

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 528

By Senator Woelfel

[Originating in the Committee on Health and Human
Resources; and then to the Committee on the
Judiciary; reported February 20, 2024]

1 A BILL to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §49-2-101, §49-2-809, and §49-2-813 of said code; and to amend and
3 reenact §49-11-101 of said code, all relating to child welfare; defining terms; stating that
4 protective services include both an investigative track and a family assessment track;
5 requiring the Bureau for Social Services to establish a system of differential response and
6 use appropriate screening tools to respond to reports received by centralized intake that
7 complies with relevant law; providing data retention requirements; and amending
8 requirements of the child welfare data dashboard.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-201. Definitions related, but not limited, to child abuse and neglect.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, child abuse and neglect, except in those instances where
3 a different meaning is provided or the context in which the word is used clearly indicates that a
4 different meaning is intended.

5 "Abandonment" means any conduct that demonstrates the settled purpose to forego the
6 duties and parental responsibilities to the child:

7 "Abused child" means:

8 (1) A child whose health or welfare is being harmed or threatened by:

9 (A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to
10 inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury,
11 upon the child or another child in the home. Physical injury may include an injury to the child as a
12 result of excessive corporal punishment;

13 (B) Sexual abuse or sexual exploitation;

14 (C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of
15 §61-2-14h of this code;

16 (D) Domestic violence as defined in §48-27-202 of this code; or

17 (E) Human trafficking or attempted human trafficking, in violation of §61-14-2 of this code.

18 (2) A child conceived as a result of sexual assault, as that term is defined in this section, or
19 as a result of the violation of a criminal law of another jurisdiction which has the same essential
20 elements: *Provided*, That no victim of sexual assault may be determined to be an abusive parent,
21 as that term is defined in this section, based upon being a victim of sexual assault.

22 "Abusing parent" means a parent, guardian, or other custodian, regardless of his or her
23 age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as
24 alleged in the petition charging child abuse or neglect.

25 "Battered parent" for the purposes of §49-4-601 *et seq.* of this code means a respondent
26 parent, guardian, or other custodian who has been adjudicated by the court to have not condoned
27 the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due
28 to being the victim of domestic violence as defined by §48-27-202 of this code, which was
29 perpetrated by the same person or persons determined to have abused or neglected the child or
30 children.

31 "Child abuse and neglect" or "child abuse or neglect" means any act or omission that
32 creates an abused child or a neglected child as those terms are defined in this section.

33 "Child abuse and neglect services" means social services which are directed toward:

34 ~~(A)~~ (1) Protecting and promoting the welfare of children who are abused or neglected;

35 ~~(B)~~ (2) Identifying, preventing, and remedying conditions which cause child abuse and
36 neglect;

37 ~~(C)~~ (3) Preventing the unnecessary removal of children from their families by identifying
38 family problems and assisting families in resolving problems which could lead to a removal of
39 children and a breakup of the family;

40 ~~(D)~~ (4) In cases where children have been removed from their families, providing time-
41 limited reunification services to the children and the families so as to reunify those children with

42 their families, or some portion of the families;

43 ~~(E)~~ (5) Placing children in suitable adoptive homes when reunifying the children with their
44 families, or some portion of the families, is not possible or appropriate; and

45 ~~(F)~~ (6) Assuring the adequate care of children or juveniles who have been placed in the
46 custody of the department or third parties.

47 "Condition requiring emergency medical treatment" means a condition which, if left
48 untreated for a period of a few hours, may result in permanent physical damage; that condition
49 includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture,
50 unconsciousness, and evidence of ingestion of significant amounts of a poisonous substance.

51 "Family assessment response" means a response to selected reports of child abuse and
52 neglect using a family-centered approach that is protection- and prevention-oriented and that
53 evaluates the strengths and needs of the child's family, as well as the conditions of the child. These
54 cases may be staffed by socially necessary service providers or other providers contracted by the
55 Department of Human Services to conduct this assessment. Any external service providers
56 contracted by the Department of Human Services to conduct a family assessment response shall
57 be trained to recognize signs of abuse and neglect.

58 "Imminent danger to the physical well-being of the child" means an emergency situation in
59 which the welfare or the life of the child is threatened. These conditions may include an emergency
60 situation when there is reasonable cause to believe that any child in the home is or has been
61 sexually abused or sexually exploited, or reasonable cause to believe that the following conditions
62 threaten the health, life, or safety of any child in the home:

63 ~~(A)~~ (1) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling, babysitter,
64 or other caretaker;

65 ~~(B)~~ (2) A combination of physical and other signs indicating a pattern of abuse which may
66 be medically diagnosed as battered child syndrome;

67 ~~(C)~~ (3) Nutritional deprivation;

68 ~~(D)~~ (4) Abandonment by the parent, guardian, or custodian;

69 ~~(E)~~ (5) Inadequate treatment of serious illness or disease;

70 ~~(F)~~ (6) Substantial emotional injury inflicted by a parent, guardian, or custodian;

71 ~~(G)~~ (7) Sale or attempted sale of the child by the parent, guardian, or custodian;

72 ~~(H)~~ (8) The parent, guardian, or custodian's abuse of alcohol or drugs or other controlled
73 substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a
74 degree as to pose an imminent risk to a child's health or safety; or

75 ~~(I)~~ (9) Any other condition that threatens the health, life, or safety of any child in the home.

76 "Investigative assessment response" means a response to reports of child abuse and
77 neglect using a formal information gathering process to determine whether a child is abused,
78 neglected, or neglected and abused.

79 "Neglected child" means a child:

80 ~~(A)~~ (1) Whose physical or mental health is harmed or threatened by a present refusal,
81 failure, or inability of the child's parent, guardian, or custodian to supply the child with necessary
82 food, clothing, shelter, supervision, medical care, or education, when that refusal, failure, or
83 inability is not due primarily to a lack of financial means on the part of the parent, guardian, or
84 custodian;

85 ~~(B)~~ (2) Who is presently without necessary food, clothing, shelter, medical care, education,
86 or supervision because of the disappearance or absence of the child's parent or custodian; or

87 ~~(C)~~ (3) "Neglected child" does not mean a child whose education is conducted within the
88 provisions of §18-8-1 *et seq.* of this code.

89 "Petitioner or copetitioner" means the department or any reputable person who files a child
90 abuse or neglect petition pursuant to §49-4-601 *et seq.* of this code.

91 "Permanency plan" means the part of the case plan which is designed to achieve a
92 permanent home for the child in the least restrictive setting available.

93 "Respondent" means all parents, guardians, and custodians identified in the child abuse

94 and neglect petition who are not petitioners or copetitioners.

95 "Sexual abuse" means:

96 (A) (1) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-
97 8c-3 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or
98 knowingly procures another person to engage in, with a child notwithstanding the fact that for a
99 child who is less than 16 years of age, the child may have willingly participated in that conduct or
100 the child may have suffered no apparent physical, mental, or emotional injury as a result of that
101 conduct or, for a child 16 years of age or older, the child may have consented to that conduct or the
102 child may have suffered no apparent physical injury or mental or emotional injury as a result of that
103 conduct;

104 (B) (2) Any conduct where a parent, guardian, or custodian displays his or her sex organs
105 to a child, or procures another person to display his or her sex organs to a child, for the purpose of
106 gratifying the sexual desire of the parent, guardian, or custodian, of the person making that
107 display, or of the child, or for the purpose of affronting or alarming the child; or

108 (C) (3) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

109 "Sexual assault" means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-5
110 of this code.

111 "Sexual contact" means sexual contact as that term is defined in §61-8b-1 of this code.

112 "Sexual exploitation" means an act where:

113 (A) (1) A parent, custodian, or guardian, whether for financial gain or not, persuades,
114 induces, entices, or coerces a child to engage in sexually explicit conduct as that term is defined in
115 §61-8c-1 of this code;

116 (B) (2) A parent, guardian, or custodian persuades, induces, entices, or coerces a child to
117 display his or her sex organs for the sexual gratification of the parent, guardian, custodian, or a
118 third person, or to display his or her sex organs under circumstances in which the parent,
119 guardian, or custodian knows that the display is likely to be observed by others who would be

120 affronted or alarmed; or

121 ~~(C)~~ (3) A parent, guardian, or custodian knowingly maintains or makes available a child for
122 the purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this
123 code.

124 "Sexual intercourse" means sexual intercourse as that term is defined in §61-8b-1 of this
125 code.

126 "Sexual intrusion" means sexual intrusion as that term is defined in §61-8b-1 of this code.

127 "Serious physical abuse" means bodily injury which creates a substantial risk of death,
128 causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or
129 impairment of the function of any bodily organ.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

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

1 (a) The Bureau for Social Services is continued within the department. The bureau is under
2 the immediate supervision of a commissioner.

3 (b) The Bureau for Social Services is authorized to provide care, support, and protective
4 services for children who are handicapped by dependency, neglect, single parent status, mental or
5 physical disability, or who for other reasons are in need of public service. The bureau is also
6 authorized to accept children for care from their parent or parents, guardian, custodian, or
7 relatives, and to accept the custody of children committed to its care by courts. Protective services
8 shall include the screening of reports, the performance of an assessment using either a family
9 assessment response or an investigative assessment response, casework, or other services to
10 help parents, guardians, other caretakers, and the court to prevent abuse, neglect, or abuse and
11 neglect, to protect children, and preserve and strengthen families. The bureau or any county office
12 of the department is also authorized to accept temporary custody of children for care from any law-
13 enforcement officer in an emergency situation.

14 (c) The bureau is responsible for the care of the infant child of an unmarried mother who

15 has been committed to the custody of the department while the infant is placed in the same
16 licensed child welfare agency as his or her mother. The bureau provides care for those children in
17 family homes meeting required standards, at board or otherwise, through a licensed child welfare
18 agency, or in a state institution providing care for dependent or neglected children. If practical,
19 when placing any child in the care of a family or a child welfare agency, the bureau shall select a
20 family holding the same religious belief as the parents or relatives of the child, or a child welfare
21 agency conducted under religious auspices of the same belief as the parents or relatives.

1 (d) The Bureau of Social Services shall utilize a system of differential response that is
2 based upon the severity of the report of child abuse or neglect which may include an investigative
3 assessment of child abuse or neglect, family assessment and services, or referrals to prevention
4 services.

§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 Bureau for Social
3 Services: *Provided*, That if the method for reporting is web-based, the Bureau for Social Services
4 shall maintain a system for addressing emergency situations that require immediate attention and
5 shall be followed by a written report within 48 hours if so requested by the receiving agency. The
6 Bureau for Social Services shall establish and maintain a 24-hour, seven-day-a-week telephone
7 number to receive calls reporting suspected or known child abuse or neglect. Notwithstanding any
8 other provisions of the code to the contrary, the Bureau for Social Services shall utilize a system of
9 differential response whereby when the Bureau for Social Services receives reports through its
10 centralized intake system, the Bureau for Social Services shall utilize a differential response which
11 shall comply with all relevant statutory provisions including but not limited to the frequency,
12 severity, and overall risk to the child, and shall use the appropriate maltreatment screening tool to
13 evaluate and screen reports. The Bureau for Social Services shall determine the appropriate
14 assessment track for the matter:

15 (1) The screening tool shall analyze risk-indicative factors, including but not limited to, prior
16 child protective service involvement, and recent repeat reports made to centralized intake;

17 (2) The screening tool shall include information on the role of the reporter, the age of the
18 child, the presence of prior child protective service involvement, and the number and recency of
19 reports made to centralized intake.

20 ~~(b) The department shall have a redundancy for its system in the event of an outage to~~
21 ~~receive reports. This redundancy system shall be transparent, meaning that it shall allow for~~
22 ~~reporting in the same means as if the outage had not occurred and no time delay shall occur from~~
23 ~~when the outage occurs to when the redundancy system begins to operate. This redundancy~~
24 ~~system shall be operational no later than July 1, 2023. If the department contends that it currently~~
25 ~~has a redundancy system, it shall describe the system, provide an operational date for the system,~~
26 ~~and explain why calls to centralized intake were unanswered to the Joint Committee on~~
27 ~~Government and Finance by July 1, 2023~~

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

33 ~~(d)~~ (c) The department shall annually submit a report in an electronic format, via the
34 legislative webpage, on July 1 to the Joint Committee on Government and Finance, which shall
35 contain ~~H~~how many calls were made to centralized intake on a per county basis, how many calls
36 were referred to centralized intake on a per county basis, how many calls were screened out
37 centralized intake on a per county basis, and the time from referral to investigation on a per county
38 basis.

39 (d) All reports made to centralized intake by email, fax, letter, or other electronic form from
40 a reporter, shall be retained in the Comprehensive Child Welfare Information System in its original

41 format for at least 12 months.

42 (e) Audio files recorded from reports made to centralized intake shall be retained in the
43 Comprehensive Child Welfare Information System for at least 12 months.

44 (f) The system of differential response and appropriate screening tool shall be fully
45 implemented and operational by July 1, 2025.

§49-2-813. Statistical index; reports.

1 The Department of ~~Health and Human Resources~~ Services shall maintain a statewide
2 child abuse and neglect statistical index of all substantiated and unsubstantiated allegations of
3 child abuse or neglect cases to include information contained in the reports required under this
4 article and any other information considered appropriate by the Secretary of the Department of
5 ~~Health and Human Resources~~ Services. Nothing in the statistical data index maintained by the
6 Department of ~~Health and Human Resources~~ Services may contain information of a specific
7 nature that would identify individual cases or persons. Notwithstanding ~~section two hundred one,~~
8 ~~article four of this chapter,~~ §49-4-201 of this code, the Department of ~~Health and Human~~
9 ~~Resources~~ Services shall provide copies of the statistical data maintained pursuant to this
10 subsection to the State Police child abuse and neglect investigations unit to carry out its
11 responsibilities to protect children from abuse and neglect.

ARTICLE 11. SYSTEM REPORTING.

§49-11-101. Systemic reporting transparency; ~~rulemaking.~~

1 (a) The commissioner shall change the existing child welfare data dashboard by July 1,
2 2023, 2024, and shall update the child welfare data dashboard monthly thereafter to report on
3 system-wide issues, including, but not limited to, system-level performance indicators, intake
4 hotline performance indicators, field investigation performance indicators, open case performance
5 indicators, out-of-home placement performance indicators, and federally mandated performance
6 indicators, and information on child fatality and near fatality information, and information on
7 children in non-placement or temporary lodging status.

8 (b) The child welfare data dashboard shall include workforce information, including but not
9 limited to, the number of child protective services staff that have been hired but who have not
10 completed training, the number and vacancies of adoption workers, and the number and
11 vacancies of home finders.

12 (c) Starting July 1, 2024, the data reported on the child welfare data dashboard shall be
13 trended over time rather than represented as a point in time number. Beginning July 1, 2024, the
14 data shall be saved in a way to allow public users to search the dashboard yearly, by reporting
15 date, and by county. The Department of Human Services may apply data suppression in order to
16 protect individual identification as necessary.