

1 **H. B. 4516**

2  
3 (By Delegates Perdue, Moore, Fleischauer, Brown,  
4 Hatfield and Poore)  
5

6 [Introduced February 14, 2012; referred to the  
7 Committee on Health and Human Resources then the  
8 Judiciary.]  
9

10 A BILL to amend and reenact §9-6-8 of the Code of West Virginia,  
11 1931, as amended, relating to human services; social services  
12 for adults; confidentiality of adult protective services  
13 records; and providing exceptions to confidentiality of those  
14 records.

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

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

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

19 **§9-6-8. Confidentiality of records.**

20 (a) Except as otherwise provided in this section, all records  
21 of the department, state and regional long-term care ombudsmen,  
22 nursing home or facility administrators, the office of health  
23 facility licensure and certification and all protective services  
24 agencies concerning an adult or facility resident under this

1 article ~~shall be~~ are confidential and ~~shall~~ may not be released,  
2 except in accordance with the provisions of section eleven of this  
3 article.

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

14 (c) Notwithstanding the provisions of subsection (a) of this  
15 section or any other provision of this code to the contrary, all  
16 records concerning reports of abuse, neglect or exploitation of  
17 vulnerable adults, including all records generated as a result of  
18 such reports, may be made available to:

19 (1) Employees or agents of the department.

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

22 (3) The prosecuting attorney of the judicial circuit in which  
23 the vulnerable adult resides or in which the alleged abuse, neglect  
24 or exploitation occurred.

1       (4) A circuit court or the Supreme Court of Appeals  
2 subpoenaing the records. The court shall, before permitting use of  
3 the records in connection with any court proceeding, review the  
4 records for relevancy and materiality to the issues in the  
5 proceeding. The court may issue an order to limit the examination  
6 and use of the records or any part of the record.

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

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

12       (7) The victim.

13       (8) The victim's legal representative, unless he or she is the  
14 subject of an investigation.

15       (d) Notwithstanding the provisions of subsection (a) of this  
16 section or any other provision of this code to the contrary,  
17 summaries concerning substantiated investigative reports of abuse,  
18 neglect or exploitation of adults may be made available to:

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

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

24       (3) Any person engaged in bona fide research or auditing.

1 However, information identifying the subjects of the report may not  
2 be made available to the researcher.

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

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

9 (6) A department administrative hearing officer when the  
10 hearing officer determines the information is necessary for the  
11 determination of an issue before the officer.

12 (e) The identity of any person reporting abuse, neglect or  
13 exploitation of a vulnerable adult may not be released, without  
14 that person's written consent, to any person other than employees  
15 of the department responsible for protective services or the  
16 appropriate prosecuting attorney or law-enforcement agency. This  
17 subsection grants protection only for the person who reported the  
18 abuse, neglect or exploitation and protects only the fact that the  
19 person is the reporter. This subsection does not prohibit the  
20 subpoena of a person reporting the abuse, neglect or exploitation  
21 when deemed necessary by the prosecuting attorney or the department  
22 to protect a vulnerable adult who is the subject of a report, if  
23 the fact that the person made the report is not disclosed.

NOTE: The purpose of this bill is to allow for greater cooperation concerning reports of abuse, neglect or exploitation of vulnerable adults among different entities, the protected person, or persons having a fiduciary relationship to the protected person for the detection, prevention and correction of abuse, neglect and exploitation of all disabled adults or elderly persons. The bill allows the release of information to the perpetrator of abuse, neglect or exploitation of a protected person consistent with due process.

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