

1 **ENROLLED**

2 **Senate Bill No. 108**

3 (BY SENATORS LAIRD, STOLLINGS, JENKINS, PLYMALE AND MILLER)

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5 [Passed April 13, 2013; in effect ninety days from passage.]  
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10 AN ACT to repeal §48-25A-1, §48-25A-2 and §48-25A-3 of the Code of  
11 West Virginia, 1931, as amended; to repeal §48-27A-1,  
12 §48-27A-2 and §48-27A-3 of said code; to repeal §49-5D-5 of  
13 said code; and to amend said code by adding thereto a new  
14 article, designated §61-12A-1, §61-12A-2, §61-12A-3 and §61-  
15 12A-4, all relating to creating a Fatality and Mortality  
16 Review Team; setting forth membership of the team; setting  
17 forth terms of office; providing that members of the team are  
18 not to be compensated or reimbursed expenses; setting forth  
19 responsibilities of the team; requiring team to establish  
20 certain advisory panels; providing that team members will also  
21 serve as advisory panel members; requiring the Commissioner of  
22 the Bureau for Public Health, in consultation with the team,  
23 to promulgate legislative rules; providing for certain actions  
24 the team and advisory panels may not take in exercising their

1 duties; requiring an annual report; providing confidentiality;  
2 setting forth record-keeping requirements; authorizing access  
3 to certain records; and requiring certain agencies to  
4 cooperate with the team and advisory panels.

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

6 That §48-25A-1, §48-25A-2 and §48-25A-3 of the Code of West  
7 Virginia, 1931, as amended, be repealed; that §48-27A-1, §48-27A-2  
8 and §48-27A-3 of said code be repealed; that §49-5D-5 of said code  
9 be repealed; and that said code be amended by adding thereto a new  
10 article, designated §61-12A-1, §61-12A-2, §61-12A-3 and §61-12A-4,  
11 all to read as follows:

12 **ARTICLE 12A. FATALITY AND MORTALITY REVIEW TEAM.**

13 **§61-12A-1. Fatality and Mortality Review Team.**

14 (a) The Fatality and Mortality Review Team is created under  
15 the Bureau for Public Health. The Fatality and Mortality Review  
16 Team is a multidisciplinary team created to oversee and coordinate  
17 the examination, review and assessment of:

18 (1) The deaths of all persons in West Virginia who die as a  
19 result of unintentional prescription or pharmaceutical drug  
20 overdoses;

21 (2) The deaths of children under the age of eighteen years;

22 (3) The deaths resulting from suspected domestic violence; and

23 (4) The deaths of all infants and all women who die during  
24 pregnancy, at the time of birth or within one year of the birth of

1 a child.

2 (b) The Fatality and Mortality Review Team shall consist of  
3 the following members:

4 (1) The Chief Medical Examiner in the Bureau for Public Health  
5 or his or her designee, who is to serve as the chairperson and who  
6 is responsible for calling and coordinating meetings of the  
7 Fatality and Mortality Review Team and meetings of any advisory  
8 panel created by the Fatality and Mortality Review Team;

9 (2) The Commissioner of the Bureau for Public Health or his or  
10 her designee;

11 (3) The Superintendent of the West Virginia State Police or  
12 his or her designee; and

13 (4) A prosecuting attorney, as appointed by the Governor, who  
14 shall serve for a term of three years unless otherwise reappointed  
15 to a second or subsequent term. A prosecuting attorney appointed  
16 to the team shall continue to serve until his or her term expires  
17 or until his or her successor has been appointed.

18 (c) Each member shall serve without additional compensation  
19 and may not be reimbursed for any expenses incurred in the  
20 discharge of his or her duties under the provisions of this  
21 article.

22 **§61-12A-2. Responsibilities of the Fatality and Mortality Review**  
23 **Team and Advisory Panels.**

24 (a) The Fatality and Mortality Review Team shall establish the

1 following advisory panels to carry out the purposes of this article  
2 including:

3 (1) An unintentional pharmaceutical drug overdose fatality  
4 review panel to examine, analyze and review deaths resulting from  
5 unintentional prescription or pharmaceutical drug overdose;

6 (2) A child fatality review panel to examine, analyze and  
7 review deaths of children under the age of eighteen years;

8 (3) A domestic violence fatality review panel to examine,  
9 analyze and review deaths resulting from suspected domestic  
10 violence;

11 (4) An infant and maternal mortality review panel to examine,  
12 analyze and review the deaths of infants and women who die during  
13 pregnancy, at the time of birth or within one year of the birth of  
14 a child.

15 (b) The members of the Fatality and Mortality Review Team  
16 shall serve as members of each of the advisory panels established  
17 pursuant to this article.

18 (c) The Commissioner of the Bureau for Public Health, in  
19 consultation with the Fatality and Mortality Review Team, shall  
20 propose rules for legislative approval in accordance with article  
21 three, chapter twenty-nine-a of this code that the advisory panels  
22 shall follow. Those rules shall include, at a minimum:

23 (1) The representatives that shall be included on each  
24 advisory panel;

1 (2) The responsibilities of each of the advisory panels,  
2 including but not limited to, each advisory panel's responsibility  
3 to:

4 (A) Review and analyze all deaths as required by this article;

5 (B) Ascertain and document the trends, patterns and risk  
6 factors; and

7 (C) Provide statistical information and analysis regarding the  
8 causes of certain fatalities;

9 (3) The standard procedures for the conduct of the advisory  
10 panels;

11 (4) The processes and protocols for the review and analysis of  
12 fatalities and mortalities of those who were not suffering from  
13 mortal diseases shortly before death;

14 (5) The processes and protocols to ensure confidentiality of  
15 records obtained by the advisory panel;

16 (6) That the advisory panels must submit a report to the  
17 Fatality and Mortality Review Team annually, the date the annual  
18 report must be submitted and the contents of the annual report;

19 (7) That the advisory panel may include any additional persons  
20 with expertise or knowledge in a particular field that it  
21 determines are needed in the review and consideration of a  
22 particular case as a result of a death in subsection (a), section  
23 one of this article;

24 (8) That the advisory panel may provide training for state

1 agencies and local multidisciplinary teams on the matters examined,  
2 reviewed and analyzed by the advisory panel;

3 (9) The advisory panel's responsibility to promote public  
4 awareness on the matters examined, reviewed and analyzed by the  
5 advisory panel;

6 (10) Actions the advisory panel may not take or engage in  
7 including:

8 (A) Call witnesses or take testimony from individuals involved  
9 in the investigation of a fatality;

10 (B) Contact a family member of the deceased;

11 (C) Enforce any public health standard or criminal law or  
12 otherwise participate in any legal proceeding; or

13 (D) Otherwise take any action which, in the determination of  
14 a prosecuting attorney or his or her assistants, impairs the  
15 ability of the prosecuting attorney, his or her assistants or any  
16 law-enforcement officer to perform his or her statutory duties; and

17 (11) Other rules as may be deemed necessary to effectuate the  
18 purposes of this article.

19 (d) The Fatality and Mortality Review Team shall submit an  
20 annual report to the Governor and to the Legislative Oversight  
21 Commission on Health and Human Resources Accountability concerning  
22 its activities within the state and the activities of the advisory  
23 panels. The report is due annually on December 1. The report is to  
24 include statistical information concerning cases reviewed during

1 the year, trends and patterns concerning these cases and the team's  
2 recommendations to reduce the number of fatalities and mortalities  
3 that occur in the state.

4 **§61-12A-3. Access to information; other agencies of government**  
5 **required to cooperate.**

6 (a) Notwithstanding any other provision of this code to the  
7 contrary, the Fatality and Mortality Review Team and the advisory  
8 panels established by the team pursuant to this article may request  
9 information and records as necessary to carry out its  
10 responsibilities. Records and information that may be requested  
11 under this section include:

12 (1) Medical, dental and mental health records;

13 (2) Substance abuse records to the extent allowed by federal  
14 law; and

15 (3) Information and records maintained by any state, county  
16 and local government agency, except as provided in subsection (c),  
17 section two of this article.

18 (b) State, county and local government agencies shall provide  
19 the Fatality and Mortality Review Team and the advisory panels  
20 established by the team with any information requested in writing  
21 by the team or by an advisory panel.

22 **§61-12A-4. Confidentiality.**

23 (a) Proceedings, records and opinions of the Fatality and  
24 Mortality Review Team and the advisory panels established by the

1 team pursuant to this article are confidential and are not subject  
2 to discovery, subpoena or introduction into evidence in any civil  
3 or criminal proceeding. This section does not limit or restrict  
4 the right to discover or use in any civil or criminal proceeding  
5 anything that is available from another credible source and  
6 entirely independent of the proceedings of the team or advisory  
7 panels.

8 (b) Members of the Fatality and Mortality Review Team and  
9 members of the advisory panels established by the team may not be  
10 questioned in any civil or criminal proceeding regarding  
11 information presented in or opinions formed as a result of a  
12 meeting of the team. This subsection does not prevent a member of  
13 the team or an advisory panel from testifying to information  
14 obtained independently of the team or advisory panel which is  
15 public information.

16 (c) Proceedings, records and opinions of the Fatality and  
17 Mortality Review Team and the advisory panels established by the  
18 team are exempt from disclosure under the Freedom of Information  
19 Act as provided in chapter twenty-nine-b of this code.