

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 326

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MILLER, OJEDA, PLYMALE AND UNGER

[Introduced February 15, 2017; referred
to the Committee on Military; and then to the
Committee on Health and Human Resources]

1 A BILL to amend and reenact §49-2-802 of the Code of West Virginia, 1931, as amended, relating
2 to requiring Department of Defense family advocacy groups to be notified about any abuse
3 or neglect of a child of a military person.

Be it enacted by the Legislature of West Virginia:

1 That §49-2-802 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

**§49-2-802. Establishment of child protective services; general duties and powers;
administrative procedure; immunity from civil liability; cooperation of other state
agencies.**

1 (a) The department shall establish or designate in every county a local child protective
2 services office to perform the duties and functions set forth in this article.

3 (b) The local child protective services office shall investigate all reports of child abuse or
4 neglect. Under no circumstances may investigating personnel be relatives of the accused, the
5 child or the families involved. In accordance with the local plan for child protective services, it shall
6 provide protective services to prevent further abuse or neglect of children and provide for or
7 arrange for and coordinate and monitor the provision of those services necessary to ensure the
8 safety of children. The local child protective services office shall be organized to maximize the
9 continuity of responsibility, care and service of individual workers for individual children and
10 families. Under no circumstances may the secretary or his or her designee promulgate rules or
11 establish any policy which restricts the scope or types of alleged abuse or neglect of minor
12 children which are to be investigated or the provision of appropriate and available services.

13 (c) Each local child protective services office shall:

14 (1) Receive or arrange for the receipt of all reports of children known or suspected to be
15 abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all reports under the
16 names of the children, the family and any person substantiated as being an abuser or neglecter

17 by investigation of the Department of Health and Human Resources, with use of cross-filing of
18 the person's name limited to the internal use of the department: Provided, That local child
19 protective services offices may disclose the names of alleged abusers pursuant to subdivision (4)
20 of this subsection;

21 (2) Provide or arrange for emergency children's services to be available at all times;

22 (3) Upon notification of suspected child abuse or neglect, commence or cause to be
23 commenced a thorough investigation of the report and the child's environment. As a part of this
24 response, within fourteen days there shall be a face-to-face interview with the child or children
25 and the development of a protection plan, if necessary, for the safety or health of the child, which
26 may involve law-enforcement officers or the court;

27 (4) Make efforts as soon as practicable to determine the military status of parents whose
28 children are subject to abuse or neglect allegations. If the office determines that a parent or
29 guardian is in the military, the department shall notify a Department of Defense family advocacy
30 program that there is an allegation of abuse and neglect that is screened in and open for
31 investigation that relates to that military parent or guardian;

32 ~~(4)~~ (5) Respond immediately to all allegations of imminent danger to the physical well-
33 being of the child or of serious physical abuse. As a part of this response, within seventy-two
34 hours there shall be a face-to-face interview with the child or children and the development of a
35 protection plan, which may involve law-enforcement officers or the court; and

36 ~~(5)~~ (6) In addition to any other requirements imposed by this section, when any matter
37 regarding child custody is pending, the circuit court or family court may refer allegations of child
38 abuse and neglect to the local child protective services office for investigation of the allegations
39 as defined by this chapter and require the local child protective services office to submit a written
40 report of the investigation to the referring circuit court or family court within the time frames set
41 forth by the circuit court or family court.

42 (d) In those cases in which the local child protective services office determines that the
43 best interests of the child require court action, the local child protective services office shall initiate
44 the appropriate legal proceeding.

45 (e) The local child protective services office shall be responsible for providing, directing or
46 coordinating the appropriate and timely delivery of services to any child suspected or known to
47 be abused or neglected, including services to the child's family and those responsible for the
48 child's care.

49 (f) To carry out the purposes of this article, all departments, boards, bureaus and other
50 agencies of the state or any of its political subdivisions and all agencies providing services under
51 the local child protective services plan shall, upon request, provide to the local child protective
52 services office any assistance and information as will enable it to fulfill its responsibilities.

53 (g)(1) In order to obtain information regarding the location of a child who is the subject of
54 an allegation of abuse or neglect, the Secretary of the Department of Health and Human
55 Resources may serve, by certified mail or personal service, an administrative subpoena on any
56 corporation, partnership, business or organization for the production of information leading to
57 determining the location of the child.

58 (2) In case of disobedience to the subpoena, in compelling the production of documents,
59 the secretary may invoke the aid of:

60 (A) The circuit court with jurisdiction over the served party if the person served is a
61 resident; or

62 (B) The circuit court of the county in which the local child protective services office
63 conducting the investigation is located if the person served is a nonresident.

64 (3) A circuit court shall not enforce an administrative subpoena unless it finds that:

65 (A) The investigation is one the Division of Child Protective Services is authorized to make
66 and is being conducted pursuant to a legitimate purpose;

67 (B) The inquiry is relevant to that purpose;

68 (C) The inquiry is not too broad or indefinite;

69 (D) The information sought is not already in the possession of the Division of Child
70 Protective Services; and

71 (E) Any administrative steps required by law have been followed.

72 (4) If circumstances arise where the secretary, or his or her designee, determines it
73 necessary to compel an individual to provide information regarding the location of a child who is
74 the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek
75 a subpoena from the circuit court with jurisdiction over the individual from whom the information
76 is sought.

77 (h) No child protective services caseworker may be held personally liable for any
78 professional decision or action taken pursuant to that decision in the performance of his or her
79 official duties as set forth in this section or agency rules promulgated thereupon. However, nothing
80 in this subsection protects any child protective services worker from any liability arising from the
81 operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton
82 misconduct or intentional misconduct.

NOTE: The purpose of this bill is to require department of defense family advocacy groups to be notified about any abuse or neglect of a child of a military person.

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