

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 540

By Senators Deeds, Grady, M. Maynard, Roberts,

Rucker, Phillips, Willis, and Smith (Mr. President)

[Reported February 23, 2026, from the Committee on
the Judiciary]

1 A BILL to amend and reenact §49-2-802 of the Code of West Virginia, 1931, as amended, relating
2 to audio recording during a Child Protective Services investigation; requiring Child
3 Protective Services workers conducting investigations to receive audio recording devices;
4 requiring workers to record investigative interviews with children and parents or guardians;
5 permitting simultaneous audio recording by parents or guardians; and providing for audio
6 file distribution, confidentiality, and preservation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

**§49-2-802. Establishment of child protective services; general duties and powers;
administrative procedure; immunity from civil liability; cooperation of other state
agencies.**

1 (a) The department shall establish or designate in every county a local child protective
2 services office to perform the duties and functions set forth in this article.

3 (b) The local child protective services office shall investigate all reports of child abuse or
4 neglect. Under no circumstances may investigating personnel be relatives of the accused, the
5 child, or the families involved. In accordance with the local plan for child protective services, it shall
6 provide protective services to prevent further abuse or neglect of children and provide for or
7 arrange for and coordinate and monitor the provision of those services necessary to ensure the
8 safety of children. The local child protective services office shall be organized to maximize the
9 continuity of responsibility, care, and service of individual workers for individual children and
10 families. Under no circumstances may the secretary or his or her designee promulgate rules or
11 establish any policy which restricts the scope or types of alleged abuse or neglect of minor children
12 which are to be investigated or the provision of appropriate and available services.

13 (c) Each local child protective services office shall:

14 (1) Receive or arrange for the receipt of all reports of children known or suspected to be
15 abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all reports under the

16 names of the children, the family, and any person substantiated as being an abuser or neglecter by
17 investigation of the Department of Human Services, with use of cross-filing of the person's name
18 limited to the internal use of the department: *Provided*, That local child protective services offices
19 shall disclose the names of alleged abusers pursuant to §49-2-802(c)(4) of this code;

20 (2) Provide or arrange for emergency children's services to be available at all times;

21 (3) Upon notification of suspected child abuse or neglect, commence or cause to be
22 commenced a thorough investigation of the report and the child's environment. As a part of this
23 response, within 14 days there shall be a face-to-face interview with the child or children and the
24 development of a protection plan, if necessary, for the safety or health of the child or children,
25 which may involve law-enforcement officers or the court;

26 (4) Make efforts as soon as practicable to determine the military status of parents whose
27 children are subject to abuse or neglect allegations. If the office determines that a parent or
28 guardian is in the military, the department shall notify a Department of Defense family advocacy
29 program that there is an allegation of abuse and neglect that is screened in and open for
30 investigation that relates to that military parent or guardian;

31 (5) Respond immediately to all allegations of imminent danger to the physical well-being of
32 the child or of serious physical abuse. As a part of this response, within 72 hours there shall be a
33 face-to-face interview with the child or children and the development of a protection plan, which
34 may involve law-enforcement officers or the court; ~~and~~

35 (6) In addition to any other requirements imposed by this section, when any matter
36 regarding child custody is pending, the circuit court or family court may refer allegations of child
37 abuse and neglect to the local child protective services office for investigation of the allegations as
38 defined by this chapter and require the local child protective services office to submit a written
39 report of the investigation to the referring circuit court or family court within the time frames set
40 forth by the circuit court or family court;

41 (7) For purposes of investigating all reports of child abuse or neglect, the local child

42 protective services office shall make available audio recording devices for use by the investigating
43 child protective services worker during the investigation of the allegations. The child protective
44 services worker shall:

45 (A) Audio record child interviews and interviews with parent or guardian the during the
46 initial investigative process prior to any potential removal of the child from the home;

47 (B) At the outset of the investigative interview, inform the parent or guardian who is the
48 subject of the investigation that:

49 (i) He or she is being audio recorded during the interview with the child protective services
50 worker; and

51 (ii) The parent or guardian may also simultaneously audio record the interview on his or her
52 own device;

53 (C) At the outset of any audio recording of a child, parent, or guardian, the child protective
54 services worker shall identify himself or herself, provide the date of the interview, and identify the
55 individual being interviewed.

56 (8) In the event that the child is removed from the parent or guardian, any audio recording
57 created pursuant to subdivision seven of this subsection shall be provided to counsel for the adult
58 respondents, the guardian ad litem, and counsel for the department in advance of the preliminary
59 hearing on the abuse and neglect petition;

60 (9) Any audio recording created by the child protective services worker pursuant to
61 subdivision seven of this subsection shall be preserved until all appellate timeframes have been
62 exhausted;

63 (10) Any audio recordings are considered a confidential record pursuant to §49-5-101 of
64 this code and not subject to disclosure pursuant to §29B-1-1 et seq. of this code; and

65 (11) The requirements contained in subdivision seven of this subsection do not impact or
66 otherwise alter, modify, or amend Rule 8 of the Rules of Procedure for Child Abuse and Neglect
67 Proceedings, nor do they impact or otherwise alter, modify, or amend the requirements or

68 procedures related to Child Advocacy Center interviews conducted in accordance with this code.

69 (d) In those cases in which the local child protective services office determines that the
70 best interests of the child require court action, the local child protective services office shall initiate
71 the appropriate legal proceeding.

72 (e) The local child protective services office ~~shall be~~ is responsible for providing, directing,
73 or coordinating the appropriate and timely delivery of services to any child suspected or known to
74 be abused or neglected, including services to the child's family and those responsible for the
75 child's care.

76 (f) To carry out the purposes of this article, all departments, boards, bureaus, and other
77 agencies of the state or any of its political subdivisions and all agencies providing services under
78 the local child protective services plan shall, upon request, provide to the local child protective
79 services office any assistance and information as will enable it to fulfill its responsibilities.

80 (g)(1) In order to obtain information regarding the location of a child who is the subject of an
81 allegation of abuse or neglect, the Secretary of the Department of Human Services may serve, by
82 certified mail or personal service, an administrative subpoena on any corporation, partnership,
83 business, or organization for the production of information leading to determining the location of
84 the child.

85 (2) In case of disobedience to the subpoena, in compelling the production of documents,
86 the secretary may invoke the aid of:

87 (A) The circuit court with jurisdiction over the served party if the person served is a
88 resident; or

89 (B) The circuit court of the county in which the local child protective services office
90 conducting the investigation is located if the person served is a nonresident.

91 (3) A circuit court ~~shall~~ may not enforce an administrative subpoena unless it finds that:

92 (A) The investigation is one the Division of Child Protective Services is authorized to make
93 and is being conducted pursuant to a legitimate purpose;

94 (B) The inquiry is relevant to that purpose;

95 (C) The inquiry is not too broad or indefinite;

96 (D) The information sought is not already in the possession of the Division of Child
97 Protective Services; and

98 (E) Any administrative steps required by law have been followed.

99 (4) If circumstances arise where the secretary, or his or her designee, determines it
100 necessary to compel an individual to provide information regarding the location of a child who is
101 the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a
102 subpoena from the circuit court with jurisdiction over the individual from whom the information is
103 sought.

104 (h) No child protective services caseworker may be held personally liable for any
105 professional decision or action taken pursuant to that decision in the performance of his or her
106 official duties as set forth in this section or agency rules promulgated thereupon. However, nothing
107 in this subsection protects any child protective services worker from any liability arising from the
108 operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton
109 misconduct, or intentional misconduct.