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]

A BILL to amend and reenact §49-2-1003 of the Code of West Virginia, 1931, as amended; and to amend §49-4-721 of the said code, all relating to establishing requirements for confining juveniles in juvenile facilities; placing limitations on when in room confinement; providing requirements for confinement rooms; providing what services juveniles in confinement shall have along with further limitations and conditions; and providing these provisions do 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.

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

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

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

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

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

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

ARTICLE 4. COURT ACTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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