

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 498**

(By Senators Foster and Klempa)

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[Originating in the Committee on the Judiciary;  
reported February 24, 2012.]

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A BILL to amend and reenact §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, all relating to adult protective services and reports of abuse, neglect or exploitation of vulnerable adults; permitting distribution of adult protective services records to certain individuals and entities; permitting distribution of a summary of those records to certain other individuals and entities; protecting the confidentiality of the identity of the reporter; and requiring a program for notifying mandatory reporters at the outset and conclusion of investigations.

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

That §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

**§9-6-8. Confidentiality of Records.**

1 (a) Except as otherwise provided in this section, all  
2 records of the department, state and regional long-term care  
3 ombudsmen, nursing home or facility administrators, the  
4 office of health facility licensure and certification and all  
5 protective services agencies concerning an adult or facility  
6 resident under this article ~~shall be~~ are confidential and ~~shall~~  
7 may not be released, except in accordance with the provi-  
8 sions of section eleven of this article.

9 (b) Unless the adult concerned is receiving adult protec-  
10 tive services or unless there are pending proceedings with  
11 regard to the adult, the records maintained by the adult  
12 protective services agency shall be destroyed thirty years  
13 following their preparation. ~~A circuit court or the Supreme~~  
14 ~~Court of Appeals may subpoena such records, but shall,~~  
15 ~~before permitting their use in connection with any court~~  
16 ~~proceeding, review the same for relevancy and materiality to~~  
17 ~~the issues in the proceeding, and may issue such order to~~

18 ~~limit the examination and use of such records or any part~~  
19 ~~requirements of the litigation as shall be just.~~

20 (c) Notwithstanding the provisions of subsection (a) of  
21 this section or any other provision of this code to the con-  
22 trary, all records concerning reports of abuse, neglect or  
23 exploitation of vulnerable adults, including all records  
24 generated as a result of such reports, may be made available  
25 to:

26 (1) Employees or agents of the department who need  
27 access to the records for official business.

28 (2) Any law-enforcement agency investigating a report of  
29 known or suspected abuse, neglect or exploitation of a  
30 vulnerable adult.

31 (3) The prosecuting attorney of the judicial circuit in  
32 which the vulnerable adult resides or in which the alleged  
33 abuse, neglect or exploitation occurred.

34 (4) A circuit court or the Supreme Court of Appeals  
35 subpoenaing the records. The court shall, before permitting  
36 use of the records in connection with any court proceeding,  
37 review the records for relevancy and materiality to the issues  
38 in the proceeding. The court may issue an order to limit the  
39 examination and use of the records or any part of the record.

40 (5) A grand jury, by subpoena, upon its determination  
41 that access to the records is necessary in the conduct of its  
42 official business.

43 (6) The recognized protection and advocacy agency for  
44 the disabled of the State of West Virginia.

45 (7) The victim.

46 (8) The victim's legal representative, unless he or she is  
47 the subject of an investigation under this article.

48 (d) Notwithstanding the provisions of subsection (a) of  
49 this section or any other provision of this code to the con-  
50 trary, summaries concerning substantiated investigative  
51 reports of abuse, neglect or exploitation of adults may be  
52 made available to:

53 (1) Any person who the department has determined to  
54 have abused, neglected or exploited the victim.

55 (2) Any appropriate official of the state or regional long-  
56 term care ombudsman investigating a report of known or  
57 suspected abuse, neglect or exploitation of a vulnerable  
58 adult.

59 (3) Any person engaged in bona fide research or auditing,  
60 as defined by the department. However, information identi-

61 fyng the subjects of the report may not be made available to  
62 the researcher.

63 (4) Employees or agents of an agency of another state  
64 that has jurisdiction to investigate known or suspected  
65 abuse, neglect or exploitation of vulnerable adults.

66 (5) A professional person when the information is  
67 necessary for the diagnosis and treatment of, and service  
68 delivery to, a vulnerable adult.

69 (6) A department administrative hearing officer when the  
70 hearing officer determines the information is necessary for  
71 the determination of an issue before the officer.

72 (e) The identity of any person reporting abuse, neglect or  
73 exploitation of a vulnerable adult may not be released,  
74 without that person's written consent, to any person other  
75 than employees of the department responsible for protective  
76 services or the appropriate prosecuting attorney or law-  
77 enforcement agency. This subsection grants protection only  
78 for the person who reported the abuse, neglect or exploita-  
79 tion and protects only the fact that the person is the reporter.  
80 This subsection does not prohibit the subpoena of a person  
81 reporting the abuse, neglect or exploitation when deemed

82 necessary by the prosecuting attorney or the department to  
83 protect a vulnerable adult who is the subject of a report, if  
84 the fact that the person made the report is not disclosed.

**§9-6-9. Mandatory reporting of incidences of abuse, neglect or  
emergency situation.**

1 (a) If any medical, dental or mental health professional,  
2 Christian Science practitioner, religious healer, social  
3 service worker, law-enforcement officer, humane officer,  
4 state or regional ombudsman or any employee of any nursing  
5 home or other residential facility has reasonable cause to  
6 believe that an incapacitated adult or facility resident is or  
7 has been neglected, abused or placed in an emergency  
8 situation, or if such person observes an incapacitated adult  
9 or facility resident being subjected to conditions that are  
10 likely to result in abuse, neglect or an emergency situation,  
11 the person shall immediately report the circumstances  
12 pursuant to the provisions of section eleven of this article:  
13 *Provided*, That nothing in this article is intended to prevent  
14 individuals from reporting on their own behalf.

15 (b) In addition to those persons and officials specifically  
16 required to report situations involving suspected abuse or

17 neglect of an incapacitated adult or facility resident or the  
18 existence of an emergency situation, any other person may  
19 make such a report.

20 (c) The secretary shall develop a form for the filing of  
21 written complaints, as provided by section eleven of this  
22 article, and provide these forms to all nursing homes or other  
23 residential facilities, hospitals, ombudsmen and adult  
24 protective service agencies in this state. The forms shall be  
25 designed to protect the identity of the complainant, if  
26 desired, and to facilitate the prompt filing of complaints.

27 (d) The Department of Health and Human Resources  
28 shall develop and implement a procedure to notify any  
29 person mandated to report suspected abuse and neglect of an  
30 incapacitated adult or facility resident of whether an  
31 investigation into the reported suspected abuse or neglect  
32 has been initiated and when the investigation is completed.