

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 647

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 25, 2023]

1 A BILL 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 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 neglect be deemed unsubstantiated;
8 allowing a petition to seal a file after five years for persons found only to be neglectful;
9 exceptions; criteria; directing the department to propose legislative rules to effectuate the
10 statutory directive; 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.

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

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

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

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

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

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

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

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

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

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

38 (1) Where any allegation of abuse and neglect is substantiated and a petition for abuse
39 and neglect could be filed and the department does not file a petition, all department records
40 related to the allegation shall be sealed one year after the substantiation determination, unless
41 during the one-year period another allegation of child abuse and neglect against the person is
42 substantiated: *Provided*, That the provisions of this subdivision do not apply to a person against
43 whom an allegation is substantiated but the circumstances do not allow for the filing of a petition
44 for abuse and neglect;

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

48 (3) (A) Where an allegation of child abuse and neglect is substantiated and a judicial
49 determination of child abuse and neglect is found, a person found to be neglectful but not abusive
50 may petition the circuit court which found the person to be neglectful to have his or her department
51 record sealed after no less than five years have elapsed since the finding of neglect is rendered:
52 *Provided*, That a petition may not be granted if the person had been the subject of a substantiated
53 allegation of abuse and neglect during the period of time after the finding and prior to the filing of
54 the petition; and

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

58 (e) The sealing of a record pursuant to subsection (d) of this section means that any
59 inquiry of the department about a person having a record of child abuse and neglect shall be
60 answered in the negative.

61 (f) The secretary is directed to propose legislative rules pursuant to §29A-1-1 et seq. of
62 this code.