

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 273

By Senators Trump, Woelfel, Plymale, Rucker,

Barrett, and Deeds

[Originating in the Committee on Health and Human

Resources; reported on January 27, 2023]

1 A BILL to amend and reenact §49-2-101, §49-2-102, and §49-2-809 of the Code of West Virginia,
2 1931, as amended; to amend said code by adding thereto three new articles, designated
3 §49-10-101, §49-10-102, and §49-10-103; to amend said code by adding thereto a new
4 article, designated §49-11-101, all relating to child welfare; continuing the Bureau for
5 Social Services; authorizing the Bureau for Social Services to provide care for children in
6 need of public service; providing the commissioner shall allocate child protective service
7 workers in counties according to the county population based on the 2020 Census;
8 requiring reporting to the Legislature of the allocation; requiring the department to have a
9 redundancy system in the event of a centralized intake outage; setting forth requirements
10 for data submission in the event a system exists; providing that the Bureau for Social
11 Services shall develop a merit-based system for specified employees; providing the merit-
12 based system shall be subject to the grievance process, except that there is no grievance
13 available for the same classification description impacted by regional pay disparities;
14 providing that for existing employees there is no grievance procedure for a regional pay
15 disparity for the same job classification; requiring reporting of statistical, systemic child
16 welfare information; and providing for emergency and legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-101. Authorization and responsibility; Bureau for Social Services.

1 ~~(a) The Department of Health and Human Resources is authorized to provide care, support~~
2 ~~and protective services for children who are handicapped by dependency, neglect, single parent~~
3 ~~status, mental or physical disability, or who for other reasons are in need of public service. The~~
4 ~~department is also authorized to accept children for care from their parent or parents, guardian,~~
5 ~~custodian or relatives and to accept the custody of children committed to its care by courts. The~~

6 ~~Department of Health and Human Resources or any county office of the department is also~~
7 ~~authorized and to accept temporary custody of children for care from any law-enforcement officer~~
8 ~~in an emergency situation. The Bureau for Social Services is hereby continued within the~~
9 ~~department. The bureau is under the immediate supervision of a commissioner.~~

10 (b) ~~The Department of Health and Human Resources is responsible for the care of the~~
11 ~~infant child of an unmarried mother who has been committed to the custody of the department~~
12 ~~while the infant is placed in the same licensed child welfare agency as his or her mother. The~~
13 ~~department may provide care for those children in family homes meeting required standards, at~~
14 ~~board or otherwise, through a licensed child welfare agency, or in a state institution providing care~~
15 ~~for dependent or neglected children. If practical, when placing any child in the care of a family or a~~
16 ~~child welfare agency the department shall select a family holding the same religious belief as the~~
17 ~~parents or relatives of the child or a child welfare agency conducted under religious auspices of the~~
18 ~~same belief as the parents or relatives. The Bureau for Social Services is authorized to provide~~
19 ~~care, support and protective services for children who are handicapped by dependency, neglect,~~
20 ~~single parent status, mental or physical disability, or who for other reasons are in need of public~~
21 ~~service. The Bureau for Social Services is also authorized to accept children for care from their~~
22 ~~parent or parents, guardian, custodian or relatives and to accept the custody of children committed~~
23 ~~to its care by courts. The Bureau for Social Services or any county office of the department is also~~
24 ~~authorized to accept temporary custody of children for care from any law-enforcement officer in an~~
25 ~~emergency situation.~~

26 (c) ~~The Bureau for Social Services is responsible for the care of the infant child of an~~
27 ~~unmarried mother who has been committed to the custody of the department while the infant is~~
28 ~~placed in the same licensed child welfare agency as his or her mother. The Bureau for Social~~
29 ~~Services may provide care for those children in family homes meeting required standards, at~~
30 ~~board or otherwise, through a licensed child welfare agency, or in a state institution providing care~~
31 ~~for dependent or neglected children. If practical, when placing any child in the care of a family or a~~

32 child welfare agency, the Bureau for Social Services shall select a family holding the same
33 religious belief as the parents or relatives of the child or a child welfare agency conducted under
34 religious auspices of the same belief as the parents or relatives.

§49-2-102. Minimum staffing complement for child protective services Staffing Allocation
for Child Protective Services Workers.

1 [Repealed.] Notwithstanding any other provision to the contrary, effective on the passage
2 of this amendment to this section, the commissioner shall allocate and station child protective
3 services workers in counties according to the county population based on the 2020 Census and
4 shall report the allocation to the Legislative Oversight Commission on Health and Human
5 Resources Accountability by July 1 each year.

1 **§49-2-809. Reporting procedures.**

1 (a) Reports of child abuse and neglect pursuant to this article shall be made immediately to
2 the department of child protective services by a method established by the ~~department~~Bureau for
3 Social Services: *Provided*, That if the method for reporting is web-based, the ~~Department of Health~~
4 and ~~Human Resources~~ Bureau for Social Services shall maintain a system for addressing
5 emergency situations that require immediate attention and shall be followed by a written report
6 within 48 hours if so requested by the receiving agency. The state ~~department~~ Bureau for Social
7 Services shall establish and maintain a 24-hour, seven-day-a-week telephone number to receive
8 calls reporting suspected or known child abuse or neglect. The department shall have a
9 redundancy for its system in the event of an outage to receive reports. This redundancy system
10 shall be transparent, meaning that it shall allow for reporting in the same means as if the outage
11 had not occurred and no time delay shall occur from when the outage occurs to when the
12 redundancy system begins to operate. This redundancy system shall be operational no later than
13 July 1, 2023. If the department contends that it currently has a redundancy system, it shall
14 describe the system, provide an operational date for the system, and explain why calls to
15 centralized intake were unanswered to the Joint Committee on Government and Finance by July

16 1, 2023.

17 (b) A copy of any report of serious physical abuse, sexual abuse, or assault shall be
18 forwarded by the department to the appropriate law-enforcement agency, the prosecuting
19 attorney, or the coroner or medical examiner's office. All reports under this article are confidential.
20 Reports of known or suspected institutional child abuse or neglect shall be made and received as
21 all other reports made pursuant to this article.

22 (c) The department shall annually submit a report in an electronic format, via the legislative
23 webpage, on July 1 to the Joint Committee on Government and Finance, which shall contain: how
24 many calls were made to centralized intake on a per county basis, how many calls were referred to
25 centralized intake on a per county basis, how many calls were screened out centralized intake on
26 a per county basis, and the time from referral to investigation on a per county basis.

ARTICLE 10. EXEMPTION FROM WEST VIRGINIA DIVISION OF PERSONNEL.

§49-10-101. Legislative Findings.

1 The Legislature finds the state of West Virginia is experiencing a child welfare crisis. From
2 2016-2020, the child protective service vacancy rate has increased from 9.7 percent to 33 percent.
3 This significant lack of staffing has caused a delay in response times to begin investigations as
4 indicated during the same time period with the average hours to start a child protective service
5 investigation after referral being 119.1 hours in 2016 to now averaging 428.1 hours in 2020. This
6 significant failure to begin the investigation can and has cost lives. The Legislature finds that the
7 Bureau for Social Services is having extreme difficulty recruiting and retaining child protective
8 service workers, youth service workers, adult protective service workers, and other related
9 workers, including necessary casework support personnel and managers at the county level, who
10 assist in the provision of services to vulnerable populations.

§49-10-102. Bureau for Social Service employees exempt from Division of Personnel.

1 (a) The West Virginia Bureau for Social Services shall develop a special merit-based
2 system, including an application appointment procedure for child protective service workers, youth

3 service workers, and adult protective workers, including necessary casework support personnel
4 and managers at the county level, who assist in the provision of services to vulnerable
5 populations. The procedure shall include classification specifications, and may include
6 compensation adjustments, retention incentives, and hiring approval by the commissioner. The
7 commissioner shall have the full authority to evaluate applicants for employment or promotion or
8 make classification determinations for positions within the special merit-based system. The
9 special merit-based system shall be approved by the Commissioner and such approval shall not
10 be unreasonably withheld. The pay rates and employment requirements shall be put into effect on
11 or before January 1, 2024. This special merit-based system shall apply to new employees in the
12 above referenced job classifications and for existing employees who elect, in writing to enter the
13 special merit-based system. The special merit-based system is exempt from the Division of
14 Personnel and any and all requirements of §29-6-1 et seq. of this code and any related rules.

15 (b) Funding for the pay rates and employment requirements shall be provided from the
16 appropriation to the Bureau of Social Services.

17 (c) The provisions of §6C-2-1 et seq. of this code shall be applicable to the employees of
18 the special merit-based system: *Provided*, That there is no requirement for uniformity regarding
19 the pay scale for the same classification between regions of the state to account for market rates
20 and demand for specific positions and the Legislature specifically finds there is no right to a
21 grievance for any such regional pay disparity by an employee of the special merit-based system or
22 any employee of the classified service.

23 (d) The commissioner may conduct periodic wage and compensation analysis of identified
24 market rates for the above positions as determined by the commissioner.

25 (e) The commissioner may promulgate emergency rules pursuant to the provisions of
26 §29A-3-15 of this code and shall propose rules for legislative approval in accordance with the
27 provisions of §29A-3-1 et seq. of this code to implement and comply with the provisions of this
28 section no later than to be considered during the 2024 Legislative Session.

§49-10-103. Bureau for Social Service employees no requirement uniformity in pay scale.

1 Within existing critical positions of the Bureau for Social Services, such as child protective
2 services workers, adult protective service workers, and youth service workers, and necessary
3 support service personnel, the Legislature finds that the Bureau for Social Services is having
4 extreme difficulty retaining child protective service workers, youth service workers, adult protective
5 service workers, and other related workers, including necessary casework support personnel and
6 managers at the county level, who assist in the provision of services to vulnerable populations. In
7 order to retain qualified employees in these crucial positions, there is no requirement for uniformity
8 regarding the pay scale for the same classification between regions of the state to account for
9 market rates and demand for specific positions. The Legislature specifically finds there is no right
10 to a grievance for any such regional pay disparity for the same job classification.

ARTICLE 11. SYSTEM REPORTING.

§49-11-101. Systemic reporting transparency.

1 The commissioner shall amend the existing child welfare data dashboard to report on
2 system-wide issues including but not limited to system-level performance indicators, intake hotline
3 performance indicators, field investigation performance indicators, open case performance
4 indicators, out-of-home placement performance indicators, and federally mandated performance
5 indicators. The commissioner shall propose rules for legislative approval in accordance with the
6 provisions of §29A-3-1 et seq. of this code to be considered during the 2024 session of the
7 Legislature. The commissioner may promulgate emergency rules pursuant to the provisions of
8 §29A-3-15 of this code.

NOTE: The purpose of this bill is to revise requirements regarding the allocation of child protective workers in counties based upon the population of the county. The department shall provide for a redundancy system for its centralized intake to provide for a seamless transition in the event of an outage. This system shall all for reporting in the same means in the same means as if the outage had not occurred and no time delay shall occur when the outage take place. The bill provides for data reporting on statistics from the time centralized intake is contacted. The bill creates a special merit-based system for critical, high need positions that the Bureau for Social Services it has had difficulty filing. This system provides that there can be a pay disparity among regions in the state based upon job

demand and market rates and this cannot be subject to a grievance even if it is within the same job classifications.

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