

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 498**

4 (By Senators Foster and Klempa)

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6 [Originating in the Committee on the Judiciary;

7 reported February 24, 2012.]

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11 A BILL to amend and reenact §9-6-8 and §9-6-9 of the Code of West  
12 Virginia, 1931, as amended, all relating to adult protective  
13 services and reports of abuse, neglect or exploitation of  
14 vulnerable adults; permitting distribution of adult protective  
15 services records to certain individuals and entities;  
16 permitting distribution of a summary of those records to  
17 certain other individuals and entities; protecting the  
18 confidentiality of the identity of the reporter; and requiring  
19 a program for notifying mandatory reporters at the outset and  
20 conclusion of investigations.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as  
23 amended, be amended and reenacted, all to read as follows:

24 **ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

1 **§9-6-8. Confidentiality of records.**

2 (a) Except as otherwise provided in this section, all records  
3 of the department, state and regional long-term care ombudsmen,  
4 nursing home or facility administrators, the office of health  
5 facility licensure and certification and all protective services  
6 agencies concerning an adult or facility resident under this  
7 article ~~shall be~~ are confidential and ~~shall~~ may not be released,  
8 except in accordance with the provisions of section eleven of this  
9 article.

10 (b) Unless the adult concerned is receiving adult protective  
11 services or unless there are pending proceedings with regard to the  
12 adult, the records maintained by the adult protective services  
13 agency shall be destroyed thirty years following their preparation.  
14 ~~A circuit court or the Supreme Court of Appeals may subpoena such~~  
15 ~~records, but shall, before permitting their use in connection with~~  
16 ~~any court proceeding, review the same for relevancy and materiality~~  
17 ~~to the issues in the proceeding, and may issue such order to limit~~  
18 ~~the examination and use of such records or any part requirements of~~  
19 ~~the litigation as shall be just.~~

20 (c) Notwithstanding the provisions of subsection (a) of this  
21 section or any other provision of this code to the contrary, all  
22 records concerning reports of abuse, neglect or exploitation of  
23 vulnerable adults, including all records generated as a result of  
24 such reports, may be made available to:

1 (1) Employees or agents of the department who need access to  
2 the records for official business.

3 (2) Any law-enforcement agency investigating a report of known  
4 or suspected abuse, neglect or exploitation of a vulnerable adult.

5 (3) The prosecuting attorney of the judicial circuit in which  
6 the vulnerable adult resides or in which the alleged abuse, neglect  
7 or exploitation occurred.

8 (4) A circuit court or the Supreme Court of Appeals  
9 subpoenaing the records. The court shall, before permitting use of  
10 the records in connection with any court proceeding, review the  
11 records for relevancy and materiality to the issues in the  
12 proceeding. The court may issue an order to limit the examination  
13 and use of the records or any part of the record.

14 (5) A grand jury, by subpoena, upon its determination that  
15 access to the records is necessary in the conduct of its official  
16 business.

17 (6) The recognized protection and advocacy agency for the  
18 disabled of the State of West Virginia.

19 (7) The victim.

20 (8) The victim's legal representative, unless he or she is the  
21 subject of an investigation under this article.

22 (d) Notwithstanding the provisions of subsection (a) of this  
23 section or any other provision of this code to the contrary,  
24 summaries concerning substantiated investigative reports of abuse,

1 neglect or exploitation of adults may be made available to:

2 (1) Any person who the department has determined to have  
3 abused, neglected or exploited the victim.

4 (2) Any appropriate official of the state or regional long-  
5 term care ombudsman investigating a report of known or suspected  
6 abuse, neglect or exploitation of a vulnerable adult.

7 (3) Any person engaged in bona fide research or auditing, as  
8 defined by the department. However, information identifying the  
9 subjects of the report may not be made available to the researcher.

10 (4) Employees or agents of an agency of another state that has  
11 jurisdiction to investigate known or suspected abuse, neglect or  
12 exploitation of vulnerable adults.

13 (5) A professional person when the information is necessary  
14 for the diagnosis and treatment of, and service delivery to, a  
15 vulnerable adult.

16 (6) A department administrative hearing officer when the  
17 hearing officer determines the information is necessary for the  
18 determination of an issue before the officer.

19 (e) The identity of any person reporting abuse, neglect or  
20 exploitation of a vulnerable adult may not be released, without  
21 that person's written consent, to any person other than employees  
22 of the department responsible for protective services or the  
23 appropriate prosecuting attorney or law-enforcement agency. This  
24 subsection grants protection only for the person who reported the

1 abuse, neglect or exploitation and protects only the fact that the  
2 person is the reporter. This subsection does not prohibit the  
3 subpoena of a person reporting the abuse, neglect or exploitation  
4 when deemed necessary by the prosecuting attorney or the department  
5 to protect a vulnerable adult who is the subject of a report, if  
6 the fact that the person made the report is not disclosed.

7 **§9-6-9. Mandatory reporting of incidences of abuse, neglect or**  
8 **emergency situation.**

9 (a) If any medical, dental or mental health professional,  
10 Christian Science practitioner, religious healer, social service  
11 worker, law-enforcement officer, humane officer, state or regional  
12 ombudsman or any employee of any nursing home or other residential  
13 facility has reasonable cause to believe that an incapacitated  
14 adult or facility resident is or has been neglected, abused or  
15 placed in an emergency situation, or if such person observes an  
16 incapacitated adult or facility resident being subjected to  
17 conditions that are likely to result in abuse, neglect or an  
18 emergency situation, the person shall immediately report the  
19 circumstances pursuant to the provisions of section eleven of this  
20 article: *Provided*, That nothing in this article is intended to  
21 prevent individuals from reporting on their own behalf.

22 (b) In addition to those persons and officials specifically  
23 required to report situations involving suspected abuse or neglect  
24 of an incapacitated adult or facility resident or the existence of

1 an emergency situation, any other person may make such a report.

2 (c) The secretary shall develop a form for the filing of  
3 written complaints, as provided by section eleven of this article,  
4 and provide these forms to all nursing homes or other residential  
5 facilities, hospitals, ombudsmen and adult protective service  
6 agencies in this state. The forms shall be designed to protect the  
7 identity of the complainant, if desired, and to facilitate the  
8 prompt filing of complaints.

9 (d) The Department of Health and Human Resources shall develop  
10 and implement a procedure to notify any person mandated to report  
11 suspected abuse and neglect of an incapacitated adult or facility  
12 resident of whether an investigation into the reported suspected  
13 abuse or neglect has been initiated and when the investigation is  
14 completed.