

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3157

By Delegates Jennings, Smith, Ridenour, Phillips,
Honaker, McGeehan, Butler, Hillenbrand, Hanshaw
(Mr. Speaker) and Crouse

[Introduced January 30, 2023; Referred to the
Committee on Veterans' Affairs and Homeland
Security then the Judiciary]

1 A BILL to amend and reenact §15A-12-1, §15A-12-2, §15A-12-3, §15A-12-4, §15A-12-5 and
 2 §15A-12-7 of the Code of West Virginia, 1931, as amended, all generally relating to
 3 clarifying security clearance and/or non-disclosure agreement requirements, the duties,
 4 functions, reporting requirements, prohibitions and restrictions applicable to the West
 5 Virginia Fusion Center and to add certain criminal penalties for violations of prohibitions
 6 and restrictions applicable to the West Virginia Fusion Center.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. WEST VIRGINIA FUSION CENTER.

§15A-12-1. West Virginia Fusion Center Established.

1 (a) The Governor shall establish, organize, equip, staff, and maintain a multiagency
 2 information fusion center ("Fusion Center") to receive, analyze, and disseminate all hazard, crime,
 3 and threat information. The Department of Homeland Security shall operate the facility, as directed
 4 by the Governor, with oversight auditing and accountability to the select committee of the
 5 Legislature as set forth herein, and in collaboration among federal, state, and local agencies, as
 6 well as private sector persons, organizations, entities, or agencies, including, but not limited to,
 7 those with the primary purposes of homeland security, counter-terrorism, public safety, public
 8 protection, and identification of threats to critical infrastructure: *Provided*, That the Fusion Center
 9 shall not knowingly participate in activity, or knowingly cooperate, with any federal agency, or a
 10 contractor for any federal agency, when that participation or cooperation involves ~~illegal or~~
 11 ~~improper actions~~ any action prohibited or restricted by §15A-12-1 et seq. of this code and/or by
 12 federal or state law prohibiting intelligence gathering activities upon citizens of the United States.
 13 The Fusion Center will exercise due diligence in ascertaining the motives of any federal agency
 14 that collaborates with the Fusion Center to ensure that the agency is only using results or
 15 collaboration with the Fusion Center for legitimate law-enforcement purposes. Further, the Fusion
 16 Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion
 17 Center or to remotely access Fusion Center assets or infrastructure absent a valid warrant from

18 the U.S. District Court for the Southern District of West Virginia, nor when it knows or has reason to
19 know that such federal agency or federal contractor is presently engaged or intends to engage in
20 unlawful intelligence-gathering activity against a citizen of West Virginia the United States. Further,
21 that the Fusion Center is subject at all times and in all operations to the Joint Oversight Committee
22 as set forth in §15A-12-3 of this code.

23 (b) The Fusion Center shall collect, integrate, analyze, disseminate, and maintain such
24 information to support local, state, and federal law-enforcement agencies, ~~other governmental~~
25 ~~agencies~~ and private persons, organizations, entities, or agencies in detecting, preventing,
26 investigating, preparing for, responding to, mitigating and/or recovering from any possible or
27 actual criminal or terrorist activity, as well as any hazard or threat, including to the state's critical
28 infrastructure, in compliance with applicable state and federal laws and regulations, including 28
29 CFR 23: *Provided*, That as used in this article, "terrorism" shall mean only foreign or international
30 terrorist groups or individuals, or domestic groups or individuals involved in transnational or
31 domestic terrorism as defined in ~~6 U.S.C. §485~~ 18 U.S. Code § 2331: *Provided, however*, That
32 under no circumstance shall the Fusion Center or its officers, directors, agents, or employees
33 engage in, or be ordered or directed to engage in prohibited ~~non-law enforcement~~ intelligence
34 gathering activities on citizens of the United States as set forth in any federal or state law or in
35 contravention of the Constitution of the United States, nor shall the Fusion Center engage in, or
36 collaborate with any other entity on, any information or intelligence gathering for any political
37 purpose nor be solicited for, or cooperate in, any investigation of a public official or candidate for
38 elected office, unless reasonable grounds exist to suspect the subject of the investigation is, or
39 may be, involved in criminal conduct. Any such information or intelligence gathering will be
40 immediately reported to the Attorney General and the leadership of the Joint Oversight
41 Committee. This provision shall not prohibit the Fusion Center from ~~participating in~~ investigating
42 matters dealing with in order to prevent or uncover election fraud, prevent or uncover election
43 tampering, or any other issues designed the purpose of which is to provide the citizens of the state

44 with ~~tamper-free~~ elections free from ballot harvesting, ballot fraud, algorithmic manipulation of
45 votes or vote tabulations, cyber attack or manipulation of any kind, or any other effort or attack of
46 any kind on free, fair and legitimate elections, as constitutionally guaranteed, anywhere within the
47 State of West Virginia, and shall not restrict the Fusion Center from assisting in security matters
48 involving political or dignitary visits to or within the State of West Virginia. Any information or
49 intelligence gathered regarding election fraud will be reported to the Attorney General and the
50 leadership of the Joint Oversight Committee at the earliest opportunity.

51 (c) Any improperly or inadvertently collected or gathered information must be reported to
52 the Director of the Fusion Center within 72 hours. The Director will investigate the causes of the
53 improper or inadvertent collection and will take corrective measures. No improperly or
54 inadvertently collected or gathered information may be shared with any other entity outside the
55 Fusion Center. The Director will direct that the subject information be destroyed or erased within
56 15 days. The Director will include any incidents of improper or inadvertent collection, together with
57 corrective actions in his annual report to the Joint Oversight Committee.

58 ~~(e)-(d)~~ The West Virginia Fusion Center shall be housed within secure facilities in order to
59 access sensitive information, as permitted by state and federal law. Within the secure facilities, the
60 Fusion Center shall house a ~~Homeland Secure Data Network (HSDN)~~ homeland secure
61 information systems and networks in order to access classified information as permitted by state
62 and federal law and ensure that appropriate security measures are in place for: (1) the secure
63 facilities; (2) data collected or stored at the secure facilities; and (3) personnel working at the
64 secure facilities: Provided, That no classified information may be allowed or accessed on the
65 Fusion Center's homeland secure information systems and networks which violates the
66 prohibitions and/or restrictions set forth in §15A-12-1(a), §15A-12-1(b), and §15A-12-2 of this
67 code, and all such classified data shall be subject to unrestricted and unredacted access, review,
68 inspection and investigation by the Joint Oversight Committee set forth in §15A-12-3 of this code.

69 ~~(d)~~ (e) The West Virginia Fusion Center shall do all acts necessary and proper to carry out

70 the powers granted to the board of the State Resiliency Office.

§15A-12-2. Operation of center.

1 (a) The West Virginia Department of Homeland Security shall operate the West Virginia
2 Fusion Center under the direction of the Governor, with oversight auditing and accountability to the
3 ~~select committee of the Legislature~~ Joint Oversight Committee as set forth herein, and shall
4 cooperate with the United States Department of Homeland Security, local, county, state, or federal
5 government agencies, and private organizations: *Provided*, That the Fusion Center shall not
6 knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor
7 for any federal agency, when that participation or cooperation involves illegal or improper actions.
8 Further, the Fusion Center shall not allow a federal agency or contractor for a federal agency to
9 work inside the Fusion Center when it knows or has any reason to know or suspect that such
10 federal agency or federal contractor is presently engaged or intends to engage in unlawful
11 intelligence-gathering activity as defined in §15A-12-1(a) of this code against a citizen of ~~West~~
12 ~~Virginia~~ the United States: *Provided, however*, That all Fusion Center operations shall be subject
13 to applicable state and federal laws and regulations, including, but not limited to, 28 CFR Part 23,
14 and shall at all times strictly abide by all restrictions and prohibitions against conducting non-law
15 enforcement intelligence operations against U.S. citizens as set forth in any federal or state law or
16 in contravention of the Constitution of the United States, including, but not limited to, 50 U.S.C.
17 §3036(d)(1).

18 (b) The West Virginia Fusion Center shall: (1) Be the primary clearinghouse for the State of
19 West Virginia for the collection, analysis, and proper distribution of information and actionable
20 intelligence as defined in this section; (2) generate intelligence analyses critical for homeland
21 security policy and relevant threat warning in order to protect life, liberty, and property in West
22 Virginia; (3) promote and improve intelligence sharing among public safety and public service
23 agencies at the federal, state, and local levels, and with critical infrastructure and key resource
24 entities within the private sector subject to all restrictions and prohibitions recited in this article; (4)

25 receive and integrate intelligence and information related to terrorism and other homeland security
26 threats; (5) collect, analyze, produce, disseminate, and maintain such intelligence and
27 information, as allowed by law, to support local, state, and federal law enforcement agencies,
28 other governmental agencies, and private organizations in: preventing, preparing for, responding
29 to, and recovering from any possible or actual terrorist attack or other homeland security threat;
30 and (6) maximize intelligence and information sharing in strict accordance with all applicable state
31 and federal laws, restrictions, and prohibitions: *Provided*, That the Fusion Center shall not
32 knowingly participate in activity, or knowingly cooperate, with any federal agency, or a contractor
33 for any federal agency, when that participation or cooperation involves ~~illegal or improper actions~~
34 any action prohibited or restricted as set forth in §15A-12-1(a) of this code. Further, the Fusion
35 Center shall not allow a federal agency or contractor for a federal agency to work inside the Fusion
36 Center when it knows or has reason to know or suspect that such federal agency or federal
37 contractor is presently engaged or intends to engage in unlawful intelligence-gathering activity or
38 politically motivated activities against a citizen of ~~West Virginia~~ the United States.

39 (c) The Governor shall provide facilities, budget, and administrative support for the West
40 Virginia Fusion Center and its employees and participants. The cabinet secretary shall serve as
41 security manager for the West Virginia Fusion Center.

42 (d) Private sector persons, organizations, entities, or agencies participating in the West
43 Virginia Fusion Center shall not be considered governmental entities, nor shall employees or
44 agents of private sector persons, organizations, entities, or agencies assigned to the West Virginia
45 Fusion Center be considered state employees; however, private sector entities and their
46 employees or agents are subject to the same confidentiality requirements and held to the same
47 standards as an employee of the West Virginia Fusion Center, including, but not limited to, any and
48 all restrictions and prohibitions against conducting non-law enforcement intelligence operations
49 against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the
50 United States, including, but not limited to, 50 U.S.C. §3036(d)(1): *Provided*, That the Fusion

51 Center shall not knowingly participate in any activity, or knowingly cooperate, with any federal
52 agency, or a contractor for or any person or entity utilizing or collaborating with any federal agency,
53 when that participation or cooperation involves illegal or improper actions: *Provided, however*, that
54 the Fusion Center shall not allow a federal agency or contractor for a federal agency to work inside
55 the Fusion Center when it knows or has reason to know or suspect that such federal agency or
56 federal contractor is presently engaged or intends to engage in unlawful intelligence-gathering
57 activity against a citizen of ~~West Virginia~~ the United States.

58 (e) The operations of the West Virginia Fusion Center shall be overseen by the cabinet
59 secretary and deputy cabinet secretary of the West Virginia Department of Homeland Security,
60 with oversight auditing and accountability to the ~~select committee~~ Joint Oversight Committee of
61 the Legislature as set forth herein in §15A-12-3 of this code.

62 (f) The cabinet secretary and deputy cabinet secretary shall either have a current, valid
63 federal security clearance at the appropriate level, and training and certifications commensurate
64 with the position, or be eligible for that clearance, and be in the process of obtaining the
65 appropriate clearance.

66 (g) The cabinet secretary and deputy cabinet secretary may adopt policies and
67 procedures for the operation of the West Virginia Fusion Center. All such policies and procedures
68 shall be subject to the full and unlimited inspection and review of the Joint Oversight Committee
69 set forth in §15A-12-3 of this code. The cabinet secretary and deputy cabinet secretary may adopt
70 rules and regulations as may be necessary to carry out the provisions of this act, including rules
71 and regulations concerning the operations of the West Virginia Fusion Center: *Provided*, That all
72 policies, procedures, rules, and regulations and use of the Fusion Center by any party shall be
73 subject to any and all restrictions and prohibitions against conducting non-law enforcement
74 intelligence operations against U.S. citizens as set forth in federal or state law or in contravention
75 of the Constitution of the United States, including but not limited to, 50 U.S.C. §3036(d)(1).

76 (h) Subject to appropriations, the West Virginia Fusion Center shall have the following

77 employees, all in the unclassified service of the civil service act:

78 (1) A director, who shall be appointed by and serve at the pleasure of the cabinet secretary.

79 The director shall either have a current, valid federal security clearance at the appropriate level,
80 and training and certifications commensurate with the position, or be eligible for that clearance,
81 and be in the process of obtaining the appropriate clearance, and shall:

82 (A) Be responsible for all operations of the West Virginia Fusion Center and shall report to
83 the cabinet secretary or deputy cabinet secretary;

84 (B) Be responsible for:

85 (i) Facilitating and implementing applicable federal standards and programs by the West
86 Virginia Fusion Center;

87 (ii) Ensuring compliance with all applicable laws and federal requirements, including, but
88 not limited to, any and all restrictions and prohibitions against conducting non-law enforcement
89 intelligence operations against U.S. citizens as set forth in federal or state law or in contravention
90 of the Constitution of the United States, including, but not limited to, 50 U.S.C. §3036(d)(1);

91 (iii) Maintaining proper separation between military and civilian capacities;

92 (iv) Providing support, as needed, to the cabinet secretary and deputy cabinet secretary;

93 and

94 (v) Other duties and responsibilities as may be assigned by the cabinet secretary and
95 deputy cabinet secretary, subject to all restrictions and prohibitions described in this article.

96 (5) A deputy director, who shall be appointed by and serve at the pleasure of the director.

97 The deputy director shall either have a current, valid federal security clearance at the appropriate
98 level, and training and certifications commensurate with the position, or be eligible for that
99 clearance, and be in the process of obtaining the appropriate clearance, and shall be responsible
100 for assisting the director in: (A) facilitating and implementing applicable federal standards and
101 programs by the West Virginia Fusion Center; (B) ensuring compliance with all applicable laws
102 and federal requirements; (C) maintaining proper separation between military and civilian

103 capacities; (D) providing support, as needed, to the cabinet secretary and deputy cabinet
104 secretary; and (E) other duties and responsibilities as may be assigned by the Fusion Center
105 director.

§15A-12-3. Joint Oversight Committee.

1 (a) The Speaker of the House of Delegates and President of the Senate shall establish a
2 select committee which shall have oversight of the operations and activities of, and information
3 collected by, the West Virginia Fusion Center to ensure the proper collection, dissemination,
4 storage, and destruction/erasure of information or intelligence and adherence by the West Virginia
5 Fusion Center with any and all prohibitions or restrictions set forth in §15A-12-1 et seq. of this
6 code. The committee shall be composed of: (1) The Speaker of the House of Delegates and four
7 members of the House of Delegates, to be appointed by the Speaker of the House of Delegates,
8 no more than two of whom shall be appointed from the same political party; and (2) the President
9 of the Senate and four members of the Senate, to be appointed by the President of the Senate, no
10 more than two of whom shall be from the same political party; and counsel and staff to the Speaker
11 and the Senate President: *Provided*, That in the event the membership of a political party is less
12 than 15 percent in the House of Delegates or Senate, then the membership of that political party
13 from the legislative house with less than 15 percent membership may be one from that house. The
14 committee shall be chaired by the President of the Senate and the Speaker of the House of
15 Delegates or any Senator or Delegate designated by same. All members appointed to the select
16 committee by the select committee chairs serve until their successors are appointed as provided in
17 this section. The select committee members, counsel, and staff ~~must have~~ shall be granted the
18 appropriate necessary security clearance or clearances in order to obtain any and all information
19 that is classified within the West Virginia Fusion Center, and/or shall be granted access to any and
20 all information and intelligence that is used, processed, or stored within the West Virginia Fusion
21 Center and shall be subject to the same rules, regulations, and laws as the employees of the West
22 Virginia Fusion Center for safeguarding of all information and intelligence for which access is

23 granted: *Provided*, That committee members, counsel, and staff execute non-disclosure
24 agreements and any other documents presented by the West Virginia Fusion Center: *Provided*,
25 *further*, That any such documentation presented is not above that required of West Virginia Fusion
26 Center employees and shall be subject to the same rules, regulations, and laws as the employees
27 of the West Virginia Fusion Center for safeguarding both classified and law enforcement sensitive
28 information or intelligence. These select committee members, counsel, and staff shall be advised
29 of the restrictions and protocol for handling such information or intelligence and shall sign a
30 statement of understanding as well as a confidentiality agreement. *Failure of any state or federal*
31 *agency to grant the necessary security clearance or clearances to the select committee members,*
32 *counsel, and staff, and/or to grant access to any and all information and intelligence that is used,*
33 *processed, or stored within the West Virginia Fusion Center to the select committee members,*
34 *counsel, and staff after their execution of the applicable non-disclosure agreements shall result in*
35 *the suspension of all Fusion Center operations precluded from oversight due to any refusal to*
36 *grant the necessary security clearance or clearances, and/or to grant access to any and all*
37 *information and intelligence that is used, processed, or stored within the West Virginia Fusion*
38 *Center to the select committee members, counsel, and staff after their execution of the applicable*
39 *non-disclosure agreements, until such necessary security clearance or clearances to the select*
40 *committee members, counsel, and staff have been granted and/or until access is granted to any*
41 *and all information and intelligence that is used, processed, or stored within the West Virginia*
42 *Fusion Center to the select committee members, counsel, and staff after their execution of the*
43 *applicable non-disclosure agreements.*

44 (b) Members of the select committee, with their counsel and/or staff, may enter and inspect
45 the West Virginia Fusion Center at any time staff is present with select committee counsel and
46 staff, with or without notice to the West Virginia Fusion Center: *Provided*, That Fusion Center staff
47 may not vacate the Fusion Center for the purpose of evading entry and inspection by the select
48 committee, with their counsel and/or staff and that if the Fusion Center staff are not present at the

49 arrival of the select committee, with their counsel and/or staff, a member of the Fusion Center staff
50 shall grant access to the Fusion Center for the select committee, with their counsel and/or staff
51 within two hours of the select committee's request for access.

52 (c) Meetings of the select committee shall be confidential, or, as applicable, classified, and
53 the information and materials, in any medium, including hard copy and electronic, coming to the
54 attention of or placed in the custody of the Select Committee shall not be subject to the West
55 Virginia Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code.

56 (d) The select committee may conduct proceedings in a confidential executive session for
57 the purpose of conducting business, establishing policy, reviewing investigations, and
58 interrogating a witness or witnesses.

59 (e) All witnesses appearing before the select committee shall testify under oath or
60 affirmation, and any member of the select committee or its counsel may administer oaths or
61 affirmations to such witnesses. To compel witnesses to attend a hearing or produce any books,
62 records, documents, or papers, or any other tangible thing except where the records, documents,
63 data, or items are protected from disclosure by privilege recognized by state or federal courts, the
64 select committee may issue subpoenas, signed by one of the co-chairs: *Provided*, That the select
65 committee may specifically authorize or delegate the power to any member of the select
66 committee to sign subpoenas on its behalf. The subpoenas shall be served by any person
67 authorized by law to serve and execute legal process, and service shall be made without charge.
68 Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is
69 allowed witnesses before any petit jury in this state.

70 (f) If any person subpoenaed to appear at any hearing shall refuse to appear or to answer
71 inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers,
72 or any other tangible thing within his or her control when the same are demanded, the select
73 committee shall report the facts to the circuit court of Kanawha County or any other court of
74 competent jurisdiction and that court may compel obedience to the subpoena as though the

75 subpoena had been issued by that court in the first instance: *Provided*, That prior to seeking circuit
76 court relief, the select committee may, in its discretion, first demand the Secretary of Homeland
77 Security or the director of the West Virginia Fusion Center under whom an employee has failed to
78 appear or which has failed to produce requested or subpoenaed material to appear before the
79 select committee and address the basis for the failure to comply and whether compliance will be
80 forthcoming.

81 (g) The select committee may direct the West Virginia Fusion Center to send its budgetary
82 accounting to the State Auditor: *Provided*, That if budgetary expenditures are classified, or
83 security or law enforcement sensitive such that disclosure would compromise an investigation,
84 those entry descriptions, but not the expenditure amounts, may be redacted from the West Virginia
85 Fusion Center accounting provided to the State Auditor: *Provided, however*, That the State Auditor
86 shall bring any accounting issues of concern to the attention of the select committee, upon which
87 the select committee shall subpoena the West Virginia Fusion Center for unredacted copies of the
88 accounting items to be presented for explanation and justification of the necessity and legality of
89 the concerns raised by the State Auditor. The select committee may take whatever action it deems
90 necessary, if any, after review and analysis of the subpoenaed unredacted materials.

91 (h) The West Virginia Fusion Center shall report annually in writing by May 1st beginning in
92 2024 to the Joint Oversight Committee set forth in §15A-12-3 of this code regarding the
93 performance of the West Virginia Fusion Center. The report must include: (i) an unclassified
94 general narrative about the types of cases, crimes, incidents, and reports the West Virginia Fusion
95 Center has reviewed and evaluated in a manner that protects the personal privacy of West Virginia
96 citizens and the operational integrity of the West Virginia Fusion Center; the unclassified narrative
97 must include both privacy audits performed in the prior year and de-identified information from
98 those audits regarding the cases, crimes, incidents and reports on which the West Virginia Fusion
99 Center worked during the prior year that were reviewed during the audits; and (ii) a classified
100 specific narrative of any and all federally or state targeted individuals in the state of West Virginia

101 and the nature of any known or suspected criminal or terrorist activity that such targeted individual
102 are known or believed on probable cause to have conducted or to be conducting.

§15A-12-4. Memoranda of understanding required.

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

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

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

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

13 (b) Nothing in any agreement shall obligate any nongovernmental entity to provide
14 information nor establish any duty for any nongovernmental entity to assume any police or law
15 enforcement responsibilities.

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

20 (d) Any and all interagency memoranda of understanding and participating public or
21 private persons, organizations, entities, or agencies described in this section shall be subject to all
22 restrictions and prohibitions described in this section and to unrestricted review, inspection and
23 auditing by the select oversight committee and its counsel and staff.

24 (e) No information may be gathered or collected for any purpose other than legitimate law
25 enforcement purposes. No information gathered or collected may be used for any non-law
26 enforcement intelligence operations against U.S. citizens as set forth in any federal or state law or
27 in contravention of the Constitution of the United States.

§15A-12-5. 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, any terrorism investigation, threat assessment, or
3 information on infrastructure which if released would compromise the public safety in the
4 possession of the West Virginia Fusion Center shall be confidential and shall not be subject to the
5 West Virginia Freedom of Information Act (§29B-1-1 *et seq.* of this code): *Provided*, That this
6 exemption from the West Virginia Freedom of Information Act may be lifted in the event a court
7 determines in a state or federal whistleblower action that unlawful or unauthorized activity has
8 taken place, and shall in no way restrict the Legislature's select oversight committee from access
9 to all such information. Every five years, the West Virginia Fusion Center shall conduct a review of
10 information contained in any database maintained by the West Virginia Fusion Center. Data that
11 has been determined not to have a nexus to criminal or terrorist activity shall be removed from
12 such database. A reasonable suspicion standard shall be applied when determining whether or
13 not information has a nexus to terrorist activity for non-U.S. citizens, but a probable cause
14 standard shall apply for U.S. citizens: *Provided, however*, That all such determinations shall be
15 reported to the Legislature's select oversight committee at regularly scheduled oversight audit and
16 committee meetings.

17 (b) No person having access to information maintained by the West Virginia Fusion Center
18 shall be subject to subpoena in a civil action in any court of the state to testify concerning a matter
19 of which he has knowledge pursuant to his access to criminal intelligence information maintained
20 by the West Virginia Fusion Center.

21 (c) No person or agency receiving information from the West Virginia Fusion Center shall

22 release or disseminate that information without prior authorization from the West Virginia Fusion
23 Center.

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

27 (e) Any person who: ~~knowingly~~

28 (1) Knowingly disseminates information in violation of this section is guilty of a
29 misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than
30 \$1,000, or be confined in jail for not more than 20 days, or both fined and confined. If such
31 unauthorized dissemination results in death or serious bodily injury to another person, such
32 person is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional
33 facility not less than one nor more than five years: *Provided*, That all state and federal
34 Whistleblower Protection Act protections shall apply to any person whose disclosures are found to
35 have been made to report or protect against violation or attempted violation of any and all
36 restrictions and prohibitions against conducting non-law enforcement intelligence operations
37 against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the
38 United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

39 (2) Intentionally, willfully, or knowingly violates any of the restrictions and prohibitions
40 governing the operation of the Fusion Center or takes any action prohibited or restricted as set
41 forth in §15A-12-1 *et seq.* of this code, is guilty of a felony and, upon conviction thereof, shall be
42 fined not less than \$1,000 nor more than \$10,000, or be confined in shall be imprisoned in a state
43 correctional facility not less than one nor more than five years, or both fined and imprisoned; and
44 shall additionally be subject to separate criminal prosecution and penalties and civil liability for
45 violations of civil rights.

46 (f) Any person, being an officer or employee of the United States, the State of West Virginia
47 or of any department, agency, or political subdivision thereof, or any person from the private sector

48 or industry assigned to or working with the West Virginia Fusion Center in any capacity, who
49 knowingly publishes, divulges, discloses, or makes known in any manner, or to any extent not
50 authorized by law, any critical infrastructure or national intelligence information protected from
51 disclosure by this section coming to him or her in the course of his or her employment, affiliation, or
52 official duties with the West Virginia Fusion Center, or by reason of any examination or
53 investigation made by, return, report, or record made to or filed with, such department or agency,
54 officer or employee thereof, shall be guilty of a felony and, upon conviction, be imprisoned in a
55 state correctional facility for not less than one year, and shall be removed from office or
56 employment and affiliation with the West Virginia Fusion Center: *Provided*, That all state and
57 federal Whistleblower Protection Act protections shall apply to any person whose disclosures are
58 found to have been made to report or protect against violation or attempted violation of any and all
59 restrictions and prohibitions against conducting non-law enforcement intelligence operations
60 against U.S. citizens as set forth in federal or state law or in contravention of the Constitution of the
61 United States, including, but not limited to, 50 U.S.C. §3036(d)(1).

62 (g) The West Virginia Department of Homeland Security shall provide legal counsel to the
63 West Virginia Fusion Center to serve as privacy and civil liberties counsel to the West Virginia
64 Fusion Center. Such attorney shall advise the West Virginia Fusion Center director and its deputy
65 director on all matters necessary to ensure compliance with all applicable federal and state privacy
66 or civil liberties laws, obligations, restrictions, and prohibitions as set forth herein.

67 (h) For purposes of this article:

68 (1) "Criminal intelligence information" means data or information that has been evaluated
69 and determined to be relevant to the identification and criminal activity of individuals or
70 organizations that are reasonably suspected of involvement in criminal activity.

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

72 (3) "National Intelligence" means data or information determined to meet the definition
73 stated in 50 U.S.C. §3003 (5): *Provided*, That Fusion Center activities and operations relating to

74 National Intelligence shall at all times strictly abide by all restrictions and prohibitions against
75 conducting non-law enforcement intelligence operations against U.S. citizens as set forth in
76 federal or state law or in contravention of the Constitution of the United States, including, but not
77 limited to, 50 U.S.C. §3036(d)(1).

§15A-12-7. 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 Fusion Center. Such agreements: (1) Shall define the duties
4 and responsibilities of each participating agency or organization; (2) may provide for payment by
5 the participating agency or organization of a reasonable share of the cost to establish, maintain,
6 and operate the West Virginia Fusion Center; and (3) shall require compliance with all
7 requirements, restrictions, and prohibitions set forth in ~~this article~~ §15A-12-1 et seq of this code.

8 (b)(1) The West Virginia Fusion Center, with approval of the cabinet secretary or deputy
9 cabinet secretary, may accept any ~~gift, grant, payment, moneys, or assets seized by forfeiture as a~~
10 ~~result of collaborative efforts or contribution from any source, public or private, for the purpose of~~
11 ~~paying~~ reimbursing the costs ~~to establish, maintain, or operate~~ incurred by the West Virginia
12 Fusion Center during the particular collaborative effort from which the moneys or assets were
13 seized. Such ~~gift, grant, payment, moneys, or assets seized by forfeiture as a result of~~
14 collaborative works or contribution may be in the form of ~~services~~, equipment, supplies, materials,
15 or funds. All amounts received under this section shall be remitted to the State Treasurer in
16 accordance with chapter 12 of this code, and the amendments thereto. Upon receipt of each such
17 remittance, the State Treasurer shall deposit the ~~entire amount~~ necessary to reimburse the costs
18 incurred by the Fusion Center during the particular collaborative effort in the State Treasury to the
19 credit of the West Virginia Fusion Center Fund, that is hereby created in the State Treasury and
20 shall be administered by the West Virginia Department of Homeland Security in accordance with
21 this article and subject to regular auditing and oversight by the Legislature's select oversight

22 committee. All amounts of money or assets seized which exceed the costs incurred by the Fusion
23 Center, the State Treasurer shall deposit in the state's Rainy Day fund.

24 (2) Moneys in the West Virginia Fusion Center Fund may be used by the director to pay any
25 costs associated with establishing, maintaining, or operating the West Virginia Fusion Center. The
26 director of the West Virginia Fusion Center Fund shall develop policy and procedures for
27 purchasing, and expenditures shall be made in accordance with vouchers approved by the
28 director or the director's designee. Any gift, grant, payment, moneys, or any assets seized by
29 forfeiture as a result of collaborative efforts, or contribution in any form other than funds may be
30 accepted by the director, with approval of the cabinet secretary, and utilized and expended in any
31 manner authorized by law to establish, maintain, or operate the West Virginia Fusion Center:
32 *Provided*, That all moneys used by the director shall be subject to all restrictions and prohibitions
33 set forth in this article, and also to regular auditing and oversight by the Legislature's select
34 oversight committee.

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

NOTE: The purpose of this bill is to clarify security clearance and/or non-disclosure agreement requirements, the duties, functions, reporting requirements, prohibitions and restrictions applicable to the West Virginia Fusion Center and to add certain criminal penalties for violations of prohibitions and restrictions applicable to the West Virginia Fusion Center.

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