

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4308

BY DELEGATES CAPITO, ZUKOFF, FLUHARTY, GARCIA,

KIMBLE, LOVEJOY AND PUSHKIN

[Introduced January 20, 2022; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a
2 new section, designated §14-2A-11a; to amend and reenact §14-2A-14 of said code; and
3 to amend and reenact §49-5-101 of said code, all relating to facilitating investigation and
4 award of benefits under the West Virginia Crime Victims' Compensation Fund when a child
5 is the subject of a civil abuse and neglect petition or injurious conduct is alleged to have
6 been committed by or against a child; expanding the class of persons who may apply on
7 behalf of a child; specifying that official records relating to a child or juvenile may be
8 disclosed for evaluation of a Crime Victims' Compensation Fund application, and providing
9 for confidentiality of records and proceedings.

Be it enacted by the Legislature of West Virginia:

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-11a. Application and proceedings when the victim is the subject of a civil abuse or neglect petition.

1 (a) An application for benefits on behalf of a minor child who is the subject of a civil abuse
2 and neglect petition may be filed by a foster parent, adoptive parent, legal guardian of the minor
3 child, court appointed guardian ad litem, or any person or entity having legal custody of the minor
4 child, including the agency filing the civil abuse and neglect petition.

5 (b) All records and proceedings related to a claim based upon a civil abuse and neglect
6 petition are confidential and may not be disclosed to any person who is not a necessary participant
7 in the proceedings. Information, details, and identities of parties in the claim shall not be published,
8 except in the form of statistical reporting, identified only by claim number, as necessary to satisfy
9 the requirements of federal and state law.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum award.

1 (a) Except as provided in §14-2A-10(b) of this code, the commissioner may not approve
2 an award of compensation to a claimant who did not file his or her application for an award of

3 compensation within two years after the date of the occurrence of the criminally injurious conduct
4 that caused the injury or death for which he or she is seeking an award of compensation.

5 (b) The commissioner may not approve an award of compensation if the criminally
6 injurious conduct upon which the claim is based was not reported to a law-enforcement officer or
7 agency or, in the case of sexual offense, the victim did not undergo a forensic medical
8 examination, within 96 hours after the occurrence of the conduct, unless it is determined that good
9 cause existed for the failure to report the conduct or undergo a forensic medical examination
10 within the 96-hour period: *Provided*, That no reporting to a law-enforcement officer or agency or
11 a forensic medical examination is required if the victim is a juvenile in order for a commissioner
12 to approve an award of compensation: *Provided, however*, That the filing of a civil abuse and
13 neglect petition in a circuit court satisfies the reporting requirement, thereby allowing the minor
14 child who is the subject of the petition to file an application for benefits, with the claims process to
15 proceed in accordance with this code. ~~The agency filing the civil abuse and neglect petition shall~~
16 ~~file an application for benefits on behalf of the minor child~~

17 (c) The commissioner may not approve an award of compensation to a claimant who is
18 the offender or an accomplice of the offender who committed the criminally injurious conduct, nor
19 to any claimant if the award would unjustly benefit the offender or his or her accomplice.

20 (d) A commissioner, upon a finding that the claimant or victim has not fully cooperated
21 with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce
22 an award of compensation, or reconsider a claim already approved.

23 (e) A commissioner may not approve an award of compensation if the injury occurred
24 while the victim was confined in any state, county, or regional jail, prison, private prison, or
25 correctional facility.

26 (f) After reaching a decision to approve an award of compensation, but prior to announcing
27 the approval, the commissioner shall require the claimant to submit current information as to
28 collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims

29 Commission. The commissioner shall reduce an award of compensation or deny a claim for an
30 award of compensation that is otherwise payable to a claimant to the extent that the economic
31 loss upon which the claim is based is or will be recouped from other persons, including collateral
32 sources, or if the reduction or denial is determined to be reasonable because of the contributory
33 misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced
34 or a claim is denied because of the expected recoupment of all or part of the economic loss of the
35 claimant from a collateral source, the amount of the award or the denial of the claim shall be
36 conditioned upon the claimant's economic loss being recouped by the collateral source: *Provided,*
37 That if it is thereafter determined that the claimant will not receive all or part of the expected
38 recoupment, the claim shall be reopened and an award shall be approved in an amount equal to
39 the amount of expected recoupment that it is determined the claimant will not receive from the
40 collateral source, subject to the limitation set forth in subsection (g) of this section.

41 (g)(1) Except in the case of death, or as provided in subdivision (2) of this subsection,
42 compensation payable to a victim and to all other claimants sustaining economic loss because of
43 injury to that victim may not exceed \$35,000 in the aggregate. Compensation payable to all
44 claimants because of the death of the victim may not exceed \$50,000 in the aggregate.

45 (2) In the event the victim's personal injuries are so severe as to leave the victim with a
46 disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U.
47 S. C. §423, the commission may award an additional amount, not to exceed \$100,000, for special
48 needs attributable to the injury.

49 (h) If an award of compensation of \$5,000 or more is made to a minor, a guardian shall be
50 appointed pursuant to the provisions of §44-10-1 *et seq.* of this code to manage the minor's estate.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.

1 (a) Except as otherwise provided in this chapter or by order of the court, all records and
2 information concerning a child or juvenile which are maintained by the Division of Juvenile
3 Services, the Department of Health and Human Resources, a child agency or facility, court or
4 law-enforcement agency are confidential and shall not be released or disclosed to anyone,
5 including any federal or state agency.

6 (b) Notwithstanding the provisions of subsection (a) of this section or any other provision
7 of this code to the contrary, records concerning a child or juvenile, except adoption records and
8 records disclosing the identity of a person making a complaint of child abuse or neglect, may be
9 made available:

10 (1) Where otherwise authorized by this chapter;

11 (2) To:

12 (A) The child;

13 (B) A parent whose parental rights have not been terminated; or

14 (C) The attorney of the child or parent;

15 (3) With the written consent of the child or of someone authorized to act on the child's
16 behalf; or

17 (4) Pursuant to an order of a court of record. However, the court shall review the record
18 or records for relevancy and materiality to the issues in the proceeding and safety, and may issue
19 an order to limit the examination and use of the records or any part thereof.

20 (c) In addition to those persons or entities to whom information may be disclosed under
21 subsection (b) of this section, information related to child abuse or neglect proceedings, except
22 information relating to the identity of the person reporting or making a complaint of child abuse or
23 neglect, shall be made available, upon request, to:

24 (1) Federal, state or local government entities, or any agent of those entities, including
25 law-enforcement agencies and prosecuting attorneys, having a need for that information in order
26 to carry out its responsibilities under law to protect children from abuse and neglect;

27 (2) The child fatality review team;

28 (3) Child abuse citizen review panels;

29 (4) Multidisciplinary investigative and treatment teams; ~~or~~

30 (5) A grand jury, circuit court or family court, upon a finding that information in the records
31 is necessary for the determination of an issue before the grand jury, circuit court or family court;

32 or

33 (6) The West Virginia Crime Victims' Compensation Fund, to review allegations of injurious
34 conduct committed by or against a child and, if appropriate, to make a determination for award of
35 benefits to the victims.

36 (d) In the event of a child fatality or near fatality due to child abuse and neglect, information
37 relating to a fatality or near fatality shall be made public by the Department of Health and Human
38 Resources and to the entities described in subsection (c) of this section, all under the
39 circumstances described in that subsection. However, information released by the Department of
40 Health and Human Resources pursuant to this subsection may not include the identity of a person
41 reporting or making a complaint of child abuse or neglect. For purposes of this subsection, "near
42 fatality" means any medical condition of the child which is certified by the attending physician to
43 be life threatening.

44 (e) Except in juvenile proceedings which are transferred to criminal proceedings, law-
45 enforcement records and files concerning a child or juvenile shall be kept separate from the
46 records and files of adults and not included within the court files. Law-enforcement records and
47 files concerning a child or juvenile shall only be open to inspection pursuant to section one
48 hundred three of this article.

49 (f) Any person who willfully violates this section is guilty of a misdemeanor and, upon
50 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months,
51 or both fined and confined. A person convicted of violating this section is also liable for damages
52 in the amount of \$300 or actual damages, whichever is greater.

53 (g) Notwithstanding the provisions of this section, or any other provision of this code to the
54 contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious
55 crime shall be made available to the public;

56 (h)(1) Notwithstanding the provisions of this section or any other provision of this code to
57 the contrary, the Division of Juvenile Services may provide access to and the confidential use of
58 a treatment plan, court records or other records of a juvenile to an agency in another state which:

59 (A) Performs the same functions in that state that are performed by the Division of Juvenile
60 Services in this state;

61 (B) Has a reciprocal agreement with this state; and

62 (C) Has legal custody of the juvenile.

63 (2) A record which is shared under this subsection may only provide information which is
64 relevant to the supervision, care, custody and treatment of the juvenile.

65 (3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with
66 other states and to propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of
67 this code to implement this subsection.

68 (4) Other than the authorization explicitly given in this subsection, this subsection may not
69 be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

70 (i) The records subject to disclosure pursuant to subsection (b) of this section shall not
71 include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of
72 which is exclusively subject to the provisions of §62-6B-6 of this code.

NOTE: The purpose of this bill is to broaden the class of persons who may apply on behalf of a child in foster care or is a subject of a civil abuse and neglect petition and to authorize law enforcement, guardians, and court and public agency personnel, to disclose information and records for purposes of evaluation for Crime Victims' Compensation Fund benefits.

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