

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4415**

BY DELEGATES ROWAN, ROHRBACH, BOGGS, ESTEP-  
BURTON, PYLES, C. MARTIN, TONEY, MANDT, LOVEJOY,  
SYPOLT, AND HANNA

[Originating in the Committee on Health and Human  
Resources; Reported on January 30, 2020.]



1 A BILL to amend and reenact §15-3D-3 and the Code of West Virginia, 1931, as amended; to  
2 amend said code by adding thereto a new section, designated §15-3D-9; to amend and  
3 reenact §49-6-103, §49-6-105, §49-6-106, §49-6-109, §49-6-110, §49-6-112, §49-6-113,  
4 and 49-6-114; and to amend said code by adding thereto a new section, designated §49-  
5 6-116, all relating to children; defining terms; creating a missing child advisory; updating  
6 terminology; requiring law-enforcement to investigate; requiring law-enforcement to issue  
7 an advisory; permitting the sharing of confidential information with the department in  
8 certain circumstances; establishing a foster child locator unit within the department;  
9 establishing duties of the unit; and requiring a report.

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

## **CHAPTER 15. PUBLIC SAFETY.**

### **ARTICLE 3D. MISSING PERSONS ACT.**

#### **§15-3D-3. Definitions.**

1 For the purposes of this article:

2 (1) "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System,  
3 which allows for the storage and exchange of DNA records submitted by federal, state, and local  
4 forensic DNA laboratories. The term "CODIS" includes the National DNA Index System or NDIS,  
5 administered and operated by the Federal Bureau of Investigation.

6 (2) "Complainant" means a person who contacts law enforcement to report that a person  
7 is missing.

8 (3) "Electronic communication device" means a cellular telephone, personal digital  
9 assistant, electronic device with mobile data access, laptop computer, pager, broadband personal  
10 communication device, two-way messaging device, electronic game, or portable computing  
11 device.

12 (4) "Juvenile" means any person under 21 years of age.

13 (5) "Law-enforcement agency" means any duly authorized state, county, or municipal  
14 organization employing one or more persons whose responsibility is the enforcement of laws of  
15 the state or any county or municipality thereof.

16 (6) "Lead law-enforcement agency" means the law-enforcement agency that initially  
17 receives a missing persons complaint or, after the fulfillment of all requirements of this article  
18 related to the initial receipt of a missing persons complaint and transmission of information to  
19 required databases, the law-enforcement agency with the primary responsibility for investigating  
20 a missing or unidentified persons complaint.

21 (7) "Missing and endangered child" means any missing child in which there are substantial  
22 indications that the child is at high risk of harm or in immediate danger, and rapid action is  
23 required.

24 (8) "Missing child" means any child under the age of 18 whose whereabouts are unknown  
25 to the child's legal custodian.

26 (9) "Missing person" means any person who is reported missing to a law-enforcement  
27 agency.

28 ~~(8)~~ (10) "NamUs" means the database of the National Missing and Unidentified Persons  
29 System.

30 ~~(9)~~ (11) "NCIC" means the database of the National Crime Information Center, the  
31 nationwide, online computer telecommunications system maintained by the Federal Bureau of  
32 Investigation to assist authorized agencies in criminal justice and related law-enforcement  
33 objectives.

34 ~~(10)~~ (12) "NCMEC" means the database of the National Center for Missing and Exploited  
35 Children.

36 ~~(11)~~ (13) "Unidentified person" means any person, living or deceased, who has not been  
37 identified through investigation for over 30 days.

38           ~~(12)~~ (14) “Violent Criminal Apprehension Program” or “ViCAP” is a unit of the Federal  
39 Bureau of Investigation responsible for the analysis of serial violent and sexual crimes.

40           ~~(13)~~ (15) “WEAPON system” means the West Virginia Automated Police Network.

**§15-3D-9. Missing and Endangered Child Advisory System; definitions; rule-making authority.**

1           (a) There is hereby created an advisory system, referred to in this section as the “system”,  
2 to aid in the identification and location of missing and endangered children.

3           (b) For the purposes of this section “missing and endangered child” means a child, under  
4 the age of 18, whose whereabouts are unknown by the child’s legal custodian and who is:

5           (1) Physically or mentally disabled and is dependent upon an agency or another individual  
6 for care;

7           (2) Under the age of 13;

8           (3) Missing under circumstances which indicate the child’s safety may be in danger; or

9           (4) A foster child and has been determined a missing and endangered child by the  
10 Department of Health and Human Resources.

11           (c) For the purposes of this section, “Missing and Endangered Child Advisory” means a  
12 system used to alert the public of a missing and endangered child to aid in the child’s rapid  
13 recovery.

14           (d) The Department of Military Affairs and Public Safety shall promulgate emergency rules  
15 establishing procedures for local law-enforcement agency’s issuance of a missing and  
16 endangered child advisory.

**CHAPTER 49. CHILD WELFARE.**

**ARTICLE 6. MISSING CHILDREN INFORMATION ACT.**

**§49-6-103. Information to clearinghouse.**

1           Every The Department of Health and Human Resources and every law-enforcement  
2 agency in West Virginia shall provide to the clearinghouse or another investigating law-

3 ~~enforcement agency~~ any information ~~the law-enforcement agency has~~ that would assist in locating  
4 or identifying a missing child.

**§49-6-105. Missing child report forms; where filed.**

1 (a) The clearinghouse shall distribute missing child and missing and endangered child  
2 report forms to law-enforcement agencies in the state and to the Department of Health and Human  
3 Resources.

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

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

**§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.**

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

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

4 (2) Enter the name of the missing child into the clearinghouse and the National Crime  
5 Information Center missing person file if the child meets the center's criteria, with all available  
6 identifying features, including dental records, fingerprints, other physical characteristics and a  
7 description of the clothing worn when the missing child was last seen.

8 (b) Information not immediately available shall be obtained as soon as possible by the  
9 law-enforcement agency and entered into the clearinghouse and the National Crime Information  
10 Center file as a supplement to the original entry.

11 (c) All West Virginia law-enforcement agencies shall enter information about all  
12 unidentified bodies of children found in their jurisdiction into the clearinghouse and the National

13 Crime Information Center unidentified person file, including all available identifying features of the  
14 body and a description of the clothing found on the body. If an information entry into the National  
15 Crime Information Center file results in an automatic entry of the information into the  
16 clearinghouse, the law-enforcement agency is not required to make a direct entry of that  
17 information into the clearinghouse.

18 (d) A law-enforcement agency, upon receiving a missing and endangered child report,  
19 shall immediately:

20 (1) Start an investigation to determine the present location of the child if it determines that  
21 the child is missing and endangered; and

22 (2) Issue a Missing and Endangered Child Advisory.

**§49-6-109. Interagency cooperation.**

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

5 (b) Information provided by a state agency or a public or private school may not be  
6 released to any person outside the law-enforcement agency or the clearinghouse, except as  
7 provided by rules of the West Virginia State Police.

**§49-6-110. Confidentiality of records; rulemaking; requirements.**

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

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

5 (2) Are related to the investigation by a law-enforcement agency of a missing child or an  
6 unidentified body, if the State Police, in consultation with the law-enforcement agency, determines  
7 that release of the information would be deleterious to the investigation;

8 (3) Are records or notations that the clearinghouse maintains for internal use in matters  
9 relating to missing children and unidentified bodies and the State Police determines that release  
10 of the internal documents might interfere with an investigation by a law-enforcement agency in  
11 West Virginia or any other jurisdiction; or

12 (4) Are records or information that the State Police determines might interfere with an  
13 investigation or otherwise harm a child or custodian.

14 (b) The rules may provide for the sharing of confidential information with the custodian of  
15 the missing child: Provided, That confidential information, which is not believed to jeopardize an  
16 investigation, must be shared with the custodian when the legal custodian is the Department of  
17 Health and Human Resources.

**§49-6-112. Agencies to receive report; law-enforcement agency requirements.**

1 (a) Upon completion of the missing child or missing and endangered child report the law-  
2 enforcement agency shall immediately forward the contents of the report to the missing children  
3 information clearinghouse and the National Crime Information Center's missing person file.  
4 However, if an information entry into the National Crime Information Center file results in an  
5 automatic entry of the information into the clearinghouse, the law-enforcement agency is not  
6 required to make a direct entry of that information into the clearinghouse.

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

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

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

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

13 (1) Update the initial report filed by the agency that received notification of the missing  
14 child upon the discovery of new information concerning the investigation;

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

16 (3) Search the National Crime Information Center's wanted person file for reports of arrest  
17 warrants issued for persons who allegedly abducted or unlawfully retained children and compare  
18 these reports to the missing child's National Crime Information Center's missing person file; and

19 (4) Notify all law-enforcement agencies involved in the investigation, the missing children  
20 information clearinghouse, and the National Crime Information Center when the missing child is  
21 located.

**§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses;  
appointment, duties and compensation of director; annual reports.**

1 (a) The Clearinghouse Advisory Council is continued as a body corporate and politic,  
2 constituting a public corporation and government instrumentality. The council shall consist of  
3 eleven members, who are knowledgeable about and interested in issues relating to missing or  
4 exploited children, as follows:

5 (1) Six members to be appointed by the Governor, with the advice and consent of the  
6 Senate, with not more than four belonging to the same political party, three being from different  
7 congressional districts of the state and, as nearly as possible, providing broad state geographical  
8 distribution of members of the council, and at least one representing a nonprofit organization  
9 involved with preventing the abduction, runaway or exploitation of children or locating missing  
10 children;

11 (2) The Secretary of the Department of Health and Human Resources or his or her  
12 designee;

13 (3) The Superintendent of the West Virginia State Police or his or her designee;

14 (4) The State Superintendent of Schools or his or her designee;

15 (5) The Director of the Criminal Justice and Highway Safety Division or his or her designee;

16 and

17 (6) The Commissioner of the Bureau for Children and Families or his or her designee.

18 (b) The Governor shall appoint the six council members for staggered terms. The terms  
19 of the members first taking office on or after the effective date of this legislation shall expire as  
20 designated by the Governor. Each subsequent appointment shall be for a full three-year term.  
21 Any appointed member whose term is expired shall serve until a successor has been duly  
22 appointed and qualified. Any person appointed to fill a vacancy may serve only for the unexpired  
23 term. A member is eligible for only one successive reappointment. A vacancy shall be filled by  
24 the Governor in the same manner as the original appointment was made.

25 (c) Members of the council are not entitled to compensation for services performed as  
26 members but are entitled to reimbursement for all reasonable and necessary expenses actually  
27 incurred in the performance of their duties in a manner consistent with the guidelines of the Travel  
28 Management Office of the Department of Administration.

29 (d) A majority of serving members constitutes a quorum for the purpose of conducting  
30 business. The chair of the council shall be designated by the Governor from among the appointed  
31 council members who represent nonprofit organizations involved with preventing the abduction,  
32 runaway or exploitation of children or locating missing children. The term of the chair shall run  
33 concurrently with his or her term of office as a member of the council. The council shall conduct  
34 all meetings in accordance with the open governmental meetings law pursuant to article nine-a,  
35 chapter six of this code.

36 (e) The employee of the West Virginia State Police who is primarily responsible for the  
37 clearinghouse established by §49-6-101 of this code, shall serve as the executive director of the  
38 council. He or she shall receive no additional compensation for service as the executive director  
39 of the council but shall be reimbursed for any reasonable and necessary expenses actually  
40 incurred in the performance of his or her duties as executive director in a manner consistent with  
41 the guidelines of the travel management office of the Department of Administration.

42           ~~(f) The expenses of council members and the executive director shall be reimbursed from~~  
43 ~~funds provided by foundation grants, in-kind contributions or funds obtained pursuant to~~  
44 ~~subsection (b), section one hundred fifteen of this article.~~

45           (g) The executive director shall provide or obtain information necessary to support the  
46 administrative work of the council and, to that end, may contract with one or more nonprofit  
47 organizations or state agencies for research and administrative support.

48           ~~(h)~~ (g) The executive director of the council shall be available to the Governor and to the  
49 Speaker of the House of Delegates and the President of the Senate to analyze and comment  
50 upon proposed legislation and rules which relate to or materially affect missing or exploited  
51 children.

52           ~~(i)~~ (h) The council shall prepare and publish an annual report of its activities and  
53 accomplishments and submit it to the Governor and to ~~the Joint Committee on Government and~~  
54 ~~Finance~~ Legislature on or before December 15 of each year.

**§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic  
plan required to be provided to the Legislature.**

1           The council shall prepare a comprehensive strategic plan and recommendation of  
2 programs in furtherance thereof that will support efforts to prevent the abduction, runaway and  
3 exploitation, or any thereof, of children to locate missing children; advise the West Virginia State  
4 Police regarding operation of the clearinghouse and its other responsibilities under this article;  
5 and cooperate with and coordinate the efforts of state agencies and private organizations involved  
6 with issues relating to missing or exploited children. The council may seek public and private  
7 grants, contracts, matching funds and procurement arrangements from the state and federal  
8 government, private industry and other agencies in furtherance of its mission and programs. An  
9 initial comprehensive strategic plan that will support and foster efforts to prevent the abduction,  
10 runaway and exploitation of children and to locate missing children shall be developed and

11 provided to the Governor, the Speaker of the House of Delegates and the President of the Senate  
12 no later than ~~July 1, 2015~~ July 1, 2020, and shall include, but not be limited to, the following:

13 (1) Findings and determinations regarding the extent of the problem in this state related  
14 to: (A) Abducted children; (B) ~~runaway~~ missing children; ~~and~~ (C) exploited children; and (D)  
15 missing and endangered children.

16 (2) Findings and determinations identifying the systems, both public and private, existing  
17 in the state to prevent the abduction, runaway or exploitation of children and to locate missing  
18 children and assessing the strengths and weaknesses of those systems and the clearinghouse;

19 (3) The inclusion of exploited children within the functions of the clearinghouse. For  
20 purposes of this article, an exploited child is a person under the age of eighteen years who has  
21 been: (A) Used in the production of pornography; (B) subjected to sexual exploitation or sexual  
22 offenses under article eight-b, chapter sixty-one of this code; or (C) employed or exhibited in any  
23 injurious, immoral or dangerous business or occupation in violation of sections five through eight,  
24 article eight, chapter sixty-one of this code;

25 (4) Recommendations of legislative changes required to improve the effectiveness of the  
26 clearinghouse and other efforts to prevent abduction, runaway or exploitation of children and to  
27 locate missing children. Those recommendations shall consider the following:

28 (A) Interaction of the clearinghouse with child custody proceedings;

29 (B) Involvement of hospitals, child care centers and other private agencies in efforts to  
30 prevent child abduction, runaway or exploitation and to locate missing children;

31 (C) Publication of a directory of and periodic reports regarding missing children;

32 (D) Required reporting by public and private agencies and penalties for failure to report  
33 and false reporting;

34 (E) Removal of names from the list of missing children;

35 (F) Creating of an advocate for missing and exploited children;

36 (G) State funding for the clearinghouse and efforts to prevent the abduction, runaway and  
37 exploitation of children and to locate missing children;

38 (H) Mandated involvement of state agencies, such as publication of information regarding  
39 missing children in existing state publications and coordination with the state registrar of vital  
40 statistics under section twelve, article five, chapter sixteen of this code; and

41 (I) Expanded requirement for boards of education to notify the clearinghouse in addition  
42 to local law-enforcement agencies under section five-c, article two, chapter eighteen of this code  
43 or if a birth certificate or school record received appears to be inaccurate or fraudulent and to  
44 receive clearinghouse approval before releasing records;

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

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

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

51 (8) Consultation with the State Board of Education and other agencies responsible for  
52 promulgating rules under this article;

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

55 (10) The feasibility and effectiveness of utilizing the federal parent locator service in  
56 locating missing children; and

57 (11) Programs for voluntary fingerprinting.

**§49-6-116. Establish a missing foster child locator unit program.**

1 (a) The Secretary of the West Virginia Department of Health and Human Resources shall  
2 establish a missing foster child locator unit within the department with a minimum staffing of a

3 northern-based caseworker, a southern-based caseworker, and an identified worker located in  
4 the Centralized Intake Unit.

5 (b) The duties of the missing foster child locator unit shall include, but are not limited to,  
6 the following:

7 (1) Receiving reports of missing foster children;

8 (2) Assisting law enforcement in locating missing foster children who have been reported  
9 missing; and

10 (3) Interviewing missing foster children and completing trafficking screening once the child  
11 is located.

12 (c) For this section, "missing foster child" means missing child or missing and endangered  
13 child, as defined in §15-3D-3 of this code, who is a foster child at the time he or she was reported  
14 missing.

15 (d) Beginning in July 1, 2021, and each year thereafter, the Secretary of Department of  
16 Health and Human Resources shall provide a status report to the Legislative Oversight Committee  
17 on Health and Human Resources Accountability.

18 (e) The secretary shall implement and administer this program at least until December 31,  
19 2022. The secretary may administer this program after such date.

NOTE: The purpose of this bill is to improve the response to and the protection and recovery of this state's missing and endangered children.

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