

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2880

BY DELEGATES BURKHAMMER, KIMBLE, MAZZOCCHI,

PINSON, AND PETITTO

[Passed April 12, 2025; in effect 90 days from
passage (July 11, 2025)]

1 AN ACT to amend and reenact §49-1-201, §49-2-809, §49-4-405, §49-5-101, and §49-11-101 of
2 the Code of West Virginia, 1931, as amended; to amend the code by adding a new section,
3 designated §49-2-802a; and to amend the code by adding a new article, designated, §61-
4 12B-1, §61-12B-2, §61-12B-3, §61-12B-4, §61-12B-5, §61-12B-6, and §61-12B-7,
5 relating to child welfare; requiring information to be provided at outset of investigation;
6 stating form of centralized intake reporting procedures; including parent resource
7 navigators within multidisciplinary teams; permitting the foster care ombudsman to access
8 information related to child abuse and neglect proceedings; requiring the Bureau for
9 Medical Services and the Bureau for Social Services to provide electronic access to
10 various persons; requiring updates to the child welfare dashboard; establishing the Critical
11 Incident Review Team; setting forth composition of members; setting forth the
12 responsibilities of the Critical Incident Review Team; setting forth the reporting
13 requirements of the Critical Incident review team; requiring cooperation with Critical
14 Incident Team; and setting forth confidentiality of information.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-201. Definitions related, but not limited to, child abuse and neglect.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, child abuse and neglect, except in those instances where
3 a different meaning is provided or the context in which the word is used clearly indicates that a
4 different meaning is intended.

5 "Abandonment" means any conduct that demonstrates the settled purpose to forego the
6 duties and parental responsibilities to the child;

7 "Abused child" means:

(1) A child whose health or welfare is being harmed or threatened by:

(A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury upon the child or another child in the home. Physical injury may include an injury to the child as a result of excessive corporal punishment;

(B) Sexual abuse or sexual exploitation;

(C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of §61-2-14h of this code;

(D) Domestic violence as defined in §48-27-202 of this code; or

(E) Human trafficking or attempted human trafficking in violation of §61-14-2 of this code.

(2) A child conceived as a result of sexual assault, as that term is defined in this section, or as a result of the violation of a criminal law of another jurisdiction which has the same essential elements: *Provided*, That no victim of sexual assault may be determined to be an abusive parent as that term is defined in this section, based upon being a victim of sexual assault.

"Abusing parent" means a parent, guardian, or other custodian, regardless of his or her age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in the petition charging child abuse or neglect.

"Battered parent" for the purposes of §49-4-601 *et seq.* of this code means a respondent parent, guardian, or other custodian who has been adjudicated by the court to have not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by §48-27-202 of this code, which was perpetrated by the same person or persons determined to have abused or neglected the child or children.

"Child abuse and neglect" or "child abuse or neglect" means any act or omission that creates an abused child or a neglected child as those terms are defined in this section.

"Child abuse and neglect services" means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing, and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing time-limited reunification services to the children and the families so as to reunify those children with their families, or some portion of the families;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion of the families, is not possible or appropriate; and

(F) Assuring the adequate care of children or juveniles who have been placed in the custody of the department or third parties.

"Condition requiring emergency medical treatment" means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; that condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness, and evidence of ingestion of significant amounts of a poisonous substance.

"Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. These conditions may include an emergency situation when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health, life, or safety of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling, babysitter, or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;

(D) Abandonment by the parent, guardian, or custodian;

(E) Inadequate treatment of serious illness or disease;

(F) Substantial emotional injury inflicted by a parent, guardian, or custodian;

(G) Sale or attempted sale of the child by the parent, guardian, or custodian;

(H) The parent, guardian, or custodian's abuse of alcohol or drugs or other controlled substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety; or

(I) Any other condition that threatens the health, life or safety of any child in the home.

"Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is not due primarily to a lack of financial means on the part of the parent, guardian, or custodian;

(B) Who is presently without necessary food, clothing, shelter, medical care, education, or supervision because of the disappearance or absence of the child's parent or custodian; or

(C) "Neglected child" does not mean a child whose education is conducted within the provisions of §18-8-1 *et seq.* of this code.

"Parent Resource Navigator" means an individual established through the Court Improvement Program (CIP) or Public Defender Services (PDS) model who is assisting a parent or parents through requirements to be unified or reunified with their child or children.

"Petitioner or copetitioner" means the department or any reputable person who files a child abuse or neglect petition pursuant to §49-4-601 *et seq.* of this code.

"Permanency plan" means the part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available.

"Respondent" means all parents, guardians, and custodians identified in the child abuse and neglect petition who are not petitioners or copetitioners.

"Sexual abuse" means:

(A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-3 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or knowingly procures another person to engage in, with a child notwithstanding the fact that for a child who is less than 16 years of age, the child may have willingly participated in that conduct or the child may have suffered no apparent physical, mental, or emotional injury as a result of that conduct or, for a child 16 years of age or older, the child may have consented to that conduct or the child may have suffered no apparent physical injury or mental, or emotional injury as a result of that conduct;

(B) Any conduct where a parent, guardian, or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian, or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or

(C) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

"Sexual assault" means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-5 of this code.

"Sexual contact" means sexual contact as that term is defined in §61-8b-1 of this code.

"Sexual exploitation" means an act where:

(A) A parent, custodian, or guardian, whether for financial gain or not, persuades, induces, entices, or coerces a child to engage in sexually explicit conduct as that term is defined in §61-8c-1 of this code;

(B) A parent, guardian, or custodian persuades, induces, entices, or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, or a third person, or to display his or her sex organs under circumstances in which the parent,

guardian, or custodian knows that the display is likely to be observed by others who would be affronted or alarmed; or

(C) A parent, guardian, or custodian knowingly maintains or makes available a child for the purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this code.

"Sexual intercourse" means sexual intercourse as that term is defined in §61-8b-1 of this code.

"Sexual intrusion" means sexual intrusion as that term is defined in §61-8b-1 of this code.

"Serious physical abuse" means bodily injury which creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-802a. Information to be provided at the outset of a child protective services investigation.

(a) Notwithstanding any other provision to the contrary, immediately upon initiating an investigation of a parent or other person having legal custody of a child, the department shall, upon first contact with the individual, provide the individual with a copy of A Parent's Guide to Working with Child Protective Services (Guide).

(b) The Guide shall include a short and plain statement to include, but not be limited to, the following:

- (1) Steps that the department will take to investigate signs of abuse and neglect;
- (2) Steps that may need to be taken to make a safer or healthier home for the child;
- (3) An overview of the court process;
- (4) The confidentiality of maltreatment reports and case appeals;
- (5) Child visitation; and
- (6) Case appeals.

§49-2-809. Reporting procedures.

1 (a) Reports of child abuse and neglect pursuant to this article shall be made immediately
2 to the Bureau for Social Services. Reports of child abuse and neglect shall be made to the Bureau
3 of Social Services via a 24-hour, seven-day-a week hotline (centralized intake) that shall be
4 maintained by the Bureau of Social Services to receive calls reporting suspected or known child
5 abuse or neglect or such reports may be made via web-based reporting (email, electronic fax,
6 fillable form, or other electronic form) that sends the reports to a live person to handle the reports
7 immediately. Both systems shall give the reporter a specific case identifier immediately upon
8 making a report.

9 (b) If a report of child abuse and neglect is made in any fashion other than specified in
10 subsection (a) of this section, then Bureau of Social Services is still required to act upon such
11 report as if the report were made to centralized intake.

12
13 (c) A copy of any report of serious physical abuse, sexual abuse, or assault shall be
14 forwarded by the department to the appropriate law-enforcement agency, the prosecuting
15 attorney, or the coroner or medical examiner's office. All reports under this article are confidential.
16 Reports of known or suspected institutional child abuse or neglect shall be made and received as
17 all other reports made pursuant to this article.

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

(e) All reports made to centralized intake by email, fax, fillable form, or other electronic form from a reporter, shall be retained in the Comprehensive Child Welfare Information System in its original format for at least 12 months.

(f) Audio files recorded from reports made to centralized intake shall be retained in the Comprehensive Child Welfare Information System for at least 12 months.

(g) Any such person receiving a report pursuant to subsection (b) of this section shall make a written record in the Comprehensive Child Welfare Information system detailing the report and retain that record in an appropriate format for a period of at least 12 months.

ARTICLE 4. COURT ACTIONS.

§49-4-405. Multidisciplinary treatment planning process involving child abuse and neglect; team membership; duties; reports; admissions.

(a) Within 30 days of the initiation of a judicial proceeding pursuant to part six of this article, the department shall convene a multidisciplinary treatment team to assess, plan, and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families. The multidisciplinary team shall obtain and utilize any assessments for the children or the adult respondents that it deems necessary to assist in the development of that plan.

(b) In a case initiated pursuant to part six of this article, the treatment team consists of:

(1) The child or family's case manager in the department;

(2) The adult respondent or respondents;

(3) The child's parent or parents, guardians, any copetitioners, custodial relatives of the child, foster or preadoptive parents;

(4) Any attorney representing an adult respondent or other member of the treatment team;

(5) The child's counsel or the guardian ad litem;

(6) The prosecuting attorney or his or her designee;

(7) A member of a child advocacy center when the child has been processed through the child advocacy center program or programs or it is otherwise appropriate that a member of the child advocacy center participate;

(8) Any court-appointed special advocate assigned to a case;

(9) Any other person entitled to notice and the right to be heard;

(10) An appropriate school official;

(11) A parent resource navigator;

(12) The managed care case coordinator; and

(13) Any other person or agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers.

The child may participate in multidisciplinary treatment team meetings if the child's participation is deemed appropriate by the multidisciplinary treatment team. Unless otherwise ordered by the court, a party whose parental rights have been terminated and his or her attorney may not be given notice of a multidisciplinary treatment team meeting and do not have the right to participate in any treatment team meeting.

(c) Prior to disposition in each case in which a treatment planning team has been convened, the team shall advise the court as to the types of services the team has determined are needed and the type of placement, if any, which will best serve the needs of the child. If the team determines that an out-of-home placement will best serve the needs of the child, the team shall first consider placement with appropriate relatives then with foster care homes, facilities, or programs located within the state. The team may only recommend placement in an out-of-state facility if it concludes, after considering the best interests and overall needs of the child, that there are no available and suitable in-state facilities which can satisfactorily meet the specific needs of the child.

(d) The multidisciplinary treatment team shall submit written reports to the court as required by the rules governing this type of proceeding or by the court and shall meet as often as deemed necessary but at least every three months until the case is dismissed from the docket of the court. The multidisciplinary treatment team shall be available for status conferences and hearings as required by the court.

(e) If a respondent or copetitioner admits the underlying allegations of child abuse or neglect, or both abuse and neglect, in the multidisciplinary treatment planning process, his or her statements may not be used in any subsequent criminal proceeding against him or her, except for perjury or false swearing.

ARTICLE 5. RECORD KEEPING AND DATABASE.

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

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

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

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

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

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

(D) The Juvenile Justice Commission and its' designees acting in the course of their official duties;

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

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

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

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

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

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

(6) The West Virginia Crime Victims Compensation Fund and its designees acting in the course of their official duties.

(d) Information related to proceedings involving child abuse or neglect, or both, shall be made available, upon request, to the Foster Care Ombudsman, or his or her designee, with the exception of information related to the identity of the person making a referral or suspected abuse or neglect. Only in cases involving near fatalities or fatalities of a child in the foster care system,

41 shall the information related to the identity of the person who reported the suspected abuse or
42 neglect be made available to the Foster Care Ombudsman: *Provided, That* such request is made
43 in the course of their official duties pursuant to §16B-16-1 *et seq.* of this code.

44 (e) If there is a child fatality or near fatality due to child abuse and neglect, information
45 relating to a fatality or near fatality shall be made public by the Department of Human Services
46 and provided to the entities described in subsection (c) of this section and to the Critical Incident
47 Review Team as established in §61-12B-1 *et seq.* of this code: *Provided, That* information
48 released by the Department of Human Services pursuant to this subsection may not include the
49 identity of a person reporting or making a complaint of child abuse or neglect except when such
50 information and records are released to the Foster Care Ombudsman or his or her designee
51 acting in the course of their official duties related to a near fatality or fatality of a child with in the
52 foster care system. Only in those circumstances shall the Department of Human Services include
53 the identity of a person reporting or making a complaint of child abuse or neglect may be included:
54 *Provided, however, That* the Foster Care Ombudsman or his or her designee is acting in the
55 course of their official duties pursuant to §16B-16-1 *et seq.* of this code. For purposes of this
56 subsection, "near fatality" means any medical condition of the child which is certified by the
57 attending physician to be life-threatening.

58 (f) Except in juvenile proceedings which are transferred to criminal proceedings, law-
59 enforcement records and files concerning a child or juvenile shall be kept separate from the
60 records and files of adults and not included within the court files. Law-enforcement records and
61 files concerning a child or juvenile shall only be open to inspection pursuant to §49-5-103 of this
62 code.

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

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

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

(A) Performs the same functions in that state that are performed by the Division of Corrections and Rehabilitation in this state;

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

(C) Has legal custody of the juvenile.

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

(3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this subsection; and

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

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

(k) Notwithstanding the provisions of subsection (a) of this section, records in the possession of the Division of Corrections and Rehabilitation declared to be confidential by the provisions of subsection (a) of this section may be published and disclosed for use in an employee grievance if the disclosure is done in compliance with subsections (l), (m), and (n) of this section.

(l) Records or information declared confidential by the provisions of this section may not be released for use in a grievance proceeding except:

(1) Upon written motion of a party; and

(2) Upon an order of the Public Employee's Grievance Board entered after an in-camera hearing as to the relevance of the record or information.

(m) If production of confidential records or information is disclosed to a grievant, his or her counsel or representative, pursuant to subsection (l) of this section:

(1) The division shall ensure that written records or information is redacted of all identifying information of any juvenile which is not relevant to the resolution of the grievance;

(2) Relevant video and audio records may be disclosed without redaction; and

(3) Records or other information released to a grievant or his or her counsel or representative pursuant to subsection (l) of this section may only be used for purposes of his or her grievance proceeding and may not be disclosed, published, copied, or distributed for any other purpose, and upon the conclusion of the grievance procedure, returned to the Division of Corrections and Rehabilitation.

(n) If a grievant or the Division of Corrections and Rehabilitation seek judicial review of a decision of the Public Employee's Grievance Board, the relevant confidential records disclosed and used in the grievance proceeding may be used in the appeal proceeding upon entry of an order by the circuit court, and the order shall contain a provision limiting disclosure or publication of the records or information to purposes necessary to the proceeding and prohibiting unauthorized use and reproduction.

(o) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et seq.* of this code.

(p) When requested, a child-placing agency or a residential childcare and treatment facility shall disclose otherwise confidential information to other child-placing agencies or residential

childcare and treatment facilities when making referrals or providing services on behalf of the child. This information shall be maintained in the same manner as provided in this code.

(q) The department shall provide electronic access to information required to perform an adoption to child-placing agencies as necessary to complete the adoption.

(r) A child-placing agency completing adoption as a contractor on behalf of the department shall have access to secure records from vital statistics and other pertinent record holders.

(s) The Bureau for Social Services shall provide to the managed care organization, the child-placing agency, and the person having temporary custody of the child, the medical records of the child that are necessary for the care of treatment of the child.

ARTICLE 11. SYSTEM REPORTING.

§49-11-101. Systemic reporting transparency.

(a) The commissioner shall update the existing child welfare data dashboard by July 1, 2026, and shall update the child welfare data dashboard monthly thereafter to report on system-wide issues including, but not limited to, system-level performance indicators, intake hotline performance indicators, field investigation performance indicators, open case performance indicators, out-of-home placement performance indicators, and federally mandated performance indicators including, but not limited to, time to first contact to all children, information on children in non-placement or temporary lodging status.

(b) The Commissioner shall update the existing child welfare data dashboard with information on child fatality and near fatality information related to those cases subject to review by the Critical Incident Review Team as set forth in §61-12B-1 *et seq.* of this code within 48 hours of a child fatality or near fatality. With respect to child fatality or near fatality information, the Department of Human Services shall report the following variables: the date of the incident, the child's sex, and the child's age. The data dashboard shall provide a link to the final report of the Critical Incident Review Team within 24 hours of its completion. The Commissioner shall send a

notification, within 24 hours of child fatalities or near fatalities, to the Secretary of Human Services to enable it to convene a meeting of the Critical Incident Review Team.

(c) The child welfare data dashboard shall include workforce information including, but not limited to, the number of child protective services staff that have been hired but who have not completed training, the number and vacancies of adoption workers, and the number and vacancies of home finders.

(d) Starting July 1, 2026, the data reported on the child welfare data dashboard shall be represented as a point in time number and trended over time. Beginning July 1, 2026, the data shall be saved in a way to allow public users to search the dashboard yearly by reporting date, and by county. The Department of Human Services may apply data suppression in order to protect individual identification as necessary.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12B. CRITICAL INCIDENT REVIEW TEAM.

§61-12B-1. Purpose.

The Critical Incident Review Team is created under the Department of Human Services for the purpose of reviewing fatalities and near fatalities involving children involved in the child welfare system and making recommendations to identify effective prevention and intervention processes to decrease preventable child fatalities and near fatalities in the child welfare system.

§61-12B-2. Definitions.

As used in this article:

"Epidemiological analysis" means an analysis of demographic factors related to the child's fatality or near fatality including, but not limited to, an analysis of the following factors: the date of birth of the child; the sex of the child; the county of the child's residence; the race/ethnicity of the child; the date the child suffered the fatality or near fatality; the type of maltreatment; the cause of

the fatality or near fatality; whether the agency had any contact, and if so, how many times, with the child or a member of the child's family or household before the fatality or near fatality; and maltreater demographic information.

"Known case" means any Child Protective Services case or youth services case in the Comprehensive Child Welfare Information System or a case assessed by Child Protective Services, youth services, or a contracted vendor;

"Near fatality" means any medical condition of the child which is certified by the attending physician to be life threatening. It shall also include incidents that have been found to have created a substantial risk of death or serious bodily injury to the child.

§61-12B-3. Creation of the Critical Incident Review Team and composition of members.

(a) The Critical Incident Review Team is created under the Office of the Inspector General and is a multidisciplinary team created to oversee and coordinate the examination, review, and assessment of:

(1) The fatality or near fatality of a child in the custody of the Department of Human Services;

(2) The fatality or near fatality of a child who has a known case with the Department of Human Services or who is the immediate family member or a member of a household of a person with a known case with the Department of Human Services; and

(3) The fatality or near fatality of a child whose identity has been brought to the attention of the Department of Human Services through a centralized intake report, regardless of whether the report was accepted for an investigation.

(b) The Critical Incident Review Team shall consist of the following members:

(1) The Commissioner of the Bureau for Social Services, or his or her designee, who is to serve as the chairperson, and is responsible for calling and coordinating meetings of the Critical Incident Review Team;

- 16 (2) The Director of the Division of Planning and Quality Improvement;
- 17 (3) The Deputy Commissioner of the Bureau for Social Services;
- 18 (4) A representative from the Office of Field Support, Programs and Resource
- 19 Development, Planning and Research, or the Office of Field Operations;
- 20 (5) The social services manager for any district having a history with the child or his or her
- 21 family or any household member that is the subject of the critical incident review;
- 22 (6) The Foster Care Ombudsman, or his or her designee;
- 23 (7) A representative of the West Virginia Supreme Court of Appeals, Division of Children
- 24 Services;
- 25 (8) A representative from the Prosecuting Attorney's Institute;
- 26 (9) The Superintendent of the West Virginia State Police or his or her designee;
- 27 (10) A member of the West Virginia Senate, appointed by the President of the Senate,
- 28 who shall serve as an ex officio member; and
- 29 (11) A member of the West Virginia House of Delegates, appointed by the Speaker of the
- 30 House, who shall serve as an ex officio member.
- 31 (c) Each member shall serve without additional compensation and may not be reimbursed
- 32 for any expenses incurred in the discharge of his or her duties under the provisions of this article.
- 33 (d) The Critical Incident Review Team may seek guidance and opinion regarding any
- 34 matter under review from outside experts in any related field. At any such time, the Critical Incident
- 35 Review Team shall require that all appropriate privacy requirements required in this article are in
- 36 place.

§61-12B-4. Responsibilities of the Critical Incident Review Team.

- 1 (a) The Critical Incident Review Team shall:
- 2 (1) The team shall meet at least quarterly: *Provided*, That in the event of a fatality or near
- 3 fatality, the team shall meet within 45 days of such fatality or near fatality to conduct the review
- 4 required by this article;

(2) Review and analyze all fatalities and near fatalities as required by this article;

(3) Ascertain and document the trends, patterns, and risk factors associated with the fatalities and near fatalities evaluated;

(4) Provide statistical information and an epidemiological analysis regarding the causes of fatalities and near fatalities as specified in this article;

(5) Establish standard procedures for the handling of the critical incident review;

(6) Establish processes and protocols for the review and analysis of fatalities and near fatalities of those who were not suffering from mortal diseases shortly before fatality;

(7) Establish processes and protocols to ensure confidentiality of records obtained by the Critical Incident Review Team; and

(8) Seek additional expert guidance as necessary to complete a review of any fatality or near fatality evaluated.

(b) The team is prohibited from the following:

(1) Contacting a witness or witnesses to take testimony from individuals involved in the investigation of a fatality; or

(2) Otherwise take any action which impedes an ongoing law enforcement investigation.

§61-12B-5. Reporting of the Critical Incident Review Team.

(a)(1) The Critical Incident Review Team shall submit an initial report within 75 days of the fatality or near fatality to the Legislative Oversight Commission on Health and Human Resources Accountability with updated reports every 90 days.

(2) Any initial reports submitted mid-year and any other updated reports to be made shall be compiled into a final report to be submitted to the Legislative Oversight Commission on Health and Human Resources Accountability which shall be submitted no later than December 1 each year.

(b) The report is to include statistical information and an epidemiological analysis concerning cases reviewed during the year, trends and patterns concerning these cases, and the

team's recommendations to reduce the number of fatalities and near fatalities that occur in this state.

(c) The Critical Incident Review Team may provide reporting to child residential facilities to inform their internal peer review activities. Such information shall be deemed confidential and shall be used only for peer review purposes.

§61-12B-6. Access to information; other agencies of government required to cooperate.

(a) Notwithstanding any other provision of this code to the contrary, the Critical Incident Review Team may request information and records as necessary to carry out its responsibilities. Records and information that may be requested under this section include:

(1) Medical, dental, and mental health records;

(2) Substance abuse records to the extent allowed by federal law; and

(3) Information and records maintained by any state, federal, or local government agency.

(b) State, county, and local government agencies shall provide the Critical Incident Review Team with any information requested in writing by the team.

§61-12B-7. Confidentiality.

(a) Proceedings and records of the Critical Incident Review Team established pursuant to this article are confidential and are not subject to discovery, subpoena, or the introduction into evidence in any civil or criminal proceeding. This section does not limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the proceedings of the team.

(b) Members of the Critical Incident Review Team may not be questioned in any civil or criminal proceeding regarding information presented or opinions formed as a result of a meeting of the team. This subsection does not prevent a member of a team from testifying to information obtained independently of the team which is public information.

10 (c) Proceedings and records of the Critical Incident Review Team established by the team
11 are exempt from disclosure under the Freedom of Information Act as provided in §29B-1-1 *et seq.*
12 of this code.

13 (d) Notwithstanding any other provision to the contrary, the Critical Incident Review Team
14 shall prepare a compilation of data to be shared, on an annual basis or more often as requested
15 or needed, with the Centers for Disease Control and Prevention to study child fatalities or near
16 fatalities.

17 (e) Information shall be maintained by the Critical Incident Review Team in a confidential
18 manner compliant with the Health Insurance Portability and Accountability Act of 1996.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2025.

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Governor