

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4415

BY DELEGATES ROWAN, ROHRBACH, BOGGS, ESTEP-
BURTON, PYLES, C. MARTIN, TONEY, MANDT, LOVEJOY,
SYPOLT AND HANNA

[Passed March 5, 2020; in effect ninety days from passage.]

1 AN ACT to amend and reenact §15-3D-3 and the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new section, designated §15-3D-9; to amend and
3 reenact §49-6-103, §49-6-105, §49-6-106, §49-6-109, §49-6-110, §49-6-112, §49-6-113,
4 and §49-6-114; and to amend said code by adding thereto a new section, designated §49-
5 6-116, all relating to children; defining terms; creating missing and endangered child
6 advisory system; providing for rulemaking; expanding missing child information
7 clearinghouse requirements; updating requirements for providing information; updating
8 requirements for missing child report forms; requiring law-enforcement agency to
9 investigate and issue advisory; providing for confidential information to be provided to
10 Department of Health and Human Resources as legal custodian; updating clearinghouse
11 advisory council; updating comprehensive strategic plan; establishing missing foster child
12 locator unit program; establishing duties; providing for report; and making technical
13 changes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-3. Definitions.

1 For the purposes of this article:

2 (1) "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System,
3 which allows for the storage and exchange of DNA records submitted by federal, state, and local
4 forensic DNA laboratories. The term "CODIS" includes the National DNA Index System or NDIS,
5 administered and operated by the Federal Bureau of Investigation.

6 (2) "Complainant" means a person who contacts law enforcement to report that a person
7 is missing.

8 (3) “Electronic communication device” means a cellular telephone, personal digital
9 assistant, electronic device with mobile data access, laptop computer, pager, broadband personal
10 communication device, two-way messaging device, electronic game, or portable computing
11 device.

12 (4) “Juvenile” means any person under 18 years of age.

13 (5) “Law-enforcement agency” means any duly authorized state, county, or municipal
14 organization employing one or more persons whose responsibility is the enforcement of laws of
15 the state or any county or municipality thereof.

16 (6) “Lead law-enforcement agency” means the law-enforcement agency that initially
17 receives a missing persons complaint or, after the fulfillment of all requirements of this article
18 related to the initial receipt of a missing persons complaint and transmission of information to
19 required databases, the law-enforcement agency with the primary responsibility for investigating
20 a missing or unidentified persons complaint.

21 (7) “Missing and endangered child” means any missing child for which there are
22 substantial indications the child is at high risk of harm or in immediate danger, and rapid action is
23 required, including, but not limited to:

24 (A) Physically or mentally disabled and dependent upon an agency or another individual
25 for care;

26 (B) Under the age of 13;

27 (C) Missing under circumstances which indicate the child’s safety may be in danger; or

28 (D) A foster child and has been determined a missing and endangered child by the
29 Department of Health and Human Resources.

30 (8) “Missing child” means any child under the age of 18 whose whereabouts are unknown
31 to the child’s legal custodian.

32 (9) “Missing person” means any person who is reported missing to a law-enforcement
33 agency.

34 (10) "NamUs" means the database of the National Missing and Unidentified Persons
35 System.

36 (11) "NCIC" means the database of the National Crime Information Center, the nationwide,
37 online computer telecommunications system maintained by the Federal Bureau of Investigation
38 to assist authorized agencies in criminal justice and related law-enforcement objectives.

39 (12) "NCMEC" means the database of the National Center for Missing and Exploited
40 Children.

41 (13) "Unidentified person" means any person, living or deceased, who has not been
42 identified through investigation for over 30 days.

43 (14) "Violent Criminal Apprehension Program" or "ViCAP" is a unit of the Federal Bureau
44 of Investigation responsible for the analysis of serial violent and sexual crimes.

45 (15) "WEAPON system" means the West Virginia Automated Police Network.

§15-3D-9. Missing and Endangered Child Advisory System; definitions; rule-making authority.

1 (a) There is hereby created an advisory system, referred to in this section as the "system",
2 to aid in the identification and location of missing and endangered children.

3 (b) "Missing and Endangered Child Advisory" means a system used to alert the public of
4 a missing and endangered child to aid in the child's rapid recovery.

5 (c) The State Police shall promulgate emergency rules establishing procedures for local
6 law-enforcement agency's issuance of a missing and endangered child advisory.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6. MISSING CHILDREN INFORMATION ACT.

§49-6-103. Information to clearinghouse; definitions.

1 (a) The Department of Health and Human Resources and every law-enforcement agency
2 in West Virginia shall provide to the clearinghouse or another investigating law-enforcement
3 agency any information that would assist in locating or identifying a missing child.

4 (b) For purposes of this article:

5 (1) "Missing and endangered child" means any missing child for which there are
6 substantial indications the child is at high risk of harm or in immediate danger, and rapid action is
7 required, including, but not limited to:

8 (A) Physically or mentally disabled and dependent upon an agency or another individual
9 for care;

10 (B) Under the age of 13;

11 (C) Missing under circumstances which indicate the child's safety may be in danger; or

12 (D) A foster child and has been determined a missing and endangered child by the
13 Department of Health and Human Resources.

14 (2) "Missing child" means any child under the age of 18 whose whereabouts are unknown
15 to the child's legal custodian.

§49-6-105. Missing child report forms; where filed.

1 (a) The clearinghouse shall distribute missing child and missing and endangered child
2 report forms to law-enforcement agencies in the state and to the Department of Health and Human
3 Resources.

4 (b) A missing child or missing and endangered child report may be made to a law-
5 enforcement agency in person or by telephone, or other indirect method of communication, and
6 the person taking the report may enter the information on the form for the reporter. A missing child
7 or missing and endangered child report form may be completed by the reporter and delivered to
8 a law-enforcement office.

9 (c) A copy of the report form shall be maintained by the clearinghouse.

**§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified
bodies.**

1 (a) A law-enforcement agency, upon receiving a missing child or missing and endangered
2 child report, shall:

3 (1) Start an investigation to determine the present location of the child if it determines that
4 the child is in danger; and

5 (2) Enter the name of the missing child or missing and endangered child into the
6 clearinghouse and the National Crime Information Center missing person file if the child meets
7 the center's criteria, with all available identifying features, including dental records, fingerprints,
8 other physical characteristics, and a description of the clothing worn when the missing child or
9 missing and endangered child was last seen.

10 (b) Information not immediately available shall be obtained as soon as possible by the
11 law-enforcement agency and entered into the clearinghouse and the National Crime Information
12 Center file as a supplement to the original entry.

13 (c) All West Virginia law-enforcement agencies shall enter information about all
14 unidentified bodies of children found in their jurisdiction into the clearinghouse and the National
15 Crime Information Center unidentified person file, including all available identifying features of the
16 body and a description of the clothing found on the body. If an information entry into the National
17 Crime Information Center file results in an automatic entry of the information into the
18 clearinghouse, the law-enforcement agency is not required to make a direct entry of that
19 information into the clearinghouse.

20 (d) A law-enforcement agency, upon receiving a missing and endangered child report,
21 shall immediately:

22 (1) Start an investigation to determine the present location of the child if it determines that
23 the child is missing and endangered; and

24 (2) Issue a Missing and Endangered Child Advisory pursuant to §15-3D-9 of this code.

§49-6-109. Interagency cooperation.

1 (a) State agencies and public and private schools shall cooperate with a law-enforcement
2 agency that is investigating any missing child or missing and endangered child report and shall
3 furnish any information, including confidential information, that will assist the law-enforcement
4 agency in completing the investigation.

5 (b) Information provided by a state agency or a public or private school may not be
6 released to any person outside the law-enforcement agency or the clearinghouse, except as
7 provided by rules of the West Virginia State Police.

§49-6-110. Confidentiality of records; rulemaking; requirements.

1 (a) The State Police shall promulgate rules according §29A-3-1 *et seq.* of this code to
2 provide for the classification of information and records as confidential that:

3 (1) Are otherwise confidential under state or federal law or rules promulgated pursuant to
4 state or federal law;

5 (2) Are related to the investigation by a law-enforcement agency of a missing child, a
6 missing and endangered child, or an unidentified body, if the State Police, in consultation with the
7 law-enforcement agency, determines that release of the information would be deleterious to the
8 investigation;

9 (3) Are records or notations that the clearinghouse maintains for internal use in matters
10 relating to missing children or missing and endangered children and unidentified bodies and the
11 State Police determines that release of the internal documents might interfere with an
12 investigation by a law-enforcement agency in West Virginia or any other jurisdiction; or

13 (4) Are records or information that the State Police determines might interfere with an
14 investigation or otherwise harm a child or custodian.

15 (b) The rules may provide for the sharing of confidential information with the custodian of
16 the missing child or missing and endangered child: *Provided*, That confidential information, which
17 is not believed to jeopardize an investigation, must be shared with the custodian when the legal
18 custodian is the Department of Health and Human Resources.

§49-6-112. Agencies to receive report; law-enforcement agency requirements.

1 (a) Upon completion of the missing child or missing and endangered child report the law-
2 enforcement agency shall immediately forward the contents of the report to the missing children
3 information clearinghouse and the National Crime Information Center's missing person file.
4 However, if an information entry into the National Crime Information Center file results in an

5 automatic entry of the information into the clearinghouse, the law-enforcement agency is not
6 required to make a direct entry of that information into the clearinghouse.

7 (b) Within 15 days of completion of the report, if the child is less than 13 years of age the
8 law-enforcement agency may, when appropriate, forward the contents of the report to the last:

9 (1) Child care center or child care home in which the child was enrolled; or

10 (2) School the child attended in West Virginia, if any.

11 (c) A law-enforcement agency involved in the investigation of a missing child or missing
12 and endangered child shall:

13 (1) Update the initial report filed by the agency that received notification of the missing
14 child or missing and endangered child upon the discovery of new information concerning the
15 investigation;

16 (2) Forward the updated report to the appropriate agencies and organizations;

17 (3) Search the National Crime Information Center's wanted person file for reports of arrest
18 warrants issued for persons who allegedly abducted or unlawfully retained children and compare
19 these reports to the missing child's National Crime Information Center's missing person file; and

20 (4) Notify all law-enforcement agencies involved in the investigation, the missing children
21 information clearinghouse, and the National Crime Information Center when the missing child is
22 located.

**§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses;
appointment, duties and compensation of director; annual reports.**

1 (a) The Clearinghouse Advisory Council is continued as a body corporate and politic,
2 constituting a public corporation and government instrumentality. The council shall consist of 11
3 members who are knowledgeable about and interested in issues relating to missing or exploited
4 children, as follows:

5 (1) Six members to be appointed by the Governor, with the advice and consent of the
6 Senate, with not more than four belonging to the same political party, three being from different

7 congressional districts of the state and, as nearly as possible, providing broad state geographical
8 distribution of members of the council, and at least one representing a nonprofit organization
9 involved with preventing the abduction, runaway, or exploitation of children or locating missing or
10 missing and endangered children;

11 (2) The Secretary of the Department of Health and Human Resources or his or her
12 designee;

13 (3) The Superintendent of the West Virginia State Police or his or her designee;

14 (4) The State Superintendent of Schools or his or her designee;

15 (5) The Director of the Division of Administrative Services or his or her designee; and

16 (6) The Commissioner of the Bureau for Children and Families or his or her designee.

17 (b) The Governor shall appoint the six council members for staggered terms. The terms
18 of the members first taking office on or after the effective date of this legislation shall expire as
19 designated by the Governor. Each subsequent appointment shall be for a full three-year term.
20 Any appointed member whose term is expired shall serve until a successor has been duly
21 appointed and qualified. Any person appointed to fill a vacancy may serve only for the unexpired
22 term. A member is eligible for only one successive reappointment. A vacancy shall be filled by
23 the Governor in the same manner as the original appointment was made.

24 (c) Members of the council are not entitled to compensation for services performed as
25 members but are entitled to reimbursement for all reasonable and necessary expenses actually
26 incurred in the performance of their duties in a manner consistent with the guidelines of the Travel
27 Management Office of the Department of Administration.

28 (d) A majority of serving members constitutes a quorum for the purpose of conducting
29 business. The chair of the council shall be designated by the Governor from among the appointed
30 council members who represent nonprofit organizations involved with preventing the abduction,
31 runaway, or exploitation of children or locating missing children or missing and endangered
32 children. The term of the chair shall run concurrently with his or her term of office as a member of

33 the council. The council shall meet semiannually at the call of the chair. The council shall conduct
34 all meetings in accordance with the open governmental meetings law pursuant to §6-9A-1 *et seq.*
35 of this code.

36 (e) The employee of the West Virginia State Police who is primarily responsible for the
37 clearinghouse established by §49-6-101 of this code, shall serve as the executive director of the
38 council. He or she shall receive no additional compensation for service as the executive director
39 of the council but shall be reimbursed for any reasonable and necessary expenses actually
40 incurred in the performance of his or her duties as executive director in a manner consistent with
41 the guidelines of the Travel Management Office of the Department of Administration.

42 (f) The executive director shall provide or obtain information necessary to support the
43 administrative work of the council and, to that end, may contract with one or more nonprofit
44 organizations or state agencies for research and administrative support.

45 (g) The executive director of the council shall be available to the Governor and to the
46 Speaker of the House of Delegates and the President of the Senate to analyze and comment
47 upon proposed legislation and rules which relate to or materially affect missing or exploited
48 children.

49 (h) The council shall prepare and publish an annual report of its activities and
50 accomplishments and submit it to the Governor and the Legislature on or before December 15 of
51 each year.

**§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic
plan required to be provided to the Legislature.**

1 The council shall prepare a comprehensive strategic plan and recommendation of
2 programs in furtherance thereof that will support efforts to prevent the abduction, runaway and
3 exploitation, or any thereof, of children to locate missing children, advise the West Virginia State
4 Police regarding operation of the clearinghouse and its other responsibilities under this article,
5 and cooperate with and coordinate the efforts of state agencies and private organizations involved

6 with issues relating to missing or exploited children. The council may seek public and private
7 grants, contracts, matching funds, and procurement arrangements from the state and federal
8 government, private industry, and other agencies in furtherance of its mission and programs. An
9 initial comprehensive strategic plan that will support and foster efforts to prevent the abduction,
10 runaway, and exploitation of children, and to locate missing children, shall be developed and
11 provided to the Governor, the Speaker of the House of Delegates, and the President of the Senate
12 no later than July 1, 2020, and shall include, but not be limited to, the following:

13 (1) Findings and determinations regarding the extent of the problem in this state related
14 to: (A) Abducted children; (B) missing children; (C) exploited children; and (D) missing and
15 endangered children.

16 (2) Findings and determinations identifying the systems, both public and private, existing
17 in the state to prevent the abduction, runaway, or exploitation of children, and to locate missing
18 children, and assessing the strengths and weaknesses of those systems and the clearinghouse;

19 (3) The inclusion of exploited children within the functions of the clearinghouse. For
20 purposes of this article, an exploited child is a person under the age of 18 years who has been:
21 (A) Used in the production of pornography; (B) subjected to sexual exploitation or sexual offenses
22 under §61-8B-1 *et seq.* of this code; or (C) employed or exhibited in any injurious, immoral, or
23 dangerous business or occupation in violation of §§61-8-5 through 61-8-8 of this code;

24 (4) Recommendations of legislative changes required to improve the effectiveness of the
25 clearinghouse and other efforts to prevent abduction, runaway, or exploitation of children, and to
26 locate missing children. Those recommendations shall consider the following:

27 (A) Interaction of the clearinghouse with child custody proceedings;

28 (B) Involvement of hospitals, child care centers, and other private agencies in efforts to
29 prevent child abduction, runaway, or exploitation, and to locate missing children;

30 (C) Publication of a directory of and periodic reports regarding missing children;

31 (D) Required reporting by public and private agencies and penalties for failure to report
32 and false reporting;

33 (E) Removal of names from the list of missing children;

34 (F) Creating of an advocate for missing and exploited children;

35 (G) State funding for the clearinghouse and efforts to prevent the abduction, runaway, and
36 exploitation of children, and to locate missing children;

37 (H) Mandated involvement of state agencies, such as publication of information regarding
38 missing children in existing state publications and coordination with the state registrar of vital
39 statistics under §§16-5-12 of this code; and

40 (I) Expanded requirement for boards of education to notify the clearinghouse in addition
41 to local law-enforcement agencies under §18-2-5c of this code or if a birth certificate or school
42 record received appears to be inaccurate or fraudulent and to receive clearinghouse approval
43 before releasing records;

44 (5) Methods that will coordinate and engender collaborative efforts among organizations
45 throughout the state, whether public or private, involved with missing or exploited children;

46 (6) Plans for the use of technology in the clearinghouse and other efforts related to missing
47 or exploited children;

48 (7) Compliance of the clearinghouse, state law, and all rules promulgated pursuant thereto
49 with applicable federal law so as to enhance opportunities for receiving federal grants;

50 (8) Consultation with the state board of education and other agencies responsible for
51 promulgating rules under this article;

52 (9) Possible methods for identifying missing children prior to enrollment in a public or
53 nonpublic school;

54 (10) The feasibility and effectiveness of utilizing the federal parent locator service in
55 locating missing children; and

56 (11) Programs for voluntary fingerprinting.

§49-6-116. Establish a missing foster child locator unit program.

1 (a) The Secretary of the West Virginia Department of Health and Human Resources shall
2 establish a Missing Foster Child Locator Unit within the department with a minimum staffing of a
3 northern-based caseworker, a southern-based caseworker, and an identified worker located in
4 the Centralized Intake Unit.

5 (b) The duties of the Missing Foster Child Locator Unit shall include, but are not limited to,
6 the following:

7 (1) Receiving reports of missing foster children;

8 (2) Assisting law enforcement in locating missing foster children who have been reported
9 missing; and

10 (3) Interviewing missing foster children and completing trafficking screening once the child
11 is located.

12 (c) For this section, “missing foster child” means missing child or missing and endangered
13 child, as defined in §49-6-103 of this code, who is a foster child at the time he or she was reported
14 missing.

15 (d) Beginning in July 1, 2021, and each year thereafter, the Secretary of the Department
16 of Health and Human Resources shall provide a status report to the Legislative Oversight
17 Committee on Health and Human Resources Accountability.

18 (e) The secretary shall implement and administer this program at least until December 31,
19 2022. The secretary may administer this program after such date.

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

.....
Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor