

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3160**

By Delegates Pushkin and Kump

[Introduced January 31, 2023; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]

1 A BILL to amend and reenact §49-4-601b of the Code of West Virginia, 1931, as amended,  
 2 relating to providing that records of Department of Health and Human Services of  
 3 sustained and nonsustained allegations of child abuse or neglect are preserved;  
 4 establishing timeframes for preservation depending on whether the allegations are  
 5 sustained or not sustained and the severity of the degree of abuse or neglect.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 4. COURT ACTIONS.**

**§49-4-601b. Substantiation by the department of abuse and neglect.**

1 (a) Notwithstanding any provision of this code to the contrary, when the department  
 2 substantiates an allegation of abuse or neglect against a person, but there is no judicial finding of  
 3 abuse or neglect as a result of the allegation, the department shall provide written notice of the  
 4 substantiation to the person by certified mail, return receipt requested.

5 (b) The individual against whom an abuse or neglect allegation has been substantiated, as  
 6 described in subsection (a) of this section, has the right to contest the substantiation by filing a  
 7 grievance with the board of review of the department and has the right to appeal the decision of the  
 8 board of review to the court, in accordance with the provisions of §29A-5-1 *et seq.* of this code  
 9 regarding administrative appeals.

10 (c) The secretary of the department shall promulgate legislative rules in accordance with  
 11 §29A-3-1 *et seq.* of this code, within the applicable time limit to be considered by the Legislature  
 12 during its regular session in the year 2021, which rules shall include, at a minimum:

13 (1) Provisions for ensuring that an individual against whom the department has  
 14 substantiated an allegation of abuse and neglect, but against whom there is no judicial finding of  
 15 abuse or neglect, receives written notice of the substantiation in a timely manner. The written  
 16 notice must, at a minimum, state the following:

17 (A) The name of the child the person is alleged to have abused or neglected, the place or

18 places where the abuse or neglect allegedly occurred, and the date or dates on which the abuse or  
19 neglect is alleged to have occurred;

20 (B) That the person has a right to file a grievance protesting the substantiation of abuse  
21 and neglect with the board of review of the department and clear instructions regarding how to file  
22 a grievance with the board of review, including a description of any applicable time limits;

23 (C) That the person has a right to appeal an adverse decision of the board of review of the  
24 department to the courts and notice of any applicable time limits; and

25 (D) A description of any public or nonpublic registry on which the person's name will be  
26 included as a result of a substantiated allegation of abuse and neglect and a statement that the  
27 inclusion of the person's name on the registry may prevent the person from holding jobs from  
28 which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

29 (2) Provisions for ensuring that a person against whom an allegation of abuse and neglect  
30 has been substantiated, but against whom there is no judicial finding of abuse or neglect, may file  
31 a grievance with the department and provisions guaranteeing that any such person will have a full  
32 and fair opportunity to be heard; and

33 (3) Provisions requiring the department to remove a person's name from an abuse and  
34 neglect registry maintained by the department if a substantiation is successfully challenged in the  
35 board of review or in a court.

36 (d)(1) The child protective services worker shall make a disposition of either founded or  
37 unfounded after collecting and assessing information about the alleged abuse or neglect. In all  
38 investigations with a founded disposition, the child protective services worker shall assess the  
39 severity of the abuse or neglect and shall assign a level. The four levels of founded dispositions  
40 are:

41 (A) Level 1- This level includes those injuries or conditions, real or threatened, that result in  
42 or were likely to have resulted in serious harm to a child;

43 (B) Level 2- This level includes injuries or conditions, real or threatened, that result in or

44 were likely to have resulted in moderate harm to a child;

45 (C) Level 3- This level includes injuries or conditions, real or threatened, that result in or  
46 were likely to have resulted in minimal harm to a child.

47 (2) The record of the investigation with an unfounded disposition shall be purged three  
48 years after the date of the complaint or report if there are no subsequent complaints or reports  
49 regarding the individual against whom allegations of abuse or neglect were made in those three  
50 years. The individual against whom an unfounded disposition for allegations of abuse or neglect  
51 was made may request in writing that the local department retain the record for an additional  
52 period of up to two years. The individual against whom allegations of abuse or neglect were made  
53 may request in writing that the department shall immediately purge the record upon presentation  
54 of a certified copy of an administrative order issued pursuant to §29A-5-1 of this code, that there  
55 has been a determination that the complaint or report was made in bad faith or with malicious  
56 intent.

57 (3) The identifying information shall be retained based on the determined level of severity  
58 of the abuse or neglect:

59 (A) Eighteen years past the date of the complaint for all complaints determined by the local  
60 department to be founded as Level 1;

61 (B) Seven years past the date of the complaint for all complaints determined by the local  
62 department to be founded as Level 2;

63 (C) Three years past the date of the complaint for all complaints determined by the local  
64 department to be founded as Level 3; and

65 (D) When a person was found to have committed a Level 2 or Level 3 offense, and at least  
66 one year has passed since the event, upon a determination by the child protective service worker  
67 that the person has successfully completed alcohol or drug rehabilitation or counseling and the  
68 person is no longer a danger to the child.

NOTE: The purpose of this bill is to establish a time period for providing that records of

Department of Health and Human Services records of sustained and nonsustained allegations of child abuse or neglect are preserved for the purpose of preventing a person in which these findings are made may have their names removed from a registry that may prevent the person from holding jobs from which child abusers are disqualified, or from providing foster or kinship care to a child in the future.

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