WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4176

BY DELEGATES MILLER, HANSHAW (MR. SPEAKER), MILEY, SHOTT, D. KELLY, KESSINGER, CANESTRARO AND LOVEJOY

[Introduced January 14, 2020; Referred to the Committee on Veterans' Affairs and Homeland Security then the Judiciary]

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. WEST VIRGINIA INTELLIGENCE/FUSION CENTER.

§15A-9-1. West Virginia Intelligence/Fusion Center Established.

(a) The Governor shall establish, organize, equip, staff, and maintain a multiagency intelligence fusion center to receive, analyze, and disseminate all hazards, all crimes, and all threat information. The Department of Military Affairs and Public Safety shall operate the facility, as directed by the Governor and in collaboration among federal, state, and local agencies, as well as private sector entities, including, but not limited to, those with the primary purposes of homeland security, counter-terrorism, public safety, public protection and critical infrastructure. The fusion center shall collect, integrate, analyze, disseminate, and maintain such information to support local, state, and federal law-enforcement agencies, other governmental agencies, and private organizations in detecting, preventing, investigating, preparing for, responding to, and recovering from any possible or actual criminal and terrorist activity, as well as any hazard, including the state’s critical infrastructure, in compliance with applicable state and federal laws and regulations, including 28 CFR 23.

(b) The West Virginia Intelligence/Fusion Center shall be housed within secure facilities in order to access sensitive information, as permitted by state and federal law. Within the secure facilities, the fusion center shall house a Homeland Secure Data Network (HDSN) in order to access classified information, as permitted by state and federal law and ensure that appropriate security measures are in place for: (1) The secure facilities; (2) data collected or stored at the secure facilities; and (3) personnel working at the secure facilities.


(a) The West Virginia Department of Military Affairs and Public Safety shall operate the
West Virginia Intelligence/Fusion Center under the direction of the Governor and shall cooperate
with the United States Department of Homeland Security, local, county, state, or federal
government agencies, and private organizations, subject to applicable state and federal laws and
regulations, including, but not limited to, 28 CFR 23.

(b) The West Virginia Intelligence/Fusion Center shall: (1) Be the primary clearing house
for the State of West Virginia for the collection, the analysis of and the proper distribution of
information and actionable intelligence; (2) generate intelligence analysis critical for homeland
security policy and relevant threat warning in order to protect life, liberty and property in West
Virginia; (3) promote and improve intelligence sharing among public safety and public service
agencies at the federal, state, and local levels, and with critical infrastructure and key resource
entities within the private sector; (4) receive and integrate intelligence and information related to
terrorism and other homeland security threats; (5) collect, analyze, produce, disseminate, and
maintain such intelligence and information, as allowed by law, to support local, state, and federal
law enforcement agencies, other governmental agencies and private organizations in: preventing,
preparing for, responding to, and recovering from any possible or actual terrorist attack or other
homeland security threat; and (6) maximize intelligence and information sharing in accordance
with all applicable state and federal laws.

(c) The Governor shall provide facilities, budget, and administrative support for the West
Virginia Intelligence/Fusion Center and its employees and participants. The cabinet secretary for
the West Virginia Department of Military Affairs and Public Safety shall be the custodian of all
records collected and maintained at the West Virginia Intelligence/Fusion Center, and also shall
serve as security manager for the West Virginia Intelligence/Fusion Center.

(d) Private sector entities participating in the West Virginia Intelligence/Fusion Center shall
not be considered governmental entities, nor shall employees or agents of private sector entities
assigned to the West Virginia Intelligence/Fusion Center be considered state employees;
however, private sector entities and their employees or agents are subject to the same
confidentiality requirements and held to the same standards as an employee of the West Virginia Intelligence/Fusion Center.

(e) The operations of the West Virginia Intelligence/Fusion Center shall be overseen by cabinet secretary and deputy cabinet secretary of the West Virginia Department of Military Affairs and Public Safety.

(f) The cabinet secretary and deputy cabinet secretary shall have a current, valid federal security clearance at the appropriate level.

(g) The cabinet secretary and deputy cabinet secretary may adopt policies and procedures for the operation of the West Virginia Intelligence/Fusion Center. The cabinet secretary and deputy cabinet secretary may adopt rules and regulations as may be necessary to carry out the provisions of this act, including rules and regulations concerning the operations of the West Virginia Intelligence/Fusion Center.

(h) Subject to appropriations, the West Virginia Intelligence/Fusion Center shall have the following employees, all in the unclassified service of the civil service act:

(1) A director, who shall be appointed by and serve at the pleasure of the cabinet secretary. The director shall have a current, valid federal security clearance at the appropriate level and training and certifications commensurate with the position and shall:

(A) Be responsible for all operations of the West Virginia Intelligence/Fusion Center and shall report to the cabinet secretary or deputy cabinet secretary;

(B) Be responsible for:

(2) Facilitating and implementing applicable federal standards and programs by the West Virginia Intelligence/Fusion Center;

(3) Ensuring compliance with all applicable laws and federal requirements; and

(4) Maintaining proper separation between military and civilian capacities;

(C) Provide support, as needed, to the cabinet secretary and deputy cabinet secretary; and
(D) Other duties and responsibilities as may be assigned by the cabinet secretary and
deputy cabinet secretary;

(5) A deputy director shall have a current, valid federal security clearance at the
appropriate level, training and certifications commensurate with the position who shall be
responsible for assisting the director in: (A) Facilitating and implementing applicable federal
standards and programs by the West Virginia Intelligence/Fusion Center; (B) ensuring compliance
with all applicable laws and federal requirements; (C) maintaining proper separation between
military and civilian capacities; (D) providing support, as needed, to the cabinet secretary and
deputy cabinet secretary; and (E) other duties and responsibilities as may be assigned by the
fusion center director, other employees as may be authorized by cabinet secretary and deputy
cabinet secretary to administer properly the provisions of this act.


(a) Each governmental and nongovernmental entity participating in the West Virginia
Intelligence/Fusion Center shall enter a memorandum of understanding between the West
Virginia Intelligence/Fusion Center and the participating entity. Said memorandum of
understanding shall at a minimum:

(1) Provide a framework and working mechanism for the organization of the West Virginia
Intelligence/Fusion Center to address issues that are common to city, county, state, and federal
governments’ obligations to protect the safety and well-being of citizens and to enhance the
success of the Fusion Center in responding to criminal, terrorist, and other threats to public safety
through the achievement of coordination and cooperation;

(2) Clarify the working relationships between the governmental and nongovernmental
entities and use limitations of shared information; and

(3) Outline the intent of the parties regarding the information provided by the non-
governmental entities to the West Virginia Intelligence/Fusion Center.

(b) Nothing in any agreement shall obligate any nongovernmental entity to provide
information nor establish any duty for any nongovernmental entity to assume any police or law enforcement responsibilities.

(c) Failure of any governmental or nongovernmental entity to abide by the restrictions and use limitations set forth by the West Virginia Intelligence/Fusion Center may result in the suspension or termination of use privileges, discipline sanctions imposed by the user’s employing agency, or criminal prosecution.

§15A-9-4. Confidentiality and immunity from service of process; penalties.

(a) Papers, records, documents, reports, materials, databases, or other evidence or information relative to criminal intelligence or any terrorism investigation in the possession of the West Virginia Intelligence/Fusion Center shall be confidential and shall not be subject to the West Virginia Freedom of Information Act (§29B-1-1 et seq. of this code). Every five years, the West Virginia Intelligence/Fusion Center shall conduct a review of information contained in any database maintained by the West Virginia Intelligence/Fusion Center. Data that has been determined to not have a nexus to criminal or terrorist activity shall be removed from such database. A reasonable suspicion standard shall be applied when determining whether or not information has a nexus to terrorist activity.

(b) No person, having access to information maintained by the West Virginia Intelligence/Fusion Center, shall be subject to subpoena in a civil action in any court of the state to testify concerning a matter of which he has knowledge pursuant to his access to criminal intelligence information maintained by the West Virginia Intelligence/Fusion Center.

(c) No person or agency receiving information from the West Virginia Intelligence/Fusion Center shall release or disseminate that information without prior authorization from the West Virginia Intelligence/Fusion Center.

(d) Intelligence data in the possession of a criminal or juvenile justice agency, state or federal regulatory agency, or peace officer, or disseminated by such agency or peace officer, are confidential records under §29B-1-1 et seq. of this code.
(e) Any person who knowingly disseminates information in violation of this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than $200 nor more than $1,000, or be confined for not more than 20 days, or both fined and confined. If such unauthorized dissemination results in death or serious bodily injury to another person, such person is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(f) Any person, being an officer or employee of the United States, the State of West Virginia or of any department, agency or political subdivision thereof, or any person from the private sector or industry assigned to or working with the West Virginia Intelligence/Fusion Center in any capacity, who knowingly publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by law, any critical infrastructure or national intelligence information protected from disclosure by this section coming to him or her in the course of their employment, affiliation or official duties with the West Virginia Intelligence/Fusion Center, or by reason of any examination or investigation made by, return, report, or record made to or filed with, such department or agency, officer or employee thereof, shall be imprisoned not less than one year, and shall be removed from office or employment and affiliation with the West Virginia Intelligence/Fusion Center.

(g) The West Virginia Department of Military Affairs and Public Safety shall provide legal counsel to the West Virginia Intelligence/Fusion Center to serve as privacy and civil liberties counsel to the West Virginia Intelligence/Fusion Center. Such attorney shall advise the West Virginia Intelligence/Fusion Center, director, and deputy director on all matters necessary to ensure compliance with all applicable federal and state privacy or civil liberties laws and obligations.

(h) For purposes of this chapter:

(1) “Criminal intelligence information” means data or information that has been evaluated and determined to be relevant to the identification and criminal activity of individuals or
organizations that are reasonably suspected of involvement in criminal activity.

(2) “Critical Infrastructure” means systems and assets as defined in 42 U.S.C. § 5195c(e).

(3) “National Intelligence” means data or information determined to meet the definition as defined in 50 U.S.C. §3003 (5).

§15A-9-5. Receipt of information; immunity from liability.

(a) No cause of action for defamation, invasion of privacy, or negligence shall arise against any person for reason of that person’s furnishing of information concerning any suspected, anticipated, or completed criminal violation or terrorist activity when the information is provided to or received from the West Virginia Intelligence/Fusion Center or any federal, state, or local governmental or private sector entity established for the purposes of detecting and preventing acts of criminal activity or terrorism.

(b) No person shall be subject to such cause of action for cooperating with or furnishing evidence or information regarding any suspected criminal violation to, the West Virginia Intelligence/Fusion Center.

(c) This section shall not provide immunity for those disclosing or furnishing false information with malice or willful intent to injure any person.

(d) This section does not abrogate or modify in any way common law or statutory privilege or immunity heretofore enjoyed by any person or entity.


(a) The director, with approval of the cabinet secretary or deputy cabinet secretary, may enter into agreements with participating agencies or organizations, whether public or private, for their participation in the West Virginia Intelligence/Fusion Center. Such agreements: (1) Shall define the duties and responsibilities of each participating agency or organization; and (2) may provide for payment by the participating agency or organization of a reasonable share of the cost to establish, maintain and operate the West Virginia Intelligence/Fusion Center.

(b) (1) The West Virginia Intelligence/Fusion Center, with approval of the cabinet secretary
or deputy cabinet secretary, may accept any gift, grant, payment, moneys or assets seized by
forfeiture as a result of collaborative efforts or contribution from any source, public or private, for
the purpose of paying the costs to establish, maintain or operate the West Virginia
Intelligence/Fusion Center. Such gift, grant, payment, moneys or assets seized by forfeiture as a
result of collaborative works or contribution may be in the form of services, equipment, supplies,
materials or funds. All amounts received under this section shall be remitted to the State Treasurer
in accordance with chapter 12 of this code, and the amendments thereto. Upon receipt of each
such remittance, the State Treasurer shall deposit the entire amount in the State Treasury to the
credit of the West Virginia Intelligence/Fusion Center Fund, that is hereby created in the State
Treasury and shall be administered by the West Virginia Department of Military Affairs and Public
Safety in accordance with this article.

(2) Moneys in the West Virginia Intelligence/Fusion Center Fund may be used by the
director to pay any costs associated with establishing, maintaining or operating the West Virginia
Intelligence/Fusion Center. The director of the West Virginia Intelligence/Fusion Center Fund shall
develop policy and procedures for purchasing, and expenditures shall be made in accordance
with vouchers approved by the director or the director’s designee. Any gift, grant, payment,
moneys, or any assets seized by forfeiture as a result of collaborative efforts, or contribution in
any form, other than funds may be accepted by the director, with approval of the cabinet secretary,
and utilized and expended in any manner authorized by law to establish, maintain or operate the
West Virginia Intelligence/Fusion Center.

(3) The moneys credited to the fund created in subsection (b) shall be used for the
purposes set forth in this section and for no other governmental purposes. It is the intent of the
Legislature that the moneys deposited in this fund shall remain intact and inviolate for the
purposes set forth in this act.

§15A-9-7. Registration plates to official vehicles; used in agency activities.

Notwithstanding any provision to the contrary, the Commissioner of the Division of Motor
Vehicles is authorized to issue Class A license plates to authorized state-owned vehicles operated by the West Virginia Intelligence/Fusion Center when the director signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used by the West Intelligence/Fusion Center in fulfilling its mission.

NOTE: The purpose of this bill is to establish the West Virginia Intelligence/Fusion Center, operation of center, confidentiality and immunity from service of process; penalties, receipt of information, immunity from liability, costs and relating to Class A registration plates for official use.

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