the facility,  
12 the department shall provide those programs and services as may be proper in the circumstances  
13 including, but not limited to, any programs or services directed to be provided by the court.

14 (c) The board of education of the county in which the facility is located shall provide  
15 instruction for juveniles residing at the facility. Residents who can be permitted to do so shall  
16 attend local schools and instruction shall otherwise take place at the facility.

17 (d) Facilities established pursuant to this section shall be structured as community-based  
18 facilities.

19 (e) The Department of Health and Human Resources may enter into cooperative  
20 arrangements and agreements with private agencies or with agencies of the state and its political  
21 subdivisions to fulfill its duties under this section: *Provided*, That after January 1, 2016, the  
22 department shall not enter into an agreement with the Division of Juvenile Services to house  
23 juvenile status offenders.

24 (f) The provisions of §49-4-721 of this code apply to facilities established pursuant to the  
25 provisions of this section.

#### **ARTICLE 4. COURT ACTIONS.**

##### **§49-4-721. Rules governing juvenile facilities; rights of juveniles.**

1 (a) The Director of the Division of Juvenile Services within the Department of Military  
2 Affairs and Public Safety shall propose legislative rules for promulgation in accordance with §29A-  
3 3-1 *et seq.* of this code, outlining policies and procedures governing the operation of those  
4 correctional, detention, predispositional detention centers and other facilities wherein juveniles  
5 may be housed. These policies and procedures shall include, but are not limited to, standards of  
6 cleanliness, temperature and lighting; availability of medical and dental care; provision of food,  
7 furnishings, clothing and toilet articles; supervision; procedures for enforcing rules of conduct  
8 consistent with due process of law; and visitation privileges. A juvenile in custody or detention  
9 has, at a minimum, the following rights, and the policies prescribed ensuring that:

10 (1) A juvenile may not be punished by physical force, deprivation of nutritious meals,  
11 deprivation of family visits ~~or imposition of solitary confinement~~;

12 (2) A juvenile shall be afforded an opportunity to participate in physical exercise each day;

13 ~~(3) Except for sleeping hours, a juvenile in a state facility may not be locked alone in a~~  
14 ~~room unless that juvenile is not amenable to reasonable direction and control;~~

15 (3) A juvenile shall not be placed in room confinement as a punishment or a disciplinary

16 sanction, as a response to a staffing shortage, or as retaliation against the juvenile by staff. A  
17 juvenile shall not be placed in room confinement unless all other less-restrictive alternatives have  
18 been exhausted and the juvenile poses an immediate and substantial risk of harm to self or others.  
19 All other less-restrictive options that were attempted shall be documented and shall be provided  
20 to the juvenile's parent or guardian and the attorney of record for the juvenile upon notification  
21 pursuant to this subsection.

22 (b) A juvenile may only be held in room confinement according to the following conditions:

23 (1) A juvenile shall not be held in room confinement longer than the minimum time required  
24 to eliminate the substantial and immediate risk of harm to self or others and shall be released  
25 from room confinement as soon as the substantial and immediate risk of harm to self or others is  
26 resolved;

27 (2) A juvenile shall only be held in room confinement for a period that does not compromise  
28 or harm the mental or physical health of the juvenile;

29 (3) Any juvenile placed in room confinement shall be released immediately upon regaining  
30 sufficient control so as to no longer engage in behavior that threatens substantial and immediate  
31 risk of harm to self or others. Upon placement of a juvenile in room confinement, the facility shall  
32 provide notice of the placement in room confinement to the juvenile's parent or guardian and the  
33 attorney of record for the juvenile, along with documentation of less-restrictive alternatives that  
34 were attempted;

35 (4) All rooms used for room confinement shall have adequate and operating lighting,  
36 heating and cooling, and ventilation for the comfort of the juvenile. Rooms shall be clean and  
37 resistant to suicide and self-harm. Juveniles in room confinement shall have access to drinking  
38 water, toilet facilities, hygiene supplies, and reading materials approved by a licensed mental  
39 health professional;

40 (5) Juveniles in room confinement shall have the same access as provided to juveniles in  
41 the general population of the facility to meals, contact with parents or legal guardians, legal

42 assistance, and access to educational programming;

43 (6) Juveniles in room confinement shall have access to appropriate medical and mental  
44 health services. Mental health staff shall promptly provide mental health services as needed;

45 (7) Juveniles in room confinement shall be continuously monitored by staff of the facility.  
46 Continuous monitoring may be accomplished through regular in-person visits to the confined  
47 juvenile which may also be supplemented by electronic video monitoring; and

48 (8) The use of consecutive periods of room confinement to avoid the intent and purpose  
49 of this section is prohibited.

50 (4) A juvenile shall be provided with his or her own clothing or individualized clothing which  
51 is clean and supplied by the facility, and shall also be afforded daily access to showers;

52 (5) A juvenile shall be afforded constant access to writing materials and may send mail  
53 without limitation, censorship or prior reading, and may receive mail without prior reading, except  
54 that mail may be opened in the juvenile's presence, without being read, to inspect for contraband;

55 (6) A juvenile may make and receive regular local phone calls without charge and long  
56 distance calls to his or her family without charge at least once a week, and receive visitors daily  
57 and on a regular basis;

58 (7) A juvenile shall be afforded immediate access to medical care as needed;

59 (8) A juvenile in a juvenile detention facility or juvenile corrections facility shall be provided  
60 access to education, including teaching, educational materials and books;

61 (9) A juvenile shall be afforded reasonable access to an attorney upon request; and

62 (10) A juvenile shall be afforded a grievance procedure, including an appeal mechanism.

63 ~~(b)~~ (c) Upon admission to a detention facility or juvenile corrections facility, a juvenile shall  
64 be furnished with a copy of the rights provided him or her by virtue of this section and as further  
65 prescribed by rules proposed and promulgated pursuant to this section.

66 (d) Nothing in this section shall be construed to authorize or require the construction or  
67 erection of fencing or similar structures at any facility, nor the imposition of nonrehabilitative

68 approaches to behavior management within any facility.

NOTE: The purpose of this bill is to establish conditions for placing juveniles in confinement at juvenile facilities; provides directives and limitations for how confinement is conducted; and providing that no fences or other similar structures are required.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.