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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001

ENROLLED

House Bill No. 2903

(By Delegates DeLong, Douglas, Cann and Swartzmiller)

Passed April 12, 2001

In Effect Ninety Days from Passage

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H. B. 2903

(BY DELEGATES DELONG, DOUGLAS, CANN AND SWARTZMILLER)

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

AN ACT to amend and reenact sections one, two, three and eight, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to including on a central registry those persons who have abused, neglected or committed other crimes against persons who are adults receiving behavioral health services.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and eight, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

1 The following words when used in this article have
2 meanings ascribed to them in this section, except in those
3 instances where the context clearly indicates a different
4 meaning:

5 (a) "Central abuse registry" or "registry" means the registry
6 created by this article which shall contain the names of individ-
7 uals who have been convicted of a felony or a misdemeanor
8 offense constituting abuse, neglect or misappropriation of the
9 property of a child or an incapacitated adult or an adult receiv-
10 ing behavioral health services.

11 (b) "Child abuse and neglect" or "child abuse or neglect"
12 means those terms as defined in section three, article one,
13 chapter forty-nine of this code, and shall include any act with
14 respect to a child which is a crime against the person pursuant
15 to article two, chapter sixty-one of this code, any act which is
16 unlawful pursuant to article eight-d of chapter sixty-one, and
17 any offense with respect to a child which is enumerated in
18 section three of this article.

19 (c) "Abuse or neglect of an incapacitated adult" means
20 "abuse" "neglect" and "incapacitated adult" as those terms are
21 defined in section one, article six, chapter nine, and shall
22 include any act with respect to an incapacitated adult which is
23 a crime against the person pursuant to article two, chapter sixty-
24 one of this code, and any offense with respect to an incapaci-
25 tated adult which is enumerated in section three of this article.

26 (d) "Adult receiving behavioral health services" means a
27 person over the age of eighteen years who is receiving any
28 behavioral health service from a licensed behavioral health
29 provider or any behavioral health provider whose services are
30 paid for, in whole or in part, by medicaid or medicare.

31 (e) "Conviction" of a felony or a misdemeanor means an
32 adjudication of guilt by a court or jury following a hearing on
33 the merits, or entry of a plea of guilty or nolo contendere.

34 (f) "Residential care facility" means any facility where a
35 child or an incapacitated adult or adult receiving behavioral
36 health services resides which is subject to registration, licensure

37 or certification by the department of health and human re-
38 sources, and shall include nursing homes, personal care homes,
39 residential board and care homes, adult family care homes,
40 group homes, legally unlicensed service providers, residential
41 child care facilities, family based foster care homes, specialized
42 family care homes and intermediate care facilities for the
43 mentally retarded.

44 (g) "Misappropriation of property" means any act which is
45 a crime against property under article three, chapter sixty-one
46 of this code with respect to a child in a residential care facility
47 or an incapacitated adult or an adult receiving behavioral health
48 services in a residential care facility or a child or an incapaci-
49 tated adult or adult receiving behavioral health services who is
50 a recipient of home care services.

51 (h) "Home care" or "home care services" means services
52 provided to children or incapacitated adults or an adult receiv-
53 ing behavioral health services in the home through a hospice
54 provider, a community care provider, a home health agency,
55 through the medicaid waiver program, or through any person
56 when that service is reimbursable under the state medicaid
57 program.

58 (i) "Requester" means any residential care facility, any state
59 licensed day care center, or any provider of home care services
60 or provider of behavioral health services providing to the
61 central abuse registry the name of an individual and other
62 information necessary to identify that individual, and either: (1)
63 Certifying that the individual is being considered for employ-
64 ment by the requester or for a contractual relationship with the
65 requester wherein the individual will provide services to a child
66 or an incapacitated adult or an adult receiving behavioral health
67 services for compensation; or (2) certifying that an allegation
68 of abuse, neglect or misappropriation of property has been
69 made against the individual.

§15-2C-2. Central abuse registry; required information; procedures.

1 (a) The criminal identification bureau of the West Virginia
2 state police shall establish a central abuse registry, to contain
3 information relating to criminal convictions involving child
4 abuse or neglect, abuse or neglect of an incapacitated adult or
5 an adult receiving behavioral health services and misappropriation
6 of property by individuals specified in subsection (b) of
7 this section and information relating to individuals required to
8 be registered as a sex offender.

9 (b) The central abuse registry shall contain, at a minimum,
10 information relating to: Convictions of a misdemeanor or a
11 felony involving abuse, neglect or misappropriation of property,
12 by an individual performing services for compensation, within
13 the scope of the individual's employment or contract to provide
14 services, in a residential care facility, in a licensed day care
15 center in connection with providing behavioral health services,
16 or in connection with the provision of home care services;
17 information relating to individuals convicted of specific
18 offenses enumerated in subsection (a), section three of this
19 article with respect to a child or an incapacitated adult or an
20 adult receiving behavioral health services; and information
21 relating to all individuals required to register with the West
22 Virginia state police as sex offenders pursuant to the provisions
23 of article twelve, chapter fifteen of this code. The central abuse
24 registry shall contain the following information:

25 (1) The individual's full name;

26 (2) Sufficient information to identify the individual,
27 including date of birth, social security number and fingerprints
28 if available;

29 (3) Identification of the criminal offense constituting abuse,
30 neglect or misappropriation of property of a child or an incapacitated
31 adult or an adult receiving behavioral health services;

32 (4) For cases involving abuse, neglect or misappropriation
33 of property of a child or an incapacitated adult or an adult
34 receiving behavioral health services in a residential care facility
35 or a day care center, or of a child or an incapacitated adult or an
36 adult receiving behavioral health services receiving home care
37 services, sufficient information to identify the location where
38 the documentation of any investigation by the department of
39 health and human resources is on file and the location of
40 pertinent court files; and

41 (5) Any statement by the individual disputing the conviction,
42 if he or she chooses to make and file one.

43 (c) Upon conviction in the criminal courts of this state of a
44 misdemeanor or a felony offense constituting child abuse or
45 neglect or abuse or neglect of an incapacitated adult or an adult
46 receiving behavioral health services, the individual so convicted
47 shall be placed on the central abuse registry.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

1 (a) The central abuse registry shall maintain information
2 relating to child abuse or neglect, abuse or neglect of an
3 incapacitated adult or adult receiving behavioral health services,
4 and misappropriation of property with respect to individuals
5 convicted of certain offenses pursuant to this code, when
6 the victim of the crime is a child or an incapacitated adult or an
7 adult receiving behavioral health services, to include:

8 (1) First or second degree murder pursuant to section one,
9 article two, chapter sixty-one of this code;

10 (2) Voluntary manslaughter pursuant to section four, article
11 two, chapter sixty-one of this code;

12 (3) Attempt to kill or injure by poison pursuant to section
13 seven, article two, chapter sixty-one of this code;

14 (4) Malicious or unlawful assault pursuant to section nine,
15 article two, chapter sixty-one of this code;

16 (5) Assault during commission of or attempt to commit a
17 felony pursuant to section ten, article two, chapter sixty-one of
18 this code;

19 (6) Extortion by threats pursuant to section thirteen, article
20 two, chapter sixty-one of this code;

21 (7) Abduction of a person or kidnapping or concealing a
22 child pursuant to section fourteen, article two, chapter sixty-one
23 of this code;

24 (8) Enticing away or otherwise kidnapping any person
25 pursuant to section fourteen-a, article two, chapter sixty-one of
26 this code;

27 (9) A misdemeanor or felony sexual offense pursuant to
28 article eight-b, chapter sixty-one of this code;

29 (10) Filming of sexually explicit conduct of minors
30 pursuant to article eight-c, chapter sixty-one of this code;

31 (11) Misdemeanor or felony child abuse pursuant to article
32 eight-d, chapter sixty-one of this code;

33 (12) A violent crime against the elderly which is an offense
34 under the provisions of section nine or ten, article two, chapter
35 sixty-one of this code which is subject to the sentencing
36 provisions of section ten-a of said article two; or

37 (13) A property offense pursuant to article three, chapter
38 sixty-one of this code, with respect to a child in a residential
39 care facility or an incapacitated adult or an adult receiving
40 behavioral health services in a residential care facility or a child
41 or an incapacitated adult or an adult receiving behavioral health

42 services who is a recipient of home care services, when the
43 individual committing the offense was providing services for
44 compensation in the residential care facility or within the home.

45 (b) The prosecuting attorneys in each of the fifty-five
46 counties within the state, upon conviction of a misdemeanor, a
47 felony or a lesser included misdemeanor offense for those
48 specific offenses set forth in subsection (a) of this section, shall
49 report the conviction to the central abuse registry, together with
50 additional information, provided in a form, as may be required
51 by the criminal identification bureau for registry purposes.
52 Reporting procedures shall be developed by the criminal
53 identification bureau in conjunction with the prosecuting
54 attorneys' institute and the office of the administrator of the
55 supreme court of appeals.

56 (c) Information relating to convictions prior to the effective
57 date of this section of a misdemeanor or a felony constituting
58 child abuse or abuse or neglect of an incapacitated adult
59 receiving behavioral health services shall, to the extent which
60 is feasible and practicable, be placed on the central abuse
61 registry. When any requester requests information related to a
62 named individual, the criminal identification bureau may search
63 and release other information maintained by the bureau to
64 determine whether that individual has been convicted of
65 offenses which are subject to inclusion on the registry.

§15-2C-8. Service provider responsibilities.

1 All residential care facilities, day care centers, providers to
2 adults with behavioral health needs and home care service
3 providers authorized to operate in West Virginia shall:

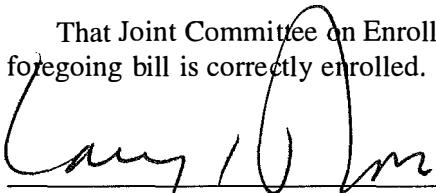
4 (1) Provide notice to current employees of the agency and
5 other persons providing services under a contract with the
6 agency within sixty days of the effective date of this article, and

7 provide notice to any newly hired employee or person at the
8 time an employment or contractual relationship is entered into,
9 which notice shall be in the following form: “NOTICE: All
10 service providers in the state of West Virginia are subject to
11 provisions of law creating a central abuse registry. Any person
12 providing services for compensation to children or to incapacitated
13 adults or to adults receiving behavioral health services,
14 who is convicted of a misdemeanor or felony offense constituting
15 abuse, neglect or misappropriation of property of a child or
16 an incapacitated adult or an adult receiving behavioral health
17 services, is subject to listing on the central abuse registry. The
18 fact that a person is listed on the registry may be disclosed in
19 specific instances provided by law. Listing on the registry may
20 limit future employment opportunities, including opportunities
21 for employment with residential care facilities, day care centers
22 and home care agencies. It is the policy of _____
23 [name of agency] to promptly report all suspected instances of
24 abuse, neglect or misappropriation of property to the proper
25 authorities and to cooperate fully in the prosecution of these
26 offenses.”

27 (2) Cooperate fully with law enforcement, prosecuting
28 attorneys and court personnel in criminal prosecutions of acts
29 of child abuse or neglect or abuse or neglect of an incapacitated
30 adult or adult receiving behavioral health services.

31 (3) Respond promptly to all requests by other service
32 providers for references for former or present employees of the
33 agency, which response may include a subjective assessment as
34 to whether the individual for whom the reference is sought is
35 suited to provide services to children or incapacitated adults or
36 to adults receiving behavioral health services.

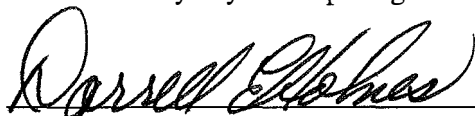
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

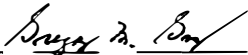

Chairman Senate Committee

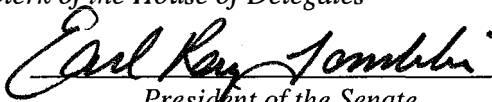

Chairman House Committee

Originating in the House

In effect ninety days from passage.

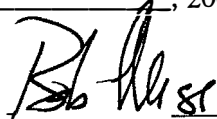

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 2nd
day of May, 2001.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/23/01

Time 3:15pm