

HB 2093

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2093

(By Delegate S Douglas, Staton, Mahan,
Hutchins and Martin)



Passed April 12, 1997

In Effect Ninety Days From Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2093

(BY DELEGATES DOUGLAS, STATON,
MAHAN, HUTCHINS AND MARTIN)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the establishment of the missing children information clearinghouse; definitions; duties of the state police; duties of the department of education; duties of law-enforcement agencies; request for information by custodian; missing child reports; procedures upon receipt of missing child report; law-enforcement requirements upon receipt of information about unidentified bodies of children; release of dental records; immunity from civil liability or criminal prosecution for release of records; cross-checking and matching of information; cooperation required of state agencies and schools; confidentiality of information and records; duties of attorney general to enforce provisions; duty of law-enforcement agencies to forward contents of completed report; duties of law-enforcement agencies to update information and provide notice; creation of a clearinghouse advisory council as a public corporation and

governmental instrumentality; membership of the council; appointment; terms of office; compensation and expenses; quorum; appointment of chairman; council to be subject to open governmental meetings act; designation of state police employee as executive director of council; authority to contract for research and administrative services; advisory services to the Legislature; annual report required; comprehensive strategic plan and recommendations required; advisory services to the state police; cooperation and coordination with other agencies; authority to seek funding from public and private sources; initial comprehensive plan to be presented by the first day of July, one thousand nine hundred ninety-eight; contents of initial plan; authority to enter into public-private partnerships; approval of majority required; council members not prohibited from sitting on certain boards; application of governmental ethics act to council members; authority of council to solicit and accept gifts, grants, bequests and devises; and deposit of same into state treasury special account.

Be it enacted by the Legislature of West Virginia:

That chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.

§49-9-1. Short title.

- 1 This article may be cited as the "Missing Children
- 2 Information Act."

§49-9-2. Definitions.

- 1 As used in this article:
- 2 (a) "Child" means an individual under the age of
- 3 eighteen years who is not emancipated;
- 4 (b) "Clearinghouse" means the West Virginia missing
- 5 children information clearinghouse;

6 (c) "Custodian" means a parent, guardian, custodian
7 or other person who exercises legal physical control, care
8 or custody of a child;

9 (d) "Missing child" means a child whose whereabouts
10 are unknown to the child's custodian and the
11 circumstances of whose absence indicate that:

12 (1) The child did not leave the care and control of the
13 custodian voluntarily and the taking of the child was not
14 authorized by law; or

15 (2) The child voluntarily left the care and control of
16 his or her custodian without the custodian's consent and
17 without intent to return;

18 (e) "Missing child report" means information that is:

19 (1) Given to a law-enforcement agency on a form
20 used for sending information to the national crime
21 information center; and

22 (2) About a child whose whereabouts are unknown to
23 the reporter and who is alleged in the form submitted by
24 the reporter to be missing;

25 (f) "Possible match" means the similarities between
26 an unidentified body of a child and a missing child that
27 would lead one to believe they are the same child;

28 (g) "Reporter" means the person who reports a
29 missing child; and

30 (h) "State agency" means an agency of the state,
31 political subdivision of the state or public postsecondary
32 educational institution.

§49-9-3. Clearinghouse function.

1 (a) The missing children information clearinghouse is
2 established under the West Virginia state police. The state
3 police:

4 (1) Shall provide for the administration of the
5 clearinghouse; and

6 (2) May promulgate rules in accordance with the
7 provisions of article three, chapter twenty-nine-a of this
8 code to carry out the provisions of this article.

9 (b) The clearinghouse is a central repository of
10 information on missing children and shall be used by all
11 law-enforcement agencies in this state.

12 (c) The clearinghouse shall:

13 (1) Establish a system of intrastate communication of
14 information relating to missing children;

15 (2) Provide a centralized file for the exchange of
16 information on missing children and unidentified bodies
17 of children within the state;

18 (3) Communicate with the national crime information
19 center for the exchange of information on missing
20 children suspected of interstate travel;

21 (4) Collect, process, maintain and disseminate accurate
22 and complete information on missing children;

23 (5) Provide a statewide toll-free telephone line for the
24 reporting of missing children and for receiving
25 information on missing children;

26 (6) Disseminate to custodians, law-enforcement
27 agencies, the state department of education, the governor's
28 cabinet on children and families and the general public
29 information that explains how to prevent child abduction
30 and what to do if a child becomes missing;

31 (7) Compile statistics relating to the incidence of
32 missing children within the state;

33 (8) Provide training materials and technical assistance
34 to law-enforcement agencies and social services agencies
35 pertaining to missing children; and

36 (9) Establish a media protocol for disseminating
37 information pertaining to missing children.

38 (d) The clearinghouse shall print and distribute
39 posters, flyers and other forms of information containing
40 descriptions of missing children.

41 (e) The state police may accept public or private
42 grants, gifts and donations to assist in carrying out the
43 provisions of this article.

§49-9-4. State department of education; missing children program.

1 (a) The state department of education shall develop
2 and administer a program for the location of missing
3 children who may be enrolled in the West Virginia school
4 system, including private schools, and for the reporting of
5 children who may be missing or who may be unlawfully
6 removed from schools.

7 (b) The program shall include the use of information
8 received from the clearinghouse and shall be coordinated
9 with the operations of the clearinghouse.

10 (c) The state board of education may promulgate rules
11 in accordance with the provisions of article three, chapter
12 twenty-nine-a of this code for the operation of the
13 program and shall require the participation of all school
14 districts and state-accredited private schools in this state.

§49-9-5. Information to clearinghouse.

1 Every law-enforcement agency in West Virginia shall
2 provide to the clearinghouse any information the law-
3 enforcement agency has that would assist in locating or
4 identifying a missing child.

§49-9-6. Custodian request for information.

1 (a) Upon written request made to a law-enforcement
2 agency by the custodian of a missing child, the law-
3 enforcement agency shall request from the clearinghouse
4 information concerning the child that may aid the
5 custodian in locating or identifying the child.

6 (b) A law-enforcement agency to which a request has
7 been made pursuant to subsection (a) of this section shall
8 report to the custodian on the results of its inquiry within
9 fourteen calendar days after the day the written request is
10 received by the law-enforcement agency.

§49-9-7. Missing child report forms.

1 (a) The clearinghouse shall distribute missing child
2 report forms to law-enforcement agencies in the state.

3 (b) A missing child report may be made to a law-
4 enforcement agency in person or by telephone or other
5 indirect method of communication and the person taking
6 the report may enter the information on the form for the
7 reporter. A missing child report form may be completed
8 by the reporter and delivered to a law-enforcement office.

9 (c) A copy of the missing child report form shall be
10 filed with the clearinghouse.

§49-9-8. Law-enforcement requirements; missing child reports; unidentified bodies.

1 (a) A law-enforcement agency, upon receiving a
2 missing child report, shall:

3 (1) Immediately start an investigation to determine the
4 present location of the child if it determines that the child
5 is in danger; and

6 (2) Enter the name of the missing child into the
7 clearinghouse and the national crime information center
8 missing person file if the child meets the center's criteria,
9 with all available identifying features, including dental
10 records, fingerprints, other physical characteristics and a
11 description of the clothing worn when the missing child
12 was last seen.

13 (b) Information not immediately available shall be
14 obtained as soon as possible by the law-enforcement
15 agency and entered into the clearinghouse and the
16 national crime information center file as a supplement to
17 the original entry.

18 (c) All West Virginia law-enforcement agencies shall
19 enter information about all unidentified bodies of children
20 found in their jurisdiction into the clearinghouse and the
21 national crime information center unidentified person file,
22 including all available identifying features of the body
23 and a description of the clothing found on the body. If
24 an information entry into the national crime information

25 center file results in an automatic entry of the information
26 into the clearinghouse, the law-enforcement agency is not
27 required to make a direct entry of that information into
28 the clearinghouse.

§49-9-9. Release of dental records; immunity.

1 (a) At the time a missing child report is made, the law-
2 enforcement agency to which the missing child report is
3 given may, when feasible and appropriate, provide a dental
4 record release form to the parent, custodian, health care
5 surrogate or other legal entity authorized to release the
6 dental records of the missing child. The law-enforcement
7 agency shall endorse the dental record release form with a
8 notation that a missing child report has been made in
9 compliance with the provisions of this article. When the
10 dental record release form is properly completed by the
11 parent, custodian, health care surrogate or other legal
12 entity authorized to release the dental records of the
13 missing child and contains the endorsement, the form is
14 sufficient to permit a dentist or physician in this state to
15 release dental records relating to the missing child to the
16 law-enforcement agency.

17 (b) A circuit court judge may for good cause shown
18 authorize the release of dental records of a missing child
19 to a law-enforcement agency.

20 (c) A law-enforcement agency which receives dental
21 records under the provisions of subsections (a) or (b) of
22 this section shall send the dental records to the
23 clearinghouse.

24 (d) A dentist or physician who releases dental records
25 to a person presenting a proper release executed or
26 ordered pursuant to this section is immune from civil
27 liability or criminal prosecution for the release of the
28 dental records.

§49-9-10. Cross-checking and matching.

1 (a) The clearinghouse shall, in accordance with
2 national crime information center policies and procedures,
3 cross-check and attempt to match unidentified bodies with
4 descriptions of missing children. When the clearinghouse

5 discovers a possible match between an unidentified body
6 and a missing child description, the clearinghouse shall
7 notify the appropriate law-enforcement agencies.

8 (b) A law-enforcement agency that receives notice of a
9 possible match shall make arrangements for positive
10 identification. If a positive identification is made, the law-
11 enforcement agency shall complete and close the
12 investigation with notification to the clearinghouse.

§49-9-11. Interagency cooperation.

1 (a) State agencies and public and private schools shall
2 cooperate with a law-enforcement agency that is
3 investigating a missing child report and shall furnish any
4 information, including confidential information, that will
5 assist the law-enforcement agency in completing the
6 investigation.

7 (b) Information provided by a state agency or a public
8 or private school may not be released to any person
9 outside the law-enforcement agency or the clearinghouse,
10 except as provided by rules of the West Virginia state
11 police.

§49-9-12. Confidentiality of records.

1 (a) The state police shall promulgate rules according
2 to the provisions of article three, chapter twenty-nine-a of
3 this code to provide for the classification of information
4 and records as confidential that:

5 (1) Are otherwise confidential under state or federal
6 law or rules promulgated pursuant to state or federal law;

7 (2) Are related to the investigation by a law-
8 enforcement agency of a missing child or an unidentified
9 body, if the state police, in consultation with the law-
10 enforcement agency, determines that release of the
11 information would be deleterious to the investigation;

12 (3) Are records or notations that the clearinghouse
13 maintains for internal use in matters relating to missing
14 children and unidentified bodies and the state police
15 determines that release of the internal documents might

16 interfere with an investigation by a law-enforcement
17 agency in West Virginia or any other jurisdiction; or

18 (4) Are records or information that the state police
19 determines might interfere with an investigation or
20 otherwise harm a child or custodian.

21 (b) The rules may provide for the sharing of
22 confidential information with the custodian of the missing
23 child.

§49-9-13. Attorney general to require compliance.

1 The attorney general shall require each law-
2 enforcement agency to comply with the provisions of the
3 Missing Children Information Act and may seek writs of
4 mandamus or other appropriate remedies to enforce the
5 provisions of this article.

§49-9-14. Agencies that receive report.

1 (a) Upon completion of the missing child report the
2 law-enforcement agency shall immediately forward the
3 contents of the report to the missing children information
4 clearinghouse and the national crime information center's
5 missing person file: *Provided*, That if an information
6 entry into the national crime information center file results
7 in an automatic entry of the information into the
8 clearinghouse, the law-enforcement agency is not required
9 to make a direct entry of that information into the
10 clearinghouse.

11 (b) Within fifteen days after completion of the report,
12 if the child is less than thirteen years of age the law-
13 enforcement agency may, when appropriate, forward the
14 contents of the report to the last:

15 (1) Child care center or child care home in which the
16 child was enrolled; or

17 (2) School the child attended in West Virginia, if any.

18 (c) A law-enforcement agency involved in the
19 investigation of a missing child shall:

20 (1) Update the initial report filed by the agency that
21 received notification of the missing child upon the
22 discovery of new information concerning the
23 investigation;

24 (2) Forward the updated report to the appropriate
25 agencies and organizations;

26 (3) Search the national crime information center's
27 wanted person file for reports of arrest warrants issued for
28 persons who allegedly abducted or unlawfully retained
29 children and compare these reports to the missing child's
30 national crime information center's missing person file;
31 and

32 (4) Notify all law-enforcement agencies involved in
33 the investigation, the missing children information clear-
34 inghouse, and the national crime information center when
35 the missing child is located.

**§49-9-15. Clearinghouse advisory council; members, appoint-
ments and expenses; appointment, duties and
compensation of director.**

1 (a) There is hereby created a clearinghouse advisory
2 council, which is a body corporate and politic, constituting
3 a public corporation and government instrumentality.
4 The council shall consist of eleven members, who are
5 knowledgeable about and interested in issues relating to
6 missing or exploited children, as follows:

7 (1) Four members to be appointed by the governor,
8 with the advice and consent of the Senate, with not more
9 than two belonging to the same political party, three being
10 from different congressional districts of the state and, as
11 nearly as possible, providing broad state geographical
12 distribution of members of the council, and at least one
13 representing a nonprofit organization involved with
14 preventing the abduction, run-away or exploitation of
15 children or locating missing children;

16 (2) One person to be appointed by the governor, with
17 the advice and consent of the Senate, from a list of two
18 persons recommended by the speaker of the House of
19 Delegates;

20 (3) One member to be appointed by the governor,
21 with the advice and consent of the Senate, from a list of
22 two persons recommended by the president of the Senate;

23 (4) The secretary of the department of health and
24 human resources or his or her designee;

25 (5) The superintendent of the West Virginia state
26 police or his or her designee;

27 (6) The state superintendent of schools or his or her
28 designee;

29 (7) The director of the criminal justice and highway
30 safety division or his or her designee; and

31 (8) The executive director of the governor's cabinet
32 on children and families.

33 (b) Not later than the first day of June, one thousand
34 nine hundred ninety-seven, the governor shall appoint the
35 six appointed council members for staggered terms. The
36 terms of the board members first taking office on or after
37 the effective date of this legislation shall expire as
38 designated by the governor at the time of their
39 appointment, one at the end of the year, two at the end of
40 the second year, and two at the end of the third year. As
41 the original appointments expire, each subsequent
42 appointment shall be for a full three year term. Any
43 appointed member whose term is expired shall serve until
44 a successor has been duly appointed and qualified. Any
45 person appointed to fill a vacancy shall serve only for the
46 unexpired term. A member is eligible for only one
47 successive reappointment. In cases of any vacancy in the
48 office of a member, such vacancy shall be filled by the
49 governor in the same manner as the original appointment
50 was made.

51 (c) Members of the council are not entitled to
52 compensation for services performed as members but are
53 entitled to reimbursement for all reasonable and
54 necessary expenses actually incurred in the performance
55 of their duties. A majority of serving members constitutes
56 a quorum for the purpose of conducting business. The
57 chairman of the council shall be designated by the

58 governor from among the appointed council members
59 who represent nonprofit organizations involved with
60 preventing the abduction, run-away or exploitation of
61 children or locating missing children. The term of the
62 chairman shall run concurrently with his or her term of
63 office as a member of the council. The council shall
64 conduct all meetings in accordance with the open
65 governmental meetings law pursuant to article nine-a,
66 chapter six of this code.

67 (d) The employee of the West Virginia state police
68 who is primarily responsible for the clearinghouse
69 established by section three of this article shall serve as the
70 executive director of the council. He or she shall receive
71 no additional compensation for service as the executive
72 director of the council but shall be reimbursed for any
73 reasonable and necessary expenses actually incurred in the
74 performance of his or her duties as executive director.

75 (e) The expenses of the council members and the
76 executive director shall be reimbursed from funds
77 provided by foundation grants, in-kind contributions or
78 funds obtained pursuant to subsection (b), section
79 seventeen of this article.

80 (f) The executive director shall provide or obtain
81 information necessary to support the administrative work
82 of the council and, to that end, may contract with one or
83 more nonprofit organizations or state agencies for
84 research and administrative support. The executive
85 director of the council shall be available to the governor
86 and to the speaker of the House of Delegates and the
87 president of the Senate to analyze and comment upon
88 proposed legislation and rules which relate to or materially
89 affect missing or exploited children.

90 (g) The council shall prepare and publish an annual
91 report of its activities and accomplishments and submit it
92 to the governor and to the Legislature's joint committee
93 on government and finance on or before the fifteenth day
94 of December of each year.

**§49-9-16. Powers and duties of clearinghouse advisory
council.**

1 (a) The council shall prepare a comprehensive
2 strategic plan and recommendation of programs in
3 furtherance thereof that will support efforts to prevent the
4 abduction, runaway and exploitation, or any thereof, of
5 children and to locate missing children; advise the West
6 Virginia state police regarding operation of the
7 clearinghouse and its other responsibilities under this
8 article; and cooperate with and coordinate the efforts of
9 state agencies and private organizations involved with
10 issues relating to missing or exploited children. The
11 council may seek public and private grants, contracts,
12 matching funds and procurement arrangements from the
13 state and federal government, private industry and other
14 agencies in furtherance of its mission and programs. An
15 initial comprehensive strategic plan that will support and
16 foster efforts to prevent the abduction, run-away and
17 exploitation of children and to locate missing children
18 shall be developed and provided to the governor, the
19 speaker of the House of Delegates and the president of
20 the Senate no later than the first day of July, one thousand
21 nine hundred ninety-eight, and shall include, but not be
22 limited to, the following;

23 (1) Findings and determinations regarding the extent
24 of the problem in this state related to (i) abducted
25 children; (ii) runaway children; and (iii) exploited
26 children;

27 (2) Findings and determinations identifying the
28 systems, both public and private, existing in the state to
29 prevent the abduction, run-away or exploitation of
30 children and to locate missing children and assessing the
31 strengths and weaknesses of those systems and the
32 clearinghouse;

33 (3) The inclusion of exploited children within the
34 functions of the clearinghouse. For purposes of this
35 article, an exploited child is a person under the age of
36 eighteen years who has been (i) used in the production of
37 pornography; (ii) subjected to sexual exploitation or
38 sexual offenses under article eight-b, chapter sixty-one of
39 the code; or (iii) employed or exhibited in any injurious,
40 immoral or dangerous business or occupation in violation

41 of the provisions of sections five through eight, article
42 eight, chapter sixty-one of this code;

43 (4) Recommendations of legislative changes required
44 to improve the effectiveness of the clearinghouse and
45 other efforts to prevent abduction, run-away or
46 exploitation of children and to locate missing children.
47 Those recommendations shall consider the following:

48 (i) Interaction of the clearinghouse with child custody
49 proceedings;

50 (ii) Involvement of hospitals, child care centers and
51 other private agencies in efforts to prevent child
52 abduction, run-away or exploitation and to locate missing
53 children;

54 (iii) Publication of a directory of and periodic reports
55 regarding missing children;

56 (iv) Required reporting by public and private agencies
57 and penalties for failure to report and false reporting;

58 (v) Removal of names from the list of missing
59 children;

60 (vi) Creating of an advocate for missing and exploited
61 children;

62 (vii) State funding for the clearinghouse and efforts to
63 prevent the abduction, run-away and exploitation of
64 children and to locate missing children;

65 (viii) Mandated involvement of state agencies, such as
66 publication of information regarding missing children in
67 existing state publications and coordination with the state
68 registrar of vital statistics under section twelve-b, article
69 five, chapter sixteen of this code;

70 (ix) Expanded requirement for boards of education to
71 notify the clearinghouse in addition to local law
72 enforcement agencies under section five-c, article two,
73 chapter eighteen of this code or/if a birth certificate or
74 school record received appears to be inaccurate or
75 fraudulent and to receive clearinghouse approval before
76 releasing records;

77 (5) Methods that will coordinate and engender
78 collaborative efforts among organizations throughout the
79 state, whether public or private, involved with missing or
80 exploited children;

81 (6) Plans for the use of technology in the
82 clearinghouse and other efforts related to missing or
83 exploited children;

84 (7) Compliance of the clearinghouse, state law and all
85 rules promulgated pursuant thereto with applicable federal
86 law so as to enhance opportunities for receiving federal
87 grants;

88 (8) Consultation with the state board of education and
89 other agencies responsible for promulgating rules under
90 this article;

91 (9) Possible methods for identifying missing children
92 prior to enrollment in a public or nonpublic school;

93 (10) The feasibility and effectiveness of utilizing the
94 federal parent locator service in locating missing children;
95 and

96 (11) Programs for voluntary fingerprinting.

§49-9-17. Public-private partnerships; funding.

1 (a) In furtherance of its mission, the clearinghouse
2 council is authorized to enter into contracts or joint
3 venture agreements with federal and state agencies; with
4 nonprofit corporations organized pursuant to the
5 corporate laws of this state or other jurisdictions that are
6 qualified under section 501(c)(3) of the Internal Revenue
7 Code; and with other organizations that conduct research,
8 make grants, improve educational programs and work for
9 the prevention of missing or exploited children and to
10 locate missing children. All contracts and joint venture
11 agreements must be approved by a majority vote of the
12 council. The council may also enter into such contractual
13 agreements for consideration or recompense to it even
14 though such entities are funded from sources other than
15 the state. Members of the council are not prohibited from
16 sitting on the boards of directors of any contracting
17 private nonprofit corporation, foundation or firm:
18 *Provided*, That members of the council shall not be

19 exempt from any of the provisions of chapter six-b of this
20 code.

21 (b) The council shall solicit and is authorized to
22 receive and accept gifts or grants from private
23 foundations, corporations, individuals, devises and be-
24 quests or from other lawful sources. Such funds shall be
25 paid into a special account in the state treasury for the use
26 and benefit of the council.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schonover
Chairman Senate Committee

Nick Fontana
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.
Russell B. Smith
Clerk of the Senate

Begory in Gray
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

FL
Speaker of the House of Delegates

The within *is approved* this the *2nd*
day of *May*, 1997.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

Date 4/25/97

Time 1:50 pm