

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 47**

BY SENATORS ROMANO AND OJEDA

[Introduced January 10, 2018; Referred  
to the Committee on Military; and then to the Committee on  
Health and Human Resources]



1 A BILL to amend and reenact §49-2-802 of the Code of West Virginia, 1931, as amended, relating  
2 to requiring Department of Defense family advocacy groups to be notified about any abuse  
3 or neglect of a child of a military person.

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

**ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

**§49-2-802. Establishment of child protective services; general duties and powers; administrative procedure; immunity from civil liability; cooperation of other state agencies.**

1 (a) The department shall establish or designate in every county a local child protective  
2 services office to perform the duties and functions set forth in this article.

3 (b) The local child protective services office shall investigate all reports of child abuse or  
4 neglect. Under no circumstances may investigating personnel be relatives of the accused, the  
5 child or the families involved. In accordance with the local plan for child protective services, it shall  
6 provide protective services to prevent further abuse or neglect of children and provide for or  
7 arrange for and coordinate and monitor the provision of those services necessary to ensure the  
8 safety of children. The local child protective services office shall be organized to maximize the  
9 continuity of responsibility, care, and service of individual workers for individual children and  
10 families. Under no circumstances may the secretary or his or her designee promulgate rules or  
11 establish any policy which restricts the scope or types of alleged abuse or neglect of minor  
12 children which are to be investigated or the provision of appropriate and available services.

13 (c) Each local child protective services office shall:

14 (1) Receive or arrange for the receipt of all reports of children known or suspected to be  
15 abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all reports under the  
16 names of the children, the family, and any person substantiated as being an abuser or neglecter  
17 by investigation of the Department of Health and Human Resources, with use of cross-filing of  
18 the person's name limited to the internal use of the department: Provided, That local child

19 protective services offices may disclose the names of alleged abusers pursuant to §49-2-  
20 802(c)(4) of this code;

21 (2) Provide or arrange for emergency children's services to be available at all times;

22 (3) Upon notification of suspected child abuse or neglect, commence or cause to be  
23 commenced a thorough investigation of the report and the child's environment. As a part of this  
24 response, within 14 days there shall be a face-to-face interview with the child or children and the  
25 development of a protection plan, if necessary, for the safety or health of the child, which may  
26 involve law-enforcement officers or the court;

27 (4) Make efforts as soon as practicable to determine the military status of parents whose  
28 children are subject to abuse or neglect allegations. If the office determines that a parent or  
29 guardian is in the military, the department shall notify a Department of Defense family advocacy  
30 program that there is an allegation of abuse and neglect that is screened in and open for  
31 investigation that relates to that military parent or guardian;

32 ~~(4)~~ (5) Respond immediately to all allegations of imminent danger to the physical well-  
33 being of the child or of serious physical abuse. As a part of this response, within 72 hours there  
34 shall be a face-to-face interview with the child or children and the development of a protection  
35 plan, which may involve law-enforcement officers or the court; and

36 ~~(5)~~ (6) In addition to any other requirements imposed by this section, when any matter  
37 regarding child custody is pending, the circuit court or family court may refer allegations of child  
38 abuse and neglect to the local child protective services office for investigation of the allegations  
39 as defined by this chapter and require the local child protective services office to submit a written  
40 report of the investigation to the referring circuit court or family court within the time frames set  
41 forth by the circuit court or family court.

42 (d) In those cases in which the local child protective services office determines that the  
43 best interests of the child require court action, the local child protective services office shall initiate  
44 the appropriate legal proceeding.

45 (e) The local child protective services office shall be responsible for providing, directing,  
46 or coordinating the appropriate and timely delivery of services to any child suspected or known to  
47 be abused or neglected, including services to the child's family and those responsible for the  
48 child's care.

49 (f) To carry out the purposes of this article, all departments, boards, bureaus, and other  
50 agencies of the state or any of its political subdivisions and all agencies providing services under  
51 the local child protective services plan shall, upon request, provide to the local child protective  
52 services office any assistance and information as will enable it to fulfill its responsibilities.

53 (g)(1) In order to obtain information regarding the location of a child who is the subject of  
54 an allegation of abuse or neglect, the Secretary of the Department of Health and Human  
55 Resources may serve, by certified mail or personal service, an administrative subpoena on any  
56 corporation, partnership, business, or organization for the production of information leading to  
57 determining the location of the child.

58 (2) In case of disobedience to the subpoena, in compelling the production of documents,  
59 the secretary may invoke the aid of:

60 (A) The circuit court with jurisdiction over the served party if the person served is a  
61 resident; or

62 (B) The circuit court of the county in which the local child protective services office  
63 conducting the investigation is located if the person served is a nonresident.

64 (3) A circuit court shall not enforce an administrative subpoena unless it finds that:

65 (A) The investigation is one the Division of Child Protective Services is authorized to make  
66 and is being conducted pursuant to a legitimate purpose;

67 (B) The inquiry is relevant to that purpose;

68 (C) The inquiry is not too broad or indefinite;

69 (D) The information sought is not already in the possession of the Division of Child  
70 Protective Services; and

71 (E) Any administrative steps required by law have been followed.

72 (4) If circumstances arise where the secretary, or his or her designee, determines it  
73 necessary to compel an individual to provide information regarding the location of a child who is  
74 the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek  
75 a subpoena from the circuit court with jurisdiction over the individual from whom the information  
76 is sought.

77 (h) No child protective services caseworker may be held personally liable for any  
78 professional decision or action taken pursuant to that decision in the performance of his or her  
79 official duties as set forth in this section or agency rules promulgated thereupon. However, nothing  
80 in this subsection protects any child protective services worker from any liability arising from the  
81 operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton  
82 misconduct, or intentional misconduct.

NOTE: The purpose of this bill is to require department of defense family advocacy groups to be notified about any abuse or neglect of a child of a military person.

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

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MILITARY COMMITTEE AMENDMENT

On page two, section 802, line 19, after the word "offices" by striking out the word "may" and inserting in lieu thereof the word "shall".