

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 647

By Senator Trump

[Introduced February 15, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §49-4-601b of the Code of West Virginia, 1931, as amended,
2 relating to substantiation of child abuse and neglect allegations; directing that Department
3 of Health and Human Resources files of unsubstantiated allegations of child abuse and
4 neglect shall be expunged one year after the determination is made unless a substantiated
5 allegation is made within the one-year period; directing that department abuse and neglect
6 files be expunged after five years where the allegation is substantiated but either no
7 petition is filed or the court finds no abuse or neglect; allowing persons adjudicated to be
8 neglectful to petition the court for removal from the central registry and have their
9 department file sealed after five or more years on the registry; requiring that no
10 substantiated allegations are made against the person during the period after the finding of
11 neglect and prior to the filing of a petition; and setting forth factors which may be
12 considered when reviewing a petition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS. PART VI.

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

10 (c) The secretary of the department shall promulgate legislative rules in accordance with

11 §29A-3-1 *et seq.* of this code, within the applicable time limit to be considered by the Legislature
12 during its regular session in the year 2021, which rules shall include, at a minimum:

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

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

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

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

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

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

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

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

37 (1) Where any allegation of abuse and neglect is not substantiated, all department records
38 related to the allegation shall be expunged from department records one year after the
39 unsubstantiated determination is made, unless during the one year period another allegation of
40 child abuse and neglect against the person is substantiated;

41 (2) Where an allegation of child abuse and neglect have been substantiated but no petition
42 based upon the allegation is filed with the circuit court or where there is a petition filed and the
43 court does not find that abuse and neglect occurred all records related to the allegation shall be
44 expunged from five years after the judicial determination unless, during the five year period,
45 another allegation of child abuse and neglect is substantiated;

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

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

NOTE: The purpose of this bill is to change the amounts of time a name will appear on the child abuse registry for various offenses.

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