

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5181

By Delegate Brooks and Martin

[Introduced January 25, 2024; Referred to the
Committee on Senior, Children, and Family Issues
then the Judiciary]

1 A BILL to amend and reenact §49-2-802 of the Code of West Virginia, 1931, as amended, relating
 2 to mandating audio recording during Child Protective Services investigations and
 3 interactions during visits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

Part VIII. Reports of Children Suspected of abuse.

§49-2-802. Establishment of child protective services; general duties and powers; administrative procedure; immunity from civil liability; cooperation of other state agencies.

1 (a) The department shall establish or designate in every county a local child protective
 2 services office to perform the duties and functions set forth in this article.

3 (b) The local child protective services office shall investigate all reports of child abuse or
 4 neglect. Under no circumstances may investigating personnel be relatives of the accused, the
 5 child or the families involved. In accordance with the local plan for child protective services, it shall
 6 provide protective services to prevent further abuse or neglect of children and provide for or
 7 arrange for and coordinate and monitor the provision of those services necessary to ensure the
 8 safety of children. The local child protective services office shall be organized to maximize the
 9 continuity of responsibility, care, and service of individual workers for individual children and
 10 families. Under no circumstances may the secretary or his or her designee promulgate rules or
 11 establish any policy which restricts the scope or types of alleged abuse or neglect of minor children
 12 which are to be investigated or the provision of appropriate and available services.

13 (c) Each local child protective services office shall:

14 (1) Receive or arrange for the receipt of all reports of children known or suspected to be
 15 abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all reports under the
 16 names of the children, the family, and any person substantiated as being an abuser or neglecter by

17 investigation of the Department of Health and Human Resources, with use of cross-filing of the
18 person's name limited to the internal use of the department: *Provided*, That local child protective
19 services offices shall disclose the names of alleged abusers pursuant to §49-2-802(c)(4) of this
20 code;

21 (2) Provide or arrange for emergency children's services to be available at all times;

22 (3) Upon notification of suspected child abuse or neglect, commence or cause to be
23 commenced a thorough investigation of the report and the child's environment. There shall be
24 audio recordings made of every investigatory or exploratory interaction between a representative
25 of CPS and a member of the public when that member of the public is currently under investigation
26 due to abuse and neglect allegations. Where these interactions involve home visits, or interviews
27 conducted in a place where the accused person enjoys an expectation of privacy, the
28 representative of CPS shall obtain informed consent or a court order before making such audio
29 recordings. As a part of this response, within 14 days there shall be a face-to-face interview with
30 the child or children and the development of a protection plan, if necessary, for the safety or health
31 of the child, which may involve law-enforcement officers or the court;

32 (4) Make efforts as soon as practicable to determine the military status of parents whose
33 children are subject to abuse or neglect allegations. If the office determines that a parent or
34 guardian is in the military, the department shall notify a Department of Defense family advocacy
35 program that there is an allegation of abuse and neglect that is screened in and open for
36 investigation that relates to that military parent or guardian;

37 (5) Respond immediately to all allegations of imminent danger to the physical well-being of
38 the child or of serious physical abuse. As a part of this response, within 72 hours there shall be a
39 face-to-face interview with the child or children and the development of a protection plan, which
40 may involve law-enforcement officers or the court; and

41 (6) In addition to any other requirements imposed by this section, when any matter
42 regarding child custody is pending, the circuit court or family court may refer allegations of child

43 abuse and neglect to the local child protective services office for investigation of the allegations as
44 defined by this chapter and require the local child protective services office to submit a written
45 report of the investigation to the referring circuit court or family court within the time frames set
46 forth by the circuit court or family court.

47 (d) In those cases in which the local child protective services office determines that the
48 best interests of the child require court action, the local child protective services office shall initiate
49 the appropriate legal proceeding.

50 (e) The local child protective services office shall be responsible for providing, directing, or
51 coordinating the appropriate and timely delivery of services to any child suspected or known to be
52 abused or neglected, including services to the child's family and those responsible for the child's
53 care.

54 (f) To carry out the purposes of this article, all departments, boards, bureaus, and other
55 agencies of the state or any of its political subdivisions and all agencies providing services under
56 the local child protective services plan shall, upon request, provide to the local child protective
57 services office any assistance and information as will enable it to fulfill its responsibilities.

58 (g)(1) In order to obtain information regarding the location of a child who is the subject of an
59 allegation of abuse or neglect, the Secretary of the Department of Health and Human Resources
60 may serve, by certified mail or personal service, an administrative subpoena on any corporation,
61 partnership, business, or organization for the production of information leading to determining the
62 location of the child.

63 (2) In case of disobedience to the subpoena, in compelling the production of documents,
64 the secretary may invoke the aid of:

65 (A) The circuit court with jurisdiction over the served party if the person served is a
66 resident; or

67 (B) The circuit court of the county in which the local child protective services office
68 conducting the investigation is located if the person served is a nonresident.

69 (3) A circuit court shall not enforce an administrative subpoena unless it finds that:

70 (A) The investigation is one the Division of Child Protective Services is authorized to make
71 and is being conducted pursuant to a legitimate purpose;

72 (B) The inquiry is relevant to that purpose;

73 (C) The inquiry is not too broad or indefinite;

74 (D) The information sought is not already in the possession of the Division of Child
75 Protective Services; and

76 (E) Any administrative steps required by law have been followed.

77 (4) If circumstances arise where the secretary, or his or her designee, determines it
78 necessary to compel an individual to provide information regarding the location of a child who is
79 the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a
80 subpoena from the circuit court with jurisdiction over the individual from whom the information is
81 sought.

82 (h) No child protective services caseworker may be held personally liable for any
83 professional decision or action taken pursuant to that decision in the performance of his or her
84 official duties as set forth in this section or agency rules promulgated thereupon. However, nothing
85 in this subsection protects any child protective services worker from any liability arising from the
86 operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton
87 misconduct, or intentional misconduct.

NOTE: The purpose of this bill is to mandate audio recording during Child Protective Services investigations and interactions during visits.

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