

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

House Bill 2542

By Delegates Brooks, Pritt, Green, Masters, Kump,

Mazzocchi, Canterbury, and Kyle

[Enter References]

1 A BILL to amend and reenact §49-2-802 of the Code of West Virginia, 1931, as amended, relating
2 to permitting 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 may 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 a reasonable expectation of privacy, the
28 representative of CPS shall obtain informed consent or a court order before making such audio
29 recordings. An audio recording shall be stored for the duration the case is open. As a part of this
30 response, within 14 days there shall be a face-to-face interview with the child or children and the
31 development of a protection plan, if necessary, for the safety or health of the child, which may
32 involve law-enforcement officers or the court;

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

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

(6) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family court may refer allegations of child abuse and neglect to the local child protective services office for investigation of the allegations as defined by this chapter and require the local child protective services office to submit a written report of the investigation to the referring circuit court or family court within the time frames set forth by the circuit court or family court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to permit 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.