

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

DRAFT

Senate Bill Number

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1 A BILL to amend and reenact §49-2-809 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §49-5-101 of said code; to amend and reenact §49-11-101 of said
3 code; to amend said code by adding thereto a new article, designated §61-12B-1, 61-12B-
4 2, 61-12B-3, 61-12B-4, §61-12B-5, and §61-12B-6, §61-12B-7 relating to child welfare;
5 amending abuse and neglect reporting; permitting the Foster Care Ombudsman to have
6 access to information related to proceedings involving child abuse or neglect, or both,
7 including information related to the identity of the person reporting or making a complaint
8 of child abuse or neglect; providing the public shall have access to reports of child abuse
9 or neglect, or both in conformity with the Critical Incident Review Team's reporting; adding
10 additional terms to the child welfare dashboard; providing for effective date; creating the
11 Critical Incident Review Team; setting forth purpose; defining terms; setting forth
12 responsibilities of the Critical Incident Review Team; requiring reporting; providing the
13 Critical Incident Review Team access to information and providing for confidentiality.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

§49-2-809. Reporting procedures.

1 ~~(a) Reports of child abuse and neglect pursuant to this article shall be made immediately~~
2 ~~to the department of child protective services by a method established by the Bureau for Social~~
3 ~~Services: *Provided*, That if the method for reporting is web-based, the Bureau for Social Services~~
4 ~~shall maintain a system for addressing emergency situations that require immediate attention and~~
5 ~~shall be followed by a written report within 48 hours if so requested by the receiving agency. The~~
6 ~~Bureau for Social Services shall establish and maintain a 24-hour, seven-day-a-week telephone~~
7 ~~number to receive calls reporting suspected or known child abuse or neglect. Reports of child~~
8 ~~abuse and neglect pursuant to this article shall be made immediately to the Bureau for Social~~
9 ~~Services. Reports of child abuse and neglect shall be made to the Bureau of Social Services via~~

10 a 24-hour, seven-day-a week hotline (centralized intake) that shall be maintained by the Bureau
11 of Social Services to receive calls reporting of suspected or known child abuse or neglect or such
12 reports may be made via web-based reporting (email, electronic fax, fillable form or other
13 electronic form) that sends the reports to a live person to handle the reports immediately. Both
14 systems shall give the reporter a specific case identifier immediately upon making a report.

15 (b) If a report of child abuse and neglect is made in any fashion other than specified in
16 subsection (a), then Bureau of Social Services is still required to act upon such report as if the
17 report were made to centralized intake.

18 ~~(b)-(c) The department shall have a redundancy for its system in the event of an outage~~
19 ~~to receive reports. This redundancy system shall be transparent, meaning that it shall allow for~~
20 ~~reporting in the same means as if the outage had not occurred and no time delay shall occur from~~
21 ~~when the outage occurs to when the redundancy system begins to operate. This redundancy~~
22 ~~system shall be operational no later than July 1, 2023. If the department contends that it currently~~
23 ~~has a redundancy system, it shall describe the system, provide an operational date for the system,~~
24 ~~and explain why calls to centralized intake were unanswered to the Joint Committee on~~
25 ~~Government and Finance by July 1, 2023. In screening reports made pursuant to subsection (a),~~
26 the Bureau for Social Services shall not screen out any reports made by mandatory reporters.

27 ~~(e) (d)~~ A copy of any report of serious physical abuse, sexual abuse, or assault shall be
28 forwarded by the department to the appropriate law-enforcement agency, the prosecuting
29 attorney, or the coroner or medical examiner's office. All reports under this article are confidential.
30 Reports of known or suspected institutional child abuse or neglect shall be made and received as
31 all other reports made pursuant to this article.

32 ~~(d) (e)~~ The department shall annually submit a report in an electronic format, via the
33 legislative webpage, on July 1 to the Joint Committee on Government and Finance, which shall
34 contain: How many calls were made to centralized intake on a per county basis, how many calls
35 were referred to centralized intake on a per county basis, how many calls were screened out

36 centralized intake on a per county basis, and the time from referral to investigation on a per county
37 basis.

38 (f) All reports made to centralized intake by email, fax, fillable form, or other electronic
39 form from a reporter, shall be retained in the Comprehensive Child Welfare Information System
40 in its original format for at least 12 months.

41 (g) Audio files recorded from reports made to centralized intake shall be retained in the
42 Comprehensive Child Welfare Information System for at least 12 months.

ARTICLE 5. RECORDKEEPING AND DATABASE.

§49-5-101. Confidentiality of records; non-release of records; exceptions; penalties.

1 (a) Except as otherwise provided in this chapter or by order of the court, all records and
2 information concerning a child or juvenile which are maintained by the Division of Corrections and
3 Rehabilitation, the Department of Human Services, a child agency or facility, or court or law-
4 enforcement agency, are confidential and may not be released or disclosed to anyone, including
5 any federal or state agency.

6 (b) Notwithstanding the provisions of subsection (a) of this section or any other provision
7 of this code to the contrary, records concerning a child or juvenile, except adoption records and
8 records disclosing the identity of a person making a complaint of child abuse or neglect, may be
9 made available:

10 (1) Where otherwise authorized by this chapter;

11 (2) To:

12 (A) The child;

13 (B) A parent whose parental rights have not been terminated;

14 (C) The attorney of the child or parent; and

15 (D) The Juvenile Justice Commission and its' designees acting in the course of their official
16 duties;

17 (3) With the written consent of the child or of someone authorized to act on the child's

18 behalf; and

19 (4) Pursuant to an order of a court of record: *Provided*, That the court shall review the
20 record or records for relevancy and materiality to the issues in the proceeding and safety and may
21 issue an order to limit the examination and use of the records or any part thereof.

22 (c) In addition to those persons or entities to whom information may be disclosed under
23 subsection (b) of this section, information related to child abuse or neglect proceedings, except
24 information relating to the identity of the person reporting or making a complaint of child abuse or
25 neglect, shall be made available upon request to:

26 (1) Federal, state, or local government entities, or any agent of those entities, including
27 law-enforcement agencies and prosecuting attorneys, having a need for that information in order
28 to carry out its responsibilities under law to protect children from abuse and neglect;

29 (2) The child fatality review team;

30 (3) Child abuse citizen review panels;

31 (4) Multidisciplinary investigative and treatment teams; or

32 (5) A grand jury, circuit court, or family court, upon a finding that information in the records
33 is necessary for the determination of an issue before the grand jury, circuit court, or family court;
34 and

35 (6) The West Virginia Crime Victims Compensation Fund and its designees acting in the
36 course of their official duties.

37 (d) Information related to proceedings involving child abuse or neglect, or both, including
38 information related to the identity of the person reporting or making a complaint of child abuse or
39 neglect, or both, shall be made available, upon request, to the Foster Care Ombudsman, or his
40 or her designee: *Provided*, That such request is made in the course of their official duties pursuant
41 to §16B-16-7 of this code.

42 ~~(d)~~ (e) If there is a child fatality or near fatality due to child abuse and neglect, information
43 relating to a fatality or near fatality shall be made public by the Department of Human Services

44 and provided to the entities described in subsection (c) of this section, all under the circumstances
45 described in §61-12B-1 et seq of said code: *Provided*, That information released by the
46 Department of Human Services pursuant to this subsection may not include the identity of a
47 person reporting or making a complaint of child abuse or neglect except when such information
48 and records are released to the Foster Care Ombudsman or his or her designee acting in the
49 course of their official duties, the identity of a person reporting or making a complaint of child
50 abuse or neglect may be included: *Provided, however*, That the Foster Care Ombudsman or his
51 or her designee is acting in the course of their official duties pursuant to §16B-16-7 of this code.
52 For purposes of this subsection, "near fatality" means any medical condition of the child which is
53 certified by the attending physician to be life threatening.

54 ~~(e)~~ (f) Except in juvenile proceedings which are transferred to criminal proceedings, law-
55 enforcement records and files concerning a child or juvenile shall be kept separate from the
56 records and files of adults and not included within the court files. Law-enforcement records and
57 files concerning a child or juvenile shall only be open to inspection pursuant to §49-5-103 of this
58 code.

59 ~~(f)~~ (g) Any person who willfully violates the provisions of this section is guilty of a
60 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in
61 jail for not more than six months, or both fined and confined. A person convicted of violating this
62 section is also liable for damages in the amount of \$300, or actual damages, whichever is greater.

63 ~~(g)~~ (h) Notwithstanding the provisions of this section, or any other provision of this code to
64 the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or
65 felonious crime shall be made available to the public.

66 ~~(h)~~ (i)(1) Notwithstanding the provisions of this section or any other provision of this code
67 to the contrary, the Division of Corrections and Rehabilitation may provide access to, and the
68 confidential use of, a treatment plan, court records, or other records of a juvenile to an agency in
69 another state which:

70 (A) Performs the same functions in that state that are performed by the Division of
71 Corrections and Rehabilitation in this state;

72 (B) Has a reciprocal agreement with this state; and

73 (C) Has legal custody of the juvenile.

74 (2) A record which is shared under this subsection may only provide information which is
75 relevant to the supervision, care, custody, and treatment of the juvenile;

76 (3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements
77 with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq.*
78 of this code to implement this subsection; and

79 (4) Other than the authorization explicitly given in this subsection, this subsection may not
80 be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

81 ~~(j)~~ (i) The records subject to disclosure pursuant to subsection (b) of this section may not
82 include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of
83 which is exclusively subject to §62-6B-6 of this code.

84 ~~(j)-(k)~~ Notwithstanding the provisions of subsection (a) of this section, records in the
85 possession of the Division of Corrections and Rehabilitation declared to be confidential by the
86 provisions of subsection (a) of this section may be published and disclosed for use in an employee
87 grievance if the disclosure is done in compliance with subsections ~~(k), (l), and (m)~~ (l), (m), and (n)
88 of this section.

89 ~~(k)~~ (l) Records or information declared confidential by the provisions of this section may
90 not be released for use in a grievance proceeding except:

91 (1) Upon written motion of a party; and

92 (2) Upon an order of the Public Employee's Grievance Board entered after an in-camera
93 hearing as to the relevance of the record or information.

94 ~~(j)~~ (m) If production of confidential records or information is disclosed to a grievant, his or
95 her counsel or representative, pursuant to subsection ~~(k)~~ (l) of this section:

96 (1) The division shall ensure that written records or information is redacted of all identifying
97 information of any juvenile which is not relevant to the resolution of the grievance;

98 (2) Relevant video and audio records may be disclosed without redaction; and

99 (3) Records or other information released to a grievant or his or her counsel or
100 representative pursuant to subsection ~~(k)~~ (l) of this section may only be used for purposes of his
101 or her grievance proceeding and may not be disclosed, published, copied, or distributed for any
102 other purpose, and upon the conclusion of the grievance procedure, returned to the Division of
103 Corrections and Rehabilitation.

104 ~~(m)~~ (n) If a grievant or the Division of Corrections and Rehabilitation seeks judicial review
105 of a decision of the Public Employee's Grievance Board, the relevant confidential records
106 disclosed and used in the grievance proceeding may be used in the appeal proceeding upon entry
107 of an order by the circuit court, and the order shall contain a provision limiting disclosure or
108 publication of the records or information to purposes necessary to the proceeding and prohibiting
109 unauthorized use and reproduction.

110 ~~(n)~~ (o) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et*
111 *seq.* of this code.

112 ~~(o)~~ (p) A child placing agency or a residential child care and treatment facility may disclose
113 otherwise confidential information to other child placing agencies or residential child care and
114 treatment facilities when making referrals or providing services on behalf of the child. This
115 information shall be maintained in the same manner as provided in this code.

116 ~~(p)~~ (q) The department shall provide electronic access to information required to perform
117 an adoption to child placing agencies as necessary to complete the adoption.

118 ~~(q)~~ (r) A child placing agency completing adoption as a contractor on behalf of the
119 department shall have access to secure records from vital statistics and other pertinent record
120 holders.

ARTICLE 11. SYSTEM REPORTING.

§49-11-101. Systemic reporting transparency; ~~rulemaking~~.

1 (a) The commissioner shall ~~change~~ update the existing child welfare data dashboard by
2 July 1, 2023, 2025, and shall update the child welfare data dashboard monthly thereafter to report
3 on system-wide issues, including, but not limited to, system-level performance indicators, intake
4 hotline performance indicators, field investigation performance indicators, open case performance
5 indicators, out-of-home placement performance indicators, ~~and~~ federally mandated performance
6 indicators, including but not limited to time to first contact, information on children in non-
7 placement or temporary lodging status.

8 (b) The Commissioner shall update the existing child welfare data dashboard with
9 information on child fatality and near fatality information, related to those cases subject to review
10 by the Critical Incident Review Team as set forth in §61-12B-1 et seq. of this code, within 48
11 hours of a child fatality or near fatality. With respect to child fatality or near fatality information, the
12 Department of Human Services shall report the following variables: the child's initials, the county
13 of residence, the date of the incident, the child's sex, the child's age, and the child's race/ethnicity.
14 The data dashboard shall provide a link to the final report of the Critical Incident Review Team
15 within 24 hours of its completion. The Commissioner shall send a report, within 24 hours of child
16 fatalities or near fatalities, to the Office of Inspector General to enable it to convene a meeting of
17 the Critical Incident Review Team.

18 (b) The child welfare data dashboard shall include workforce information, including but not
19 limited to, the number of child protective services staff that have been hired but who have not
20 completed training, the number and vacancies of adoption workers, and the number and
21 vacancies of home finders.

22 (c) Starting July 1, 2025, the data reported on the child welfare data dashboard shall be
23 represented as a point in time number and trended over time. Beginning July 1, 2025, the data
24 shall be saved in a way to allow public users to search the dashboard yearly, by reporting date,
25 and by county. The Department of Human Services may apply data suppression in order to protect

26 individual identification as necessary.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12B. CRITICAL INCIDENT REVIEW TEAM.

§61-12B-1. Purpose.

1 The Critical Incident Review Team is created for the purpose of reviewing fatalities and
2 near fatalities involving children involved in the child welfare system and making
3 recommendations to identify effective prevention and intervention processes to decrease
4 preventable child fatalities and near fatalities in the child welfare system.

§61-12B-2. Definitions.

1 As used in this article:

2 "Epidemiological analysis" means an analysis of demographic factors related to the child's
3 fatality or near fatality including but not limited to an analysis of the following factors: the date of
4 birth of the child; the sex of the child; the county of the child's residence; the race/ethnicity of the
5 child; the date the child suffered the fatality or near fatality; the type of maltreatment, the cause of
6 the fatality or near fatality; whether the agency had any contact, and if so, how many times, with
7 the child or a member of the child's family or household before the fatality or near fatality; and
8 maltreater demographic information.

9 "Known case" means any Child Protective Services case or youth services case in the
10 Comprehensive Child Welfare Information System or a case assessed by Child Protective
11 Services, youth services, or a contracted vendor;

12 "Near fatality" means any medical condition of the child which is certified by the attending
13 physician to be life threatening.

§61-12B-3. Creation of the Critical Incident Review Team and composition of members.

1 (a) The Critical Incident Review Team is created under the Office of the Inspector General
2 and is a multidisciplinary team created to oversee and coordinate the examination, review, and
3 assessment of:

4 (1) The fatality or near fatality of a child in the custody of the Department of Human
5 Services;

6 (2) The fatality or near fatality of a child who has a known case with the Department of
7 Human Services or who is a member of a family with a known case with the Department of
8 Human Services; and

9 (3) The fatalities or near fatalities of a child whose identity is brought to the attention of
10 the Department of Human Services through a centralized intake report, regardless of whether the
11 report was accepted for an investigation.

12 (b) The Critical Incident Review Team shall consist of the following members:

13 (1) The Commissioner of the Bureau for Social Services, or his or her designee, who is to
14 serve as the chairperson, is responsible for calling and coordinating meetings of the Critical
15 Incident Review Team;

16 (2) The Director of the Division of Planning and Quality Improvement;

17 (3) The Deputy Commissioner of the Bureau for Social Services;

18 (4) A representatives from the Office of Field Support, Programs and Resource
19 Development, Planning and Research, or the Office of Field Operations;

20 (5) The social services manager for any district having a history with the child or his or her
21 family that is the subject of the critical incident review;

22 (6) The Foster Care Ombudsman, or his or her designee;

23 (7) A representative of the West Virginia Supreme Court of Appeals, Division of Children
24 Services; and

25 (8) A prosecuting attorney, as appointed by the Governor, who shall serve for a term of
26 three years unless otherwise reappointed to a second or subsequent term. A prosecuting attorney

27 appointed to the term shall continue to serve until his or her term expires or until his or her
28 successor has been appointed;

29 (9) The Superintendent of the West Virginia State Police or his or her designee;

30 (10) A member of the West Virginia Senate appointed by the President of the Senate; and

31 (11) A member of the West Virginia House of Delegates appointed by the Speaker of the
32 House.

33 (c) Each member shall serve without additional compensation and may not be reimbursed
34 for any expenses incurred in the discharge of his or her duties under the provisions of this article.

35 (d) The Critical Incident Review Team may seek guidance and opinion regarding any
36 matter under review from outside experts in any related field. At any such time, the Critical Incident
37 Review Team shall require that all appropriate privacy requirements required in this article are in
38 place.

§61-12B-4. Responsibilities of the Critical Incident Review Team.

1 The Critical Incident Review Team shall:

2 (1) The team shall meet at least quarterly; Provided That in the event of a fatality or near
3 fatality, the team shall meet within 10 days of such fatality or near fatality to conduct the review
4 required by this article;

5 (2) Review and analyze all fatalities and near fatalities as required by this article;

6 (3) Ascertain and document the trends, patterns, and risk factors associated with the
7 fatalities and near fatalities evaluated;

8 (4) Provide statistical information and an epidemiological analysis regarding the causes
9 of fatalities and near fatalities as specified in this article;

10 (5) Establish standard procedures for the handling of the critical incident review;

11 (6) Establish processes and protocols for the review and analysis of fatalities and near
12 fatalities of those who were not suffering from mortal diseases shortly before fatality;

13 (7) Establish processes and protocols to ensure confidentiality of records obtained by the
14 Critical Incident Review Team; and
15 (8) Seek additional expert guidance as necessary to complete a review of any fatality or
16 near fatality evaluated.

§61-12B-5. Reporting of the Critical Incident Review Team.

1 (1) The Critical Incident Review Team shall submit an initial report within 30 days of the
2 fatality or near fatality to the Legislative Oversight Commission on Health and Human Resources
3 Accountability, with updates to be provided as soon as they become available.

4 (2) Any reports submitted mid-year and any other reports to be made shall be compiled
5 into a final report to submitted to the Legislative Oversight Commission on Health and Human
6 Resources Accountability which shall be submitted December 1 annually thereafter.

7 (b) The report is to include statistical information and an epidemiological analysis
8 concerning cases reviewed during the year, trends and patterns concerning these cases, and the
9 team's recommendations to reduce the number of fatalities and near fatalities that occur in this
10 state.

11 (c) The Critical Incident Review Team may provide reporting to child residential facilities
12 to inform their internal peer review activities. Such information shall be deemed confidential and
13 shall be used only for peer review purposes.

§61-12B-6. Access to information; other agencies of government required to cooperate.

1 (a) Notwithstanding any other provision of this code to the contrary, the Critical Incident
2 Review Team may request information and records as necessary to carry out its responsibilities.
3 Records and information that may be requested under this section include:

- 4 (1) Medical, dental, and mental health records;
5 (2) Substance abuse records to the extent allowed by federal law;
6 (3) Information and records maintained by any state, federal, or local government agency,

7 (b) State, county, and local government agencies shall provide the Critical Incident Review
8 Team with any information requested in writing by the team.

§61-12B-7. Confidentiality.

1 (a) Proceedings and records of the Critical Incident Review Team established pursuant to
2 this article are confidential and are not subject to discovery, subpoena, or the introduction into
3 evidence in any civil or criminal proceeding. This section does not limit or restrict the right to
4 discover or use in any civil or criminal proceeding anything that is available from another source
5 and entirely independent of the proceedings of the team.

6 (b) Members of the Critical Incident Review Team may not be questioned in any civil or
7 criminal proceeding regarding information presented or opinions formed as a result of a meeting
8 of the team. This subsection does not prevent a member of a team from testifying to information
9 obtained independently of the team which is public information.

10 (c) Proceedings and records of the Critical Incident Review Team established by the team
11 are exempt from disclosure under the Freedom of Information Act as provided in §29B-1-1 et seq.
12 of this code.

13 (d) Notwithstanding any other provision to the contrary, the Critical Incident Review Team
14 shall prepare a compilation of data to be shared, on an annual basis or more often as requested
15 or needed, with the Centers for Disease Control and Prevention to study child fatalities or near
16 fatalities.

17 (e) Information shall be maintained by the Critical Incident Review Team in a confidential
18 manner compliant with the Health Insurance Portability and Accountability Act of 1996.

NOTE: The purpose of this bill is to require transparency from the Department of Human Services.

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