

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 647

By Senator Trump

[Passed March 11, 2023; in effect 90 days from
passage]

1 AN ACT to amend and reenact §49-4-601b of the Code of West Virginia, 1931, as amended,
2 relating to substantiation of abuse and neglect allegations; requiring that when an abuse
3 and/or neglect allegation is substantiated and a child abuse petition could be filed and the
4 department does not do so, records related to the allegation are sealed after one year,
5 absent a new allegation within that year; excluding persons from having records sealed
6 who have a substantiated case but no court case can be filed; requiring that substantiated
7 cases where the court does not adjudicate abuse and/or neglect be deemed
8 unsubstantiated; allowing a petition to seal a file after five years for persons found to be
9 creating an abusing parent; exceptions; criteria; directing the department to propose
10 legislative rules to effectuate the statutory directive; clarifying terms relating to abuse
11 and/or neglect; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

PART VI. Procedures in cases of child neglect or abuse.

§49-4-601b. Substantiation by the department of abuse and neglect; file purging; expungement; exceptions.

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

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

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

24 (1) Provisions for ensuring that an individual against whom the department has
25 substantiated an allegation of abuse and/or neglect, but against whom there is no judicial finding of
26 abuse and/or neglect, receives written notice of the substantiation in a timely manner. The written
27 notice shall at a minimum, state the following:

28 (A) The name of the child the person is alleged to have abused and/or neglected, the place
29 or places where the abuse and/or neglect allegedly occurred, and the date or dates on which the
30 abuse and/or neglect is alleged to have occurred;

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

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

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

40 (2) Provisions for ensuring that a person against whom an allegation of abuse and/or
41 neglect has been substantiated, but against whom there is no judicial finding of abuse and/or
42 neglect, may file a grievance with the department and provisions guaranteeing that he or she will
43 have a full and fair opportunity to be heard; and

44 (3) Provisions requiring the department to remove a person's name from an abuse and/or
45 neglect registry maintained by the department if a substantiated allegation is successfully
46 challenged in the board of review or in a court.

47 (d) Notwithstanding any provision of this code to the contrary:

48 (1) Where any allegation of abuse and/or neglect is substantiated and a petition for abuse
49 and/or neglect could be filed and the department does not file a petition, all department records
50 related to the allegation shall be sealed one year after the substantiation determination, unless
51 during the one-year period another allegation of child abuse and/or neglect against the person is
52 substantiated: *Provided*, That the provisions of this subdivision do not apply to a person against
53 whom an allegation is substantiated but the circumstances do not allow for the filing of a petition
54 for abuse and/or neglect;

55 (2) Where an allegation of child abuse and/or neglect is substantiated and a petition is filed
56 with the circuit court which does not end in an adjudication that abuse and/or neglect occurred, the
57 allegation shall be considered to have been unsubstantiated.

58 (3)(A) Where an allegation of child abuse and/or neglect is substantiated and a judicial
59 determination of child abuse and/or neglect is found, a person may petition the circuit court which
60 found the person to be an abusing parent to have his or her department record sealed after no less
61 than five years have elapsed since the finding of abuse and/or neglect is rendered: *Provided*, That
62 a petition may not be filed if the person had been the subject of a substantiated allegation of abuse
63 and/or neglect during the period of time after the finding and prior to the filing of the petition; and

64 (B) In its consideration of a petition filed under this subdivision, the court, in its discretion,
65 may look at all relevant factors related to the petition, including, but not limited to, efforts at
66 rehabilitation and family reunification.

67 (e) The sealing of a record pursuant to subsection (d) of this section means that any inquiry
68 of the department about a person having a record of child abuse and/or neglect for purposes of
69 possible employment shall be answered in the negative.

70 (f) The secretary is directed to propose legislative rules pursuant to §29A-1-1 *et seq.* of this
71 code to effectuate the amendments to this section enacted during the regular session of the
72 Legislature, 2023.