

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4350

BY DELEGATES PUSHKIN, REYNOLDS, UPSON,
MCCUSKEY, SHOTT, WELD, FLEISCHAUER, GUTHRIE,
BYRD, SKINNER AND MARCUM

[Introduced February 2, 2016; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §15-2C-1 of the Code of West Virginia, 1931, as amended; to
 2 amend said code by adding thereto a new section, designated §15-2C-2a; and to amend
 3 and reenact §15-2C-3, §15-2C-4 and §15-2C-8 of said code, all relating to creating a
 4 domestic violence registry; providing a purpose; directing the Criminal Identification
 5 Bureau of the West Virginia State Police to establish and maintain the registry; providing
 6 for confidential inquiry of persons on the registry; establishing criteria for placement on
 7 and releasing information from the registry; requiring prosecuting attorneys to provide
 8 certain information; and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That §15-2C-1 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that said code be amended by adding there to a new section, designated §15-2C-2a;
 3 and that §15-2C-3, §15-2C-4 and §15-2C-8 of said code be amended and reenacted, all to read
 4 as follows:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

1 The following words when used in this article have meanings ascribed to them in this
 2 section, except in those instances where the context clearly indicates a different meaning:

3 ~~(a)~~ "Central abuse registry" or ~~"registry"~~ means the registry created by this article which
 4 shall contain the names of individuals who have been convicted of a felony or a misdemeanor
 5 offense constituting abuse, neglect or misappropriation of the property of a child or an
 6 incapacitated adult or an adult receiving behavioral health services.

7 ~~(b)~~ "Child abuse and neglect" or "child abuse or neglect" means those terms as defined in
 8 section three, article one, chapter forty-nine of this code, and shall include any act with respect to
 9 a child which is a crime against the person pursuant to article two, chapter sixty-one of this code,
 10 any act which is unlawful pursuant to article eight-d of said chapter sixty-one, and any offense
 11 with respect to a child which is enumerated in section three of this article.

12 ~~(e)~~ "Abuse or neglect of an incapacitated adult" means "abuse," "neglect" and
13 "incapacitated adult" as those terms are defined in section one, article six, chapter nine, and shall
14 include any act with respect to an incapacitated adult which is a crime against the person pursuant
15 to article two, chapter sixty-one of this code, and any offense with respect to an incapacitated
16 adult which is enumerated in section three of this article.

17 ~~(d)~~ "Adult receiving behavioral health services" means a person over the age of eighteen
18 years who is receiving any behavioral health service from a licensed behavioral health provider
19 or any behavioral health provider whose services are paid for, in whole or in part, by Medicaid or
20 Medicare.

21 ~~(e)~~ "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or
22 jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

23 "Domestic violence" means an occurrence of one or more acts as provided in section two
24 hundred two, article twenty-seven of chapter forty-eight of this code.

25 "Domestic violence registry" means the registry created pursuant to section two-a of this
26 article that contains the names and other identifying factors of individuals who have been
27 convicted of three or more misdemeanor or felony offenses that constitute domestic violence.

28 ~~(f)~~ "Residential care facility" means any facility where a child or an incapacitated adult or
29 an adult receiving behavioral health services resides which is subject to registration, licensure or
30 certification by the Department of Health and Human Resources, and shall include nursing
31 homes, personal care homes, residential board and care homes, adult family care homes, group
32 homes, legally unlicensed service providers, residential child care facilities, family based foster
33 care homes, specialized family care homes and intermediate care facilities for the mentally
34 ~~retarded~~ challenged.

35 ~~(g)~~ "Misappropriation of property" means any act which is a crime against property under
36 article three, chapter sixty-one of this code with respect to a child in a residential care facility or
37 an incapacitated adult or an adult receiving behavioral health services in a residential care facility

38 or a child or an incapacitated adult or an adult receiving behavioral health services who is a
39 recipient of home care services.

40 (h) "Home care" or "home care services" means services provided to children or
41 incapacitated adults or adults receiving behavioral health services in the home through a hospice
42 provider, a community care provider, a home health agency, through the Medicaid waiver
43 program, or through any person when that service is reimbursable under the state Medicaid
44 program.

45 (i) "Requester" means the West Virginia Department of Education, any residential care
46 facility, any state licensed day care center, any qualified entity as defined in this section or any
47 provider of home care services or an adult receiving behavioral health services providing to the
48 Central Abuse Registry the name of an individual and other information necessary to identify that
49 individual, and either: (1) Certifying that the individual is being considered for employment or
50 service as a volunteer by the requester or for a contractual relationship with the requester wherein
51 the individual will provide services to a child or an incapacitated adult or an adult receiving
52 behavioral health services for compensation; or contractors and vendors who have or may have
53 unsupervised access to the child, disabled or elderly person for whom the qualified entity provides
54 care; or (2) certifying that an allegation of abuse, neglect or misappropriation of property has been
55 made against the individual. However, the purpose of the domestic violence registry, "requester"
56 means any member of the public that makes an inquiry about whether a specific person is listed
57 in the directory.

58 (j) "Qualified entity" means any business, agency or organization that provides care,
59 treatment, education, training, instruction, supervision or recreation for children, the elderly or
60 individuals with disabilities and is a public, private or not-for-profit entity within the State of West
61 Virginia and meets the definition of qualified entity under the federal National Child Protection Act
62 of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

§15-2C-2a. Domestic violence registry; required information and procedures.

1 (a) The purpose of the domestic violence registry is to protect children and other
2 household members by providing a means to alert a person of another person's prior domestic
3 violence, by creating a database of individuals in which information about their prior conduct can
4 be confidentially verified, allowing a person that may enter into a domestic or other relationship
5 with that person, to be made aware of and take necessary actions to protect his or her personal
6 safety or the safety of a child or children that may exposed to a person on the registry. The
7 Criminal Identification Bureau of the West Virginia State Police shall establish a domestic violence
8 registry, for the purpose of verifying that a person has or has not had prior domestic violence
9 convictions. The bureau shall confirm to any person that may inquire, whether a person has three
10 or more prior domestic violence convictions. This registry shall be accessible to individual
11 members of public on a request basis, and contain the criminal history of persons that have been
12 convicted of multiple acts of domestic violence. The domestic violence registry shall contain the
13 name of every person who has three or more domestic violence convictions, when the third or
14 subsequent conviction has occurred subsequent to the establishment of the registry. The
15 information provided to a requestor shall include the nature of the convictions and other necessary
16 identification and crime details but will not include the name of any victim or victims of the crimes.
17 All information relating to a request about the domestic violence registry including the identity of
18 any person making a request is confidential, is exempt from the provisions of article one, chapter
19 twenty-nine-b of this code, and may not be otherwise released to the public.

20 (b) The domestic violence registry shall contain, at a minimum, the following information,
21 which shall be provided to a requestor:

22 (1) The individual's full name;

23 (2) Sufficient information to identify the individual, including date of birth;

24 (3) Identification of the criminal offenses constituting domestic violence; and

25 (4) Any statement by the individual disputing the conviction, if he or she chooses to make
26 and file one.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

27 (a) The central abuse registry shall maintain information relating to child abuse or neglect,
28 abuse or neglect of an incapacitated adult or adult receiving behavioral health services, and
29 misappropriation of property with respect to individuals convicted of certain offenses pursuant to
30 this code, when the victim of the crime is a child or an incapacitated adult or an adult receiving
31 behavioral health services, to include:

32 (1) First or second degree murder pursuant to section one, article two, chapter sixty-one
33 of this code;

34 (2) Voluntary manslaughter pursuant to section four, article two, chapter sixty-one of this
35 code;

36 (3) Attempt to kill or injure by poison pursuant to section seven, article two, chapter sixty-
37 one of this code;

38 (4) Malicious or unlawful assault pursuant to section nine, article two, chapter sixty-one of
39 this code;

40 (5) Assault during commission of or attempt to commit a felony pursuant to section ten,
41 article two, chapter sixty-one of this code;

42 (6) Extortion by threats pursuant to section thirteen, article two, chapter sixty-one of this
43 code;

44 (7) Abduction of a person or kidnapping or concealing a child pursuant to section fourteen,
45 article two, chapter sixty-one of this code;

46 (8) Enticing away or otherwise kidnapping any person pursuant to section fourteen-a,
47 article two, chapter sixty-one of this code;

48 (9) A misdemeanor or felony sexual offense pursuant to article eight-b, chapter sixty-one
49 of this code;

50 (10) Filming of sexually explicit conduct of minors pursuant to article eight-c, chapter sixty-
51 one of this code;

52 (11) Misdemeanor or felony child abuse pursuant to article eight-d, chapter sixty-one of
53 this code;

54 (12) A violent crime against the elderly which is an offense under the provisions of section
55 nine or ten, article two, chapter sixty-one of this code which is subject to the sentencing provisions
56 of section ten-a of said article two; or

57 (13) A property offense pursuant to article three, chapter sixty-one of this code, with
58 respect to a child in a residential care facility or an incapacitated adult or an adult receiving
59 behavioral health services in a residential care facility or a child or an incapacitated adult or an
60 adult receiving behavioral health services who is a recipient of home care services, when the
61 individual committing the offense was providing services for compensation in the residential care
62 facility or within the home.

63 (b) The prosecuting attorneys in each of the fifty-five counties within the state, upon
64 conviction of a misdemeanor, a felony or a lesser included misdemeanor offense for those specific
65 offenses set forth in subsection (a) of this section, shall report the conviction to the central abuse
66 registry, together with additional information, provided in a form, as may be required by the
67 criminal identification bureau for registry purposes. Reporting procedures shall be developed by
68 the criminal identification bureau in conjunction with the prosecuting attorneys' institute and the
69 office of the administrator of the Supreme Court of Appeals.

70 (c) Information relating to convictions prior to the effective date of this section of a
71 misdemeanor or a felony constituting child abuse or abuse or neglect of an incapacitated adult
72 receiving behavioral health services shall, to the extent which is feasible and practicable, be
73 placed on the central abuse registry. When any requester requests information related to a named
74 individual, the criminal identification bureau may search and release other information maintained
75 by the bureau to determine whether that individual has been convicted of offenses which are
76 subject to inclusion on the central abuse registry.

77 (d) The prosecuting attorneys in each of the fifty-five counties within the state, upon

78 conviction of a misdemeanor, a felony or a lesser included misdemeanor offense for domestic
79 violence, as provided in section two of this article, shall report to the domestic violence registry,
80 information as may be required by the criminal identification bureau for registry purposes.
81 Reporting procedures shall be developed by the criminal identification bureau in conjunction with
82 the prosecuting attorneys' institute and the office of the administrator of the Supreme Court of
83 Appeals. The prosecuting attorneys shall also provide to the bureau any information regarding
84 the prior history of a person convicted of domestic violence sufficient to determine whether this is
85 a first or subsequent conviction.

§15-2C-4. Disclosure of information.

1 (a) The information contained in the central abuse registry is confidential, and may not be
2 disclosed except as specifically provided in this section. The criminal identification bureau shall
3 disclose the information described in subdivisions (1) through (3) and subdivision (5), subsection
4 (b), section two of this article to any requester, except that the name of the victim of the act alleged
5 shall not appear on the information disclosed and shall be stricken from any statement filed by an
6 individual. The Department of Health and Human Resources shall certify, not later than fifteen
7 days following the effective date of this section, the list of requesters authorized to obtain central
8 abuse registry information, and shall inform the criminal identification bureau promptly of
9 subsequent additions and deletions from the list. The information contained in the central abuse
10 registry with respect to an individual shall be provided to that individual promptly upon request.
11 Individuals on the registry requesting registry information shall be afforded the opportunity to file
12 statements correcting any misstatements or inaccuracies contained in the registry. The criminal
13 identification bureau may disclose central abuse registry information to authorized law-
14 enforcement and governmental agencies of the United States and its territories, of foreign states
15 and of the State of West Virginia upon proper request stating that the information requested is
16 necessary in the interest of and will be used solely in the administration of official duties and the
17 criminal laws. Agreements with other states providing for the reciprocal sharing of abuse registry

18 information are specifically authorized.

19 (b) An active file on requests for information by requesters shall be maintained by the
20 criminal identification bureau for a period of one year from the date of a request. If an individual
21 who is the subject of the request is placed on the registry with respect to any conviction within
22 one year of the date of the request, that information shall promptly be disclosed to the requester.

§15-2C-8. Service provider responsibilities.

1 All residential care facilities, day care centers, providers to adults with behavioral health
2 needs and home care service providers authorized to operate in West Virginia shall:

3 (1) Provide notice to current employees of the agency and other persons providing
4 services under a contract with the agency within sixty days of the effective date of this article, and
5 provide notice to any newly hired employee or person at the time an employment or contractual
6 relationship is entered into, which notice shall be in the following form: "NOTICE: All service
7 providers in the State of West Virginia are subject to provisions of law creating a central abuse
8 registry. Any person providing services for compensation to children or to incapacitated adults or
9 to adults receiving behavioral health services, who is convicted of a misdemeanor or felony
10 offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated
11 adult or an adult receiving behavioral health services, is subject to listing on the central abuse
12 registry. The fact that a person is listed on the central abuse registry may be disclosed in specific
13 instances provided by law. Listing on the central abuse registry may limit future employment
14 opportunities, including opportunities for employment with residential care facilities, day care
15 centers and home care agencies. It is the policy of _____ [name of agency] to
16 promptly report all suspected instances of abuse, neglect or misappropriation of property to the
17 proper authorities and to cooperate fully in the prosecution of these offenses."

18 (2) Cooperate fully with law enforcement, prosecuting attorneys and court personnel in
19 criminal prosecutions of acts of child abuse or neglect or abuse or neglect of an incapacitated
20 adult or adult receiving behavioral health services.

21 (3) Respond promptly to all requests by other service providers for references for former
22 or present employees of the agency, which response may include a subjective assessment as to
23 whether the individual for whom the reference is sought is suited to provide services to children
24 or incapacitated adults or to adults receiving behavioral health services.

NOTE: The purpose of this bill is to create a domestic violence registry. The bill provides a purpose. The bill directs the criminal identification bureau of the West Virginia State Police to establish and maintain the registry. The bill provides for confidential inquiry of persons on the registry. The bill establishes criteria for placement on and releasing information from the registry. The bill requires prosecuting attorneys to provide certain information. The bill defines terms.

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