

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 498

(SENATORS FOSTER AND KLEMPA, *original sponsors*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT 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 are confidential and may not be
7 released, except in accordance with the provisions of section
8 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.

14 (c) Notwithstanding the provisions of subsection (a) of
15 this section or any other provision of this code to the con-
16 trary, all records concerning reports of abuse, neglect or
17 exploitation of vulnerable adults, including all records
18 generated as a result of such reports, may be made available
19 to:

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

22 (2) Any law-enforcement agency investigating a report of
23 known or suspected abuse, neglect or exploitation of a
24 vulnerable adult.

25 (3) The prosecuting attorney of the judicial circuit in
26 which the vulnerable adult resides or in which the alleged
27 abuse, neglect or exploitation occurred.

28 (4) A circuit court or the Supreme Court of Appeals
29 subpoenaing the records. The court shall, before permitting
30 use of the records in connection with any court proceeding,
31 review the records for relevancy and materiality to the issues
32 in the proceeding. The court may issue an order to limit the
33 examination and use of the records or any part of the record.

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

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

39 (7) The victim.

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

42 (d) Notwithstanding the provisions of subsection (a) of
43 this section or any other provision of this code to the con-
44 trary, summaries concerning substantiated investigative
45 reports of abuse, neglect or exploitation of adults may be
46 made available to:

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

49 (2) Any appropriate official of the state or regional long-
50 term care ombudsman investigating a report of known or
51 suspected abuse, neglect or exploitation of a vulnerable
52 adult.

53 (3) Any person engaged in bona fide research or auditing,
54 as defined by the department. However, information identi-
55 fying the subjects of the report may not be made available to
56 the researcher.

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

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

63 (6) A department administrative hearing officer when the
64 hearing officer determines the information is necessary for
65 the determination of an issue before the officer.

66 (e) The identity of any person reporting abuse, neglect or
67 exploitation of a vulnerable adult may not be released,
68 without that person's written consent, to any person other
69 than employees of the department responsible for protective

70 services or the appropriate prosecuting attorney or law-
71 enforcement agency. This subsection grants protection only
72 for the person who reported the abuse, neglect or exploita-
73 tion and protects only the fact that the person is the reporter.
74 This subsection does not prohibit the subpoena of a person
75 reporting the abuse, neglect or exploitation when deemed
76 necessary by the prosecuting attorney or the department to
77 protect a vulnerable adult who is the subject of a report, if
78 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.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2012.

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Governor