

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4176

BY DELEGATES MILLER, HANSHAW (MR. SPEAKER),
MILEY, SHOTT, D. KELLY, KESSINGER, CANESTRARO AND
LOVEJOY

[Introduced January 14, 2020; Referred to the
Committee on Veterans' Affairs and Homeland
Security then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §15A-9-1, §15A-9-2, §15A-9-3, §15A-9-4, §15A-9-5, §15A-9-6, and §15A-9-7,
3 establishing the West Virginia Intelligence/Fusion Center Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. WEST VIRGINIA INTELLIGENCE/FUSION CENTER.

§15A-9-1. West Virginia Intelligence/Fusion Center Established.

1 (a) The Governor shall establish, organize, equip, staff, and maintain a multiagency
2 intelligence fusion center to receive, analyze, and disseminate all hazards, all crimes, and all
3 threat information. The Department of Military Affairs and Public Safety shall operate the facility,
4 as directed by the Governor and in collaboration among federal, state, and local agencies, as well
5 as private sector entities, including, but not limited to, those with the primary purposes of
6 homeland security, counter-terrorism, public safety, public protection and critical infrastructure.
7 The fusion center shall collect, integrate, analyze, disseminate, and maintain such information to
8 support local, state, and federal law-enforcement agencies, other governmental agencies, and
9 private organizations in detecting, preventing, investigating, preparing for, responding to, and
10 recovering from any possible or actual criminal and terrorist activity, as well as any hazard,
11 including the state's critical infrastructure, in compliance with applicable state and federal laws
12 and regulations, including 28 CFR 23.

13 (b) The West Virginia Intelligence/Fusion Center shall be housed within secure facilities
14 in order to access sensitive information, as permitted by state and federal law. Within the secure
15 facilities, the fusion center shall house a Homeland Secure Data Network (HDSN) in order to
16 access classified information, as permitted by state and federal law and ensure that appropriate
17 security measures are in place for: (1) The secure facilities; (2) data collected or stored at the
18 secure facilities; and (3) personnel working at the secure facilities.

§15A-9-2. Operation of center.

1 (a) The West Virginia Department of Military Affairs and Public Safety shall operate the

2 West Virginia Intelligence/Fusion Center under the direction of the Governor and shall cooperate
3 with the United States Department of Homeland Security, local, county, state, or federal
4 government agencies, and private organizations, subject to applicable state and federal laws and
5 regulations, including, but not limited to, 28 CFR 23.

6 (b) The West Virginia Intelligence/Fusion Center shall: (1) Be the primary clearing house
7 for the State of West Virginia for the collection, the analysis of and the proper distribution of
8 information and actionable intelligence; (2) generate intelligence analysis critical for homeland
9 security policy and relevant threat warning in order to protect life, liberty and property in West
10 Virginia; (3) promote and improve intelligence sharing among public safety and public service
11 agencies at the federal, state, and local levels, and with critical infrastructure and key resource
12 entities within the private sector; (4) receive and integrate intelligence and information related to
13 terrorism and other homeland security threats; (5) collect, analyze, produce, disseminate, and
14 maintain such intelligence and information, as allowed by law, to support local, state, and federal
15 law enforcement agencies, other governmental agencies and private organizations in: preventing,
16 preparing for, responding to, and recovering from any possible or actual terrorist attack or other
17 homeland security threat; and (6) maximize intelligence and information sharing in accordance
18 with all applicable state and federal laws.

19 (c) The Governor shall provide facilities, budget, and administrative support for the West
20 Virginia Intelligence/Fusion Center and its employees and participants. The cabinet secretary for
21 the West Virginia Department of Military Affairs and Public Safety shall be the custodian of all
22 records collected and maintained at the West Virginia Intelligence/Fusion Center, and also shall
23 serve as security manager for the West Virginia Intelligence/Fusion Center.

24 (d) Private sector entities participating in the West Virginia Intelligence/Fusion Center shall
25 not be considered governmental entities, nor shall employees or agents of private sector entities
26 assigned to the West Virginia Intelligence/Fusion Center be considered state employees;
27 however, private sector entities and their employees or agents are subject to the same

28 confidentiality requirements and held to the same standards as an employee of the West Virginia
29 Intelligence/Fusion Center.

30 (e) The operations of the West Virginia Intelligence/Fusion Center shall be overseen by
31 cabinet secretary and deputy cabinet secretary of the West Virginia Department of Military Affairs
32 and Public Safety.

33 (f) The cabinet secretary and deputy cabinet secretary shall have a current, valid federal
34 security clearance at the appropriate level.

35 (g) The cabinet secretary and deputy cabinet secretary may adopt policies and procedures
36 for the operation of the West Virginia Intelligence/Fusion Center. The cabinet secretary and
37 deputy cabinet secretary may adopt rules and regulations as may be necessary to carry out the
38 provisions of this act, including rules and regulations concerning the operations of the West
39 Virginia Intelligence/Fusion Center.

40 (h) Subject to appropriations, the West Virginia Intelligence/Fusion Center shall have the
41 following employees, all in the unclassified service of the civil service act:

42 (1) A director, who shall be appointed by and serve at the pleasure of the cabinet
43 secretary. The director shall have a current, valid federal security clearance at the appropriate
44 level and training and certifications commensurate with the position and shall:

45 (A) Be responsible for all operations of the West Virginia Intelligence/Fusion Center and
46 shall report to the cabinet secretary or deputy cabinet secretary;

47 (B) Be responsible for:

48 (2) Facilitating and implementing applicable federal standards and programs by the West
49 Virginia Intelligence/Fusion Center;

50 (3) Ensuring compliance with all applicable laws and federal requirements; and

51 (4) Maintaining proper separation between military and civilian capacities;

52 (C) Provide support, as needed, to the cabinet secretary and deputy cabinet secretary;

53 and

54 (D) Other duties and responsibilities as may be assigned by the cabinet secretary and
55 deputy cabinet secretary;

56 (5) A deputy director shall have a current, valid federal security clearance at the
57 appropriate level, training and certifications commensurate with the position who shall be
58 responsible for assisting the director in: (A) Facilitating and implementing applicable federal
59 standards and programs by the West Virginia Intelligence/Fusion Center; (B) ensuring compliance
60 with all applicable laws and federal requirements; (C) maintaining proper separation between
61 military and civilian capacities; (D) providing support, as needed, to the cabinet secretary and
62 deputy cabinet secretary; and (E) other duties and responsibilities as may be assigned by the
63 fusion center director, other employees as may be authorized by cabinet secretary and deputy
64 cabinet secretary to administer properly the provisions of this act.

§15A-9-3. Memorandum of understanding required.

1 (a) Each governmental and nongovernmental entity participating in the West Virginia
2 Intelligence/Fusion Center shall enter a memorandum of understanding between the West
3 Virginia Intelligence/Fusion Center and the participating entity. Said memorandum of
4 understanding shall at a minimum:

5 (1) Provide a framework and working mechanism for the organization of the West Virginia
6 Intelligence/Fusion Center to address issues that are common to city, county, state, and federal
7 governments' obligations to protect the safety and well-being of citizens and to enhance the
8 success of the Fusion Center in responding to criminal, terrorist, and other threats to public safety
9 through the achievement of coordination and cooperation;

10 (2) Clarify the working relationships between the governmental and nongovernmental
11 entities and use limitations of shared information; and

12 (3) Outline the intent of the parties regarding the information provided by the non-
13 governmental entities to the West Virginia Intelligence/Fusion Center.

14 (b) Nothing in any agreement shall obligate any nongovernmental entity to provide

15 information nor establish any duty for any nongovernmental entity to assume any police or law
16 enforcement responsibilities.

17 (c) Failure of any governmental or nongovernmental entity to abide by the restrictions and
18 use limitations set forth by the West Virginia Intelligence/Fusion Center may result in the
19 suspension or termination of use privileges, discipline sanctions imposed by the user's employing
20 agency, or criminal prosecution.

§15A-9-4. Confidentiality and immunity from service of process; penalties.

1 (a) Papers, records, documents, reports, materials, databases, or other evidence or
2 information relative to criminal intelligence or any terrorism investigation in the possession of the
3 West Virginia Intelligence/Fusion Center shall be confidential and shall not be subject to the West
4 Virginia Freedom of Information Act (§29B-1-1 et seq. of this code). Every five years, the West
5 Virginia Intelligence/Fusion Center shall conduct a review of information contained in any
6 database maintained by the West Virginia Intelligence/Fusion Center. Data that has been
7 determined to not have a nexus to criminal or terrorist activity shall be removed from such
8 database. A reasonable suspicion standard shall be applied when determining whether or not
9 information has a nexus to terrorist activity.

10 (b) No person, having access to information maintained by the West Virginia
11 Intelligence/Fusion Center, shall be subject to subpoena in a civil action in any court of the state
12 to testify concerning a matter of which he has knowledge pursuant to his access to criminal
13 intelligence information maintained by the West Virginia Intelligence/Fusion Center.

14 (c) No person or agency receiving information from the West Virginia Intelligence/Fusion
15 Center shall release or disseminate that information without prior authorization from the West
16 Virginia Intelligence/Fusion Center.

17 (d) Intelligence data in the possession of a criminal or juvenile justice agency, state or
18 federal regulatory agency, or peace officer, or disseminated by such agency or peace officer, are
19 confidential records under §29B-1-1 et seq. of this code.

20 (e) Any person who knowingly disseminates information in violation of this section is guilty
21 of a misdemeanor and, upon conviction, shall be fined not less than \$200 nor more than \$1,000,
22 or be confined for not more than 20 days, or both fined and confined. If such unauthorized
23 dissemination results in death or serious bodily injury to another person, such person is guilty of
24 a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one
25 nor more than five years.

26 (f) Any person, being an officer or employee of the United States, the State of West Virginia
27 or of any department, agency or political subdivision thereof, or any person from the private sector
28 or industry assigned to or working with the West Virginia Intelligence/Fusion Center in any
29 capacity, who knowingly publishes, divulges, discloses, or makes known in any manner, or to any
30 extent not authorized by law, any critical infrastructure or national intelligence information
31 protected from disclosure by this section coming to him or her in the course of their employment,
32 affiliation or official duties with the West Virginia Intelligence/Fusion Center, or by reason of any
33 examination or investigation made by, return, report, or record made to or filed with, such
34 department or agency, officer or employee thereof, shall be imprisoned not less than one year,
35 and shall be removed from office or employment and affiliation with the West Virginia
36 Intelligence/Fusion Center.

37 (g) The West Virginia Department of Military Affairs and Public Safety shall provide legal
38 counsel to the West Virginia Intelligence/Fusion Center to serve as privacy and civil liberties
39 counsel to the West Virginia Intelligence/Fusion Center. Such attorney shall advise the West
40 Virginia Intelligence/Fusion Center, director, and deputy director on all matters necessary to
41 ensure compliance with all applicable federal and state privacy or civil liberties laws and
42 obligations.

43 (h) For purposes of this chapter:

44 (1) "Criminal intelligence information" means data or information that has been evaluated
45 and determined to be relevant to the identification and criminal activity of individuals or

46 organizations that are reasonably suspected of involvement in criminal activity.

47 (2) "Critical Infrastructure" means systems and assets as defined in 42 U.S.C. § 5195c(e).

48 (3) "National Intelligence" means data or information determined to meet the definition as
49 defined in 50 U.S.C. §3003 (5).

§15A-9-5. Receipt of information; immunity from liability.

1 (a) No cause of action for defamation, invasion of privacy, or negligence shall arise against
2 any person for reason of that person's furnishing of information concerning any suspected,
3 anticipated, or completed criminal violation or terrorist activity when the information is provided to
4 or received from the West Virginia Intelligence/Fusion Center or any federal, state, or local
5 governmental or private sector entity established for the purposes of detecting and preventing
6 acts of criminal activity or terrorism.

7 (b) No person shall be subject to such cause of action for cooperating with or furnishing
8 evidence or information regarding any suspected criminal violation to, the West Virginia
9 Intelligence/Fusion Center.

10 (c) This section shall not provide immunity for those disclosing or furnishing false
11 information with malice or willful intent to injure any person.

12 (d) This section does not abrogate or modify in any way common law or statutory privilege
13 or immunity heretofore enjoyed by any person or entity.

§15A-9-6. Costs.

1 (a) The director, with approval of the cabinet secretary or deputy cabinet secretary, may
2 enter into agreements with participating agencies or organizations, whether public or private, for
3 their participation in the West Virginia Intelligence/Fusion Center. Such agreements: (1) Shall
4 define the duties and responsibilities of each participating agency or organization; and (2) may
5 provide for payment by the participating agency or organization of a reasonable share of the cost
6 to establish, maintain and operate the West Virginia Intelligence/Fusion Center.

7 (b) (1) The West Virginia Intelligence/Fusion Center, with approval of the cabinet secretary

8 or deputy cabinet secretary, may accept any gift, grant, payment, moneys or assets seized by
9 forfeiture as a result of collaborative efforts or contribution from any source, public or private, for
10 the purpose of paying the costs to establish, maintain or operate the West Virginia
11 Intelligence/Fusion Center. Such gift, grant, payment, moneys or assets seized by forfeiture as a
12 result of collaborative works or contribution may be in the form of services, equipment, supplies,
13 materials or funds. All amounts received under this section shall be remitted to the State Treasurer
14 in accordance with chapter 12 of this code, and the amendments thereto. Upon receipt of each
15 such remittance, the State Treasurer shall deposit the entire amount in the State Treasury to the
16 credit of the West Virginia Intelligence/Fusion Center Fund, that is hereby created in the State
17 Treasury and shall be administered by the West Virginia Department of Military Affairs and Public
18 Safety in accordance with this article.

19 (2) Moneys in the West Virginia Intelligence/Fusion Center Fund may be used by the
20 director to pay any costs associated with establishing, maintaining or operating the West Virginia
21 Intelligence/Fusion Center. The director of the West Virginia Intelligence/Fusion Center Fund shall
22 develop policy and procedures for purchasing, and expenditures shall be made in accordance
23 with vouchers approved by the director or the director's designee. Any gift, grant, payment,
24 moneys, or any assets seized by forfeiture as a result of collaborative efforts, or contribution in
25 any form, other than funds may be accepted by the director, with approval of the cabinet secretary,
26 and utilized and expended in any manner authorized by law to establish, maintain or operate the
27 West Virginia Intelligence/Fusion Center.

28 (3) The moneys credited to the fund created in subsection (b) shall be used for the
29 purposes set forth in this section and for no other governmental purposes. It is the intent of the
30 Legislature that the moneys deposited in this fund shall remain intact and inviolate for the
31 purposes set forth in this act.

§15A-9-7. Registration plates to official vehicles; used in agency activities.

1 Notwithstanding any provision to the contrary, the Commissioner of the Division of Motor

- 2 Vehicles is authorized to issue Class A license plates to authorized state-owned vehicles operated
3 by the West Virginia Intelligence/Fusion Center when the director signs a written affidavit stating
4 that the vehicle or vehicles for which the plates are being requested will be used by the West
5 Intelligence/Fusion Center in fulfilling its mission.

NOTE: The purpose of this bill is to is to establish the West Virginia Intelligence/Fusion Center, operation of center, confidentiality and immunity from service of process; penalties, receipt of information, immunity from liability, costs and relating to Class A registration plates for official use.

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