

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2194

BY DELEGATE PUSHKIN

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §15-2C-1 of the Code of West Virginia, 1931, as amended; to
 2 amend said code by adding thereto a new section, designated §15-2C-2a; and to amend
 3 and reenact §15-2C-3, §15-2C-4 and §15-2C-8 of said code, all relating to creating a
 4 domestic violence registry; providing a purpose; directing the Criminal Identification
 5 Bureau of the West Virginia State Police to establish and maintain the registry; providing
 6 for confidential inquiry of persons on the registry; establishing criteria for placement on
 7 and releasing information from the registry; requiring prosecuting attorneys to provide
 8 certain information; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

1 The following terms when used in this article have meanings ascribed to them in this
 2 section, except in those instances where the context clearly indicates a different meaning:

3 ~~(a)~~ “Central abuse registry” or “registry” means the registry created by this article which
 4 contains the names of individuals who have been convicted of a felony or a misdemeanor offense
 5 constituting abuse, neglect, or misappropriation of the property of a child or an incapacitated adult
 6 or an adult receiving behavioral health services.

7 ~~(b)~~ “Child abuse and neglect” or “child abuse or neglect” means those terms as defined in
 8 §49-1-201 of this code, and shall include any act with respect to a child which is a crime against
 9 the person pursuant to §61-2-1 *et seq.* of this code, any act which is unlawful pursuant to §61-
 10 8D-1 *et seq.*, of this code and any offense with respect to a child which is enumerated in §15-2C-
 11 3 of this code.

12 ~~(c)~~ “Abuse or neglect of an incapacitated adult” means “abuse,” “neglect,” and
 13 “incapacitated adult” as those terms are defined in §9-6-1 of this code, and shall include any act
 14 with respect to an incapacitated adult which is a crime against the person pursuant to §61-2-1 *et*

15 *seq.* of this code, and any offense with respect to an incapacitated adult which is enumerated in
16 §15-2C-3 of this code.

17 ~~(d)~~ “Adult receiving behavioral health services” means a person over the age of 18 years
18 who is receiving any behavioral health service from a licensed behavioral health provider or any
19 behavioral health provider whose services are paid for, in whole or in part, by Medicaid or
20 Medicare.

21 ~~(e)~~ “Conviction” of a felony or a misdemeanor means an adjudication of guilt by a court or
22 jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

23 “Domestic violence” means an occurrence of one or more acts as provided in §48-27-202
24 of this code.

25 “Domestic violence registry” means the registry created pursuant to §15-2C-2a of this
26 code that contains the names and other identifying factors of individuals who have been convicted
27 of three or more misdemeanor or felony offenses that constitute domestic violence.

28 ~~(f)~~ “Residential care facility” means any facility where a child or an incapacitated adult or
29 an adult receiving behavioral health services resides which is subject to registration, licensure, or
30 certification by the Department of Health and Human Resources, and includes nursing homes,
31 personal care homes, residential board and care homes, adult family care homes, group homes,
32 legally unlicensed service providers, residential child care facilities, family based foster care
33 homes, specialized family care homes, and intermediate care facilities for the mentally ~~retarded~~
34 challenged.

35 ~~(g)~~ “Misappropriation of property” means any act which is a crime against property under
36 §61-3-1 *et seq.* of this code with respect to a child in a residential care facility or an incapacitated
37 adult or an adult receiving behavioral health services in a residential care facility or a child or an
38 incapacitated adult or an adult receiving behavioral health services who is a recipient of home
39 care services.

40 ~~(h)~~ “Home care” or “home care services” means services provided to children or
41 incapacitated adults or adults receiving behavioral health services in the home through a hospice
42 provider, a community care provider, a home health agency, through the Medicaid waiver
43 program, or through any person when that service is reimbursable under the state Medicaid
44 program.

45 ~~(i)~~ “Requester” means the West Virginia Department of Education, any residential care
46 facility, any state licensed day care center, any qualified entity as defined in this section, or any
47 provider of home care services or an adult receiving behavioral health services, providing to the
48 Central Abuse Registry the name of an individual and other information necessary to identify that
49 individual, and either: ~~(1)~~ (A) Certifying that the individual is being considered for employment or
50 service as a volunteer by the requester or for a contractual relationship with the requester where
51 the individual will provide services to a child or an incapacitated adult or an adult receiving
52 behavioral health services for compensation; or contractors and vendors who have or may have
53 unsupervised access to the child, disabled, or elderly person for whom the qualified entity
54 provides care; or ~~(2)~~ (B) certifying that an allegation of abuse, neglect, or misappropriation of
55 property has been made against the individual. However, the purpose of the domestic violence
56 registry, “requester” means any member of the public that makes an inquiry about whether a
57 specific person is listed in the directory.

58 ~~(j)~~ “Qualified entity” means any business, agency, or organization that provides care,
59 treatment, education, training, instruction, supervision, or recreation for children, the elderly, or
60 individuals with disabilities and is a public, private, or not-for-profit entity within the State of West
61 Virginia and meets the definition of qualified entity under the federal National Child Protection Act
62 of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

§15-2C-2a. Domestic violence registry; required information and procedures.

1 (a) The purpose of the domestic violence registry is to protect children and other
2 household members by providing a means to alert a person of another person’s prior domestic

3 violence, by creating a database of individuals in which information about their prior conduct can
4 be confidentially verified, allowing a person that may enter into a domestic or other relationship
5 with that person, to be made aware of and take necessary actions to protect his or her personal
6 safety or the safety of a child or children that may exposed to a person on the registry. The
7 Criminal Identification Bureau of the West Virginia State Police shall establish a domestic violence
8 registry, for the purpose of verifying that a person has or has not had prior domestic violence
9 convictions. The bureau shall confirm to any person that may inquire, whether a person has three
10 or more prior domestic violence convictions. This registry shall be accessible to individual
11 members of public on a request basis, and contain the criminal history of persons that have been
12 convicted of multiple acts of domestic violence. The domestic violence registry shall contain the
13 name of every person who has three or more domestic violence convictions, when the third or
14 subsequent conviction has occurred subsequent to the establishment of the registry. The
15 information provided to a requestor shall include the nature of the convictions and other necessary
16 identification and crime details but will not include the name of any victim or victims of the crimes.
17 All information relating to a request about the domestic violence registry including the identity of
18 any person making a request is confidential, is exempt from the provisions of §29B-1-1 et seq.
19 of this code, and may not be otherwise released to the public.

20 (b) The domestic violence registry shall contain, at a minimum, the following information,
21 which shall be provided to a requestor:

22 (1) The individual's full name;

23 (2) Sufficient information to identify the individual, including date of birth;

24 (3) Identification of the criminal offenses constituting domestic violence; and

25 (4) Any statement by the individual disputing the conviction, if he or she chooses to make
26 and file one.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

1 (a) The central abuse registry shall maintain information relating to child abuse or neglect,

2 abuse or neglect of an incapacitated adult or adult receiving behavioral health services, and
3 misappropriation of property with respect to individuals convicted of certain offenses pursuant to
4 this code, when the victim of the crime is a child or an incapacitated adult or an adult receiving
5 behavioral health services, to include:

6 (1) First or second degree murder pursuant to §61-2-1 this code;

7 (2) Voluntary manslaughter pursuant to §61-2-4 of this code;

8 (3) Attempt to kill or injure by poison pursuant to §61-2-7 of this code;

9 (4) Malicious or unlawful assault pursuant to §61-2-9 of this code;

10 (5) Assault during commission of or attempt to commit a felony pursuant to §61-2-10 of
11 this code;

12 (6) Extortion by threats pursuant to §61-2-13 of this code;

13 (7) Abduction of a person or kidnapping or concealing a child pursuant to §61-2-14 of this
14 code;

15 (8) Enticing away or otherwise kidnapping any person pursuant to §61-2-14a of this code;

16 (9) A misdemeanor or felony sexual offense pursuant to §61-8B-1 *et seq.* of this code;

17 (10) Filming of sexually explicit conduct of minors pursuant to §61-8C-1 *et seq.* of this
18 code;

19 (11) Misdemeanor or felony child abuse pursuant to §61-8D-1 *et seq.* of this code;

20 (12) A violent crime against the elderly which is an offense under the provisions of §61-2-
21 9 or §61-2-10 of this code which is subject to the sentencing provisions of §61-2-10a of this code;
22 or

23 (13) A property offense pursuant to §61-3-1 *et seq.* of this code, with respect to a child in
24 a residential care facility or an incapacitated adult or an adult receiving behavioral health services
25 in a residential care facility or a child or an incapacitated adult or an adult receiving behavioral
26 health services who is a recipient of home care services, when the individual committing the
27 offense was providing services for compensation in the residential care facility or within the home.

28 (b) The prosecuting attorneys in each of the 55 counties within the state, upon conviction
29 of a misdemeanor, a felony or a lesser included misdemeanor offense for those specific offenses
30 set forth in §15-2C-3(a) of this code, shall report the conviction to the central abuse registry,
31 together with additional information, provided in a form, as may be required by the criminal
32 identification bureau for registry purposes. Reporting procedures shall be developed by the
33 criminal identification bureau in conjunction with the prosecuting attorneys' institute and the office
34 of the administrator of the Supreme Court of Appeals.

35 (c) Information relating to convictions prior to the effective date of this section of a
36 misdemeanor or a felony constituting child abuse or abuse or neglect of an incapacitated adult
37 receiving behavioral health services shall, to the extent which is feasible and practicable, be
38 placed on the central abuse registry. When any requester requests information related to a named
39 individual, the criminal identification bureau may search and release other information maintained
40 by the bureau to determine whether that individual has been convicted of offenses which are
41 subject to inclusion on the central abuse registry.

42 (d) The prosecuting attorneys in each of the 55 counties within the state, upon conviction
43 of a misdemeanor, a felony or a lesser included misdemeanor offense for domestic violence, as
44 provided in §15-2C-2 of this code, shall report to the domestic violence registry, information as
45 may be required by the criminal identification bureau for registry purposes. Reporting procedures
46 shall be developed by the criminal identification bureau in conjunction with the prosecuting
47 attorneys' institute and the office of the administrator of the Supreme Court of Appeals. The
48 prosecuting attorneys shall also provide to the bureau any information regarding the prior history
49 of a person convicted of domestic violence sufficient to determine whether this is a first or
50 subsequent conviction.

§15-2C-4. Disclosure of information.

1 (a) The information contained in the central abuse registry is confidential, and may not be
2 disclosed except as specifically provided in this section. The criminal identification bureau shall

3 disclose the information described in §15-2C-2(b)(1), §15-2C-2(b)(2), §15-2C-2(b)(3), and §15-
4 2C-2(b)(5) of this code to any requester, except that the name of the victim of the act alleged shall
5 not appear on the information disclosed and shall be stricken from any statement filed by an
6 individual. The Department of Health and Human Resources shall certify, not later than 15 days
7 following the effective date of this section, the list of requesters authorized to obtain central abuse
8 registry information, and shall inform the criminal identification bureau promptly of subsequent
9 additions and deletions from the list. The information contained in the central abuse registry with
10 respect to an individual shall be provided to that individual promptly upon request. Individuals on
11 the registry requesting registry information shall be afforded the opportunity to file statements
12 correcting any misstatements or inaccuracies contained in the registry. The criminal identification
13 bureau may disclose central abuse registry information to authorized law-enforcement and
14 governmental agencies of the United States and its territories, of foreign states and of the State
15 of West Virginia upon proper request stating that the information requested is necessary in the
16 interest of and will be used solely in the administration of official duties and the criminal laws.
17 Agreements with other states providing for the reciprocal sharing of abuse registry information
18 are specifically authorized.

19 (b) An active file on requests for information by requesters shall be maintained by the
20 criminal identification bureau for a period of one year from the date of a request. If an individual
21 who is the subject of the request is placed on the registry with respect to any conviction within
22 one year of the date of the request, that information shall promptly be disclosed to the requester.

§15-2C-8. Service provider responsibilities.

1 All residential care facilities, day care centers, providers to adults with behavioral health
2 needs and home care service providers authorized to operate in West Virginia shall:

3 (1) Provide notice to current employees of the agency and other persons providing
4 services under a contract with the agency within 60 days of the effective date of this article, and
5 provide notice to any newly hired employee or person at the time an employment or contractual

6 relationship is entered into, which notice shall be in the following form: "NOTICE: All service
7 providers in the State of West Virginia are subject to provisions of law creating a central abuse
8 registry. Any person providing services for compensation to children or to incapacitated adults or
9 to adults receiving behavioral health services, who is convicted of a misdemeanor or felony
10 offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated
11 adult or an adult receiving behavioral health services, is subject to listing on the central abuse
12 registry. The fact that a person is listed on the central abuse registry may be disclosed in specific
13 instances provided by law. Listing on the central abuse registry may limit future employment
14 opportunities, including opportunities for employment with residential care facilities, day care
15 centers and home care agencies. It is the policy of _____ [name of agency] to
16 promptly report all suspected instances of abuse, neglect or misappropriation of property to the
17 proper authorities and to cooperate fully in the prosecution of these offenses."

18 (2) Cooperate fully with law enforcement, prosecuting attorneys and court personnel in
19 criminal prosecutions of acts of child abuse or neglect or abuse or neglect of an incapacitated
20 adult or adult receiving behavioral health services.

21 (3) Respond promptly to all requests by other service providers for references for former
22 or present employees of the agency, which response may include a subjective assessment as to
23 whether the individual for whom the reference is sought is suited to provide services to children
24 or incapacitated adults or to adults receiving behavioral health services.

NOTE: The purpose of this bill is to create a domestic violence registry. The bill provides a purpose. The bill directs the criminal identification bureau of the West Virginia State Police to establish and maintain the registry. The bill provides for confidential inquiry of persons on the registry. The bill establishes criteria for placement on and releasing information from the registry. The bill requires prosecuting attorneys to provide certain information. The bill defines terms.

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