

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 273

BY SENATORS TRUMP, WOELFEL, PLYMALE, RUCKER,

BARRETT, AND DEEDS

[Originating in the Committee on Finance; reported on

February 17, 2023]

1 A BILL to amend and reenact §49-2-101, §49-2-102, and §49-2-809 of the Code of West Virginia,
2 1931, as amended; to amend said code by adding thereto a new article, designated §49-
3 10-101, §49-10-102, and §49-10-103; to amend said code by adding thereto a new article,
4 designated §49-11-101, all relating to child welfare; continuing the Bureau for Social
5 Services; authorizing the Bureau for Social Services to provide care for children in need
6 of public service; providing the commissioner shall allocate child protective service
7 workers in counties according to the average caseload per county and the county
8 population based on the 2020 Census; requiring reporting to the Legislature of the
9 allocation; requiring the department to have a redundancy system in the event of a
10 centralized intake outage; setting forth requirements for data submission in the event a
11 system exists; providing that the Bureau for Social Services shall develop a merit-based
12 system for specified employees; providing the merit-based system shall be subject to the
13 grievance process, except that there is no grievance available for the same classification
14 description impacted by regional pay disparities; providing that for existing employees
15 there is no grievance procedure for a regional pay disparity for the same job classification;
16 requiring reporting of statistical, systemic child welfare information; and providing for
17 emergency and legislative rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-101. Authorization and responsibility; Bureau for Social Services.

1 ~~(a) The Department of Health and Human Resources is authorized to provide care,~~
2 ~~support and protective services for children who are handicapped by dependency, neglect, single~~
3 ~~parent status, mental or physical disability, or who for other reasons are in need of public service.~~
4 ~~The department is also authorized to accept children for care from their parent or parents,~~

5 ~~guardian, custodian or relatives and to accept the custody of children committed to its care by~~
6 ~~courts. The Department of Health and Human Resources or any county office of the department~~
7 ~~is also authorized and to accept temporary custody of children for care from any law enforcement~~
8 ~~officer in an emergency situation. The Bureau for Social Services is hereby continued within the~~
9 ~~department. The bureau is under the immediate supervision of a commissioner.~~

10 (b) ~~The Department of Health and Human Resources is responsible for the care of the~~
11 ~~infant child of an unmarried mother who has been committed to the custody of the department~~
12 ~~while the infant is placed in the same licensed child welfare agency as his or her mother. The~~
13 ~~department may provide care for those children in family homes meeting required standards, at~~
14 ~~board or otherwise, through a licensed child welfare agency, or in a state institution providing care~~
15 ~~for dependent or neglected children. If practical, when placing any child in the care of a family or~~
16 ~~a child welfare agency the department shall select a family holding the same religious belief as~~
17 ~~the parents or relatives of the child or a child welfare agency conducted under religious auspices~~
18 ~~of the same belief as the parents or relatives. The Bureau for Social Services is authorized to~~
19 ~~provide care, support, and protective services for children who are handicapped by dependency,~~
20 ~~neglect, single parent status, mental or physical disability, or who for other reasons are in need~~
21 ~~of public service. The Bureau for Social Services is also authorized to accept children for care~~
22 ~~from their parent or parents, guardian, custodian, or relatives, and to accept the custody of~~
23 ~~children committed to its care by courts. The Bureau for Social Services or any county office of~~
24 ~~the department is also authorized to accept temporary custody of children for care from any law-~~
25 ~~enforcement officer in an emergency situation.~~

26 (c) ~~The Bureau for Social Services is responsible for the care of the infant child of an~~
27 ~~unmarried mother who has been committed to the custody of the department while the infant is~~
28 ~~placed in the same licensed child welfare agency as his or her mother. The Bureau for Social~~
29 ~~Services may provide care for those children in family homes meeting required standards, at~~
30 ~~board or otherwise, through a licensed child welfare agency, or in a state institution providing care~~

31 for dependent or neglected children. If practical, when placing any child in the care of a family or
32 a child welfare agency, the Bureau for Social Services shall select a family holding the same
33 religious belief as the parents or relatives of the child, or a child welfare agency conducted under
34 religious auspices of the same belief as the parents or relatives.

§49-2-102. Minimum staffing complement for child protective services Staffing Allocation
for Child Protective Services Workers.

1 [Repealed.] Notwithstanding any other provision of this code to the contrary, effective July
2 1, 2024, the commissioner shall give equal consideration to and allocate and station child
3 protective services workers in counties according to the average caseload over the past three
4 calendar years in each county and the county population. This county population allocation shall
5 be based on the 2020 United States Census. The Bureau for Social Services shall report the
6 allocation to the Legislative Oversight Commission on Health and Human Resources
7 Accountability by July 1 each year.

§49-2-809. Reporting procedures.

1 (a) Reports of child abuse and neglect pursuant to this article shall be made immediately to
2 the department of child protective services by a method established by the ~~department~~ Bureau
3 for Social Services: *Provided*, That if the method for reporting is web-based, the ~~Department of~~
4 ~~Health and Human Resources~~ Bureau for Social Services shall maintain a system for addressing
5 emergency situations that require immediate attention and shall be followed by a written report
6 within 48 hours if so requested by the receiving agency. The state ~~department~~ Bureau for Social
7 Services shall establish and maintain a 24-hour, seven-day-a-week telephone number to receive
8 calls reporting suspected or known child abuse or neglect.

9 (b) The department shall have a redundancy for its system in the event of an outage to receive
10 reports. This redundancy system shall be transparent, meaning that it shall allow for reporting in
11 the same means as if the outage had not occurred and no time delay shall occur from when the
12 outage occurs to when the redundancy system begins to operate. This redundancy system shall

13 be operational no later than July 1, 2023. If the department contends that it currently has a
14 redundancy system, it shall describe the system, provide an operational date for the system, and
15 explain why calls to centralized intake were unanswered to the Joint Committee on Government
16 and Finance by July 1, 2023.

17 ~~(b)~~ (c) A copy of any report of serious physical abuse, sexual abuse, or assault shall be
18 forwarded by the department to the appropriate law-enforcement agency, the prosecuting
19 attorney, or the coroner or medical examiner's office. All reports under this article are confidential.
20 Reports of known or suspected institutional child abuse or neglect shall be made and received as
21 all other reports made pursuant to this article.

22 (d) The department shall annually submit a report in an electronic format, via the legislative
23 webpage, on July 1 to the Joint Committee on Government and Finance, which shall contain:
24 How many calls were made to centralized intake on a per county basis, how many calls were
25 referred to centralized intake on a per county basis, how many calls were screened out
26 centralized intake on a per county basis, and the time from referral to investigation on a per county
27 basis.

ARTICLE 10. EXEMPTION FROM WEST VIRGINIA DIVISION OF PERSONNEL.

§49-10-101. Legislative findings.

1 The Legislature finds the State of West Virginia is experiencing a child welfare crisis. From
2 2016 to 2020, the child protective service vacancy rate has increased from 9.7 percent to 33
3 percent. This significant lack of staffing has caused a delay in response times to begin
4 investigations. During the same time period, the average hours to start a child protective service
5 investigation after referral went from 119.1 hours in 2016 to now averaging 428.1 hours in 2020.
6 This significant failure to begin the investigation can and has cost lives. The Legislature finds that
7 the Bureau for Social Services is having extreme difficulty recruiting and retaining child protective
8 service workers, youth service workers, adult protective service workers, and other related

9 workers, including necessary casework support personnel and managers at the county level, who
10 assist in the provision of services to vulnerable populations.

§49-10-102. Bureau for Social Service employees exempt from Division of Personnel.

1 (a) The commissioner of the West Virginia Bureau for Social Services shall develop a
2 special merit-based system, including an application appointment procedure for child protective
3 service workers, youth service workers, and adult protective workers, including necessary
4 casework support personnel and managers at the county level, who assist in the provision of
5 services to vulnerable populations. The procedure shall include classification specifications, and
6 may include compensation adjustments, retention incentives, and hiring approval by the
7 commissioner. The commissioner shall have the full authority to evaluate applicants for
8 employment or promotion or make classification determinations for positions within the special
9 merit-based system. The pay rates and employment requirements shall be put into effect on or
10 before January 1, 2024. This special merit-based system shall apply to new employees in the
11 above referenced job classifications and for existing employees who elect, in writing to enter the
12 special merit-based system. The special merit-based system is exempt from the Division of
13 Personnel and any and all requirements of §29-6-1 et seq. of this code and any related rules.

14 (b) Funding for the pay rates and employment requirements shall be provided from the
15 appropriation to the Bureau of Social Services.

16 (c) The commissioner may conduct periodic wage and compensation analysis of identified
17 market rates for the above positions as determined by the commissioner.

18 (d) The commissioner may promulgate emergency rules pursuant to the provisions of
19 §29A-3-15 of this code and shall propose rules for legislative approval, in accordance with the
20 provisions of §29A-3-1 et seq. of this code, to implement and comply with the provisions of this
21 section no later than to be considered during the regular session of the Legislature, 2023.

§49-10-103. Bureau for Social Service employees no requirement uniformity in pay scale.

1 The Legislature finds that the Bureau for Social Services is having extreme difficulty
2 retaining child protective service workers, youth service workers, adult protective service workers,
3 and other related workers, including necessary casework support personnel and managers at the
4 county level, who assist in the provision of services to vulnerable populations. To retain qualified
5 employees in these crucial positions, there is no requirement for uniformity regarding the pay
6 scale for the same classification between regions of the state to account for market rates and
7 demand for specific positions. The provisions of §6C-2-1 et seq. of this code shall be applicable
8 to the employees of the special merit-based system as set forth in §49-10-102 of this code,
9 however, there is no right to a grievance for any such regional pay disparity for the same job
10 classification.

ARTICLE 11. SYSTEM REPORTING.

§49-11-101. Systemic reporting transparency; rulemaking.

1 (a) The commissioner shall amend the existing child welfare data dashboard to report on
2 system-wide issues, including, but not limited to, system-level performance indicators, intake
3 hotline performance indicators, field investigation performance indicators, open case performance
4 indicators, out-of-home placement performance indicators, and federally mandated performance
5 indicators.

6 (b) The commissioner shall propose rules for legislative approval in accordance with the
7 provisions of §29A-3-1 et seq. of this code to be considered during the regular session of the
8 Legislature, 2023. The commissioner may promulgate emergency rules pursuant to the provisions
9 of §29A-3-15 of this code.