



# West Virginia Legislature

2ND SESSION OF THE 80TH LEGISLATURE



## WEST VIRGINIA CODE

### CHAPTER 49. CHILD WELFARE.

#### ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

##### §49-6A-1. Purpose.

It is the purpose of this article, through the complete reporting of child abuse and neglect, to protect the best interests of the child, to offer protective services in order to prevent any further harm to the child or any other children living in the home, to stabilize the home environment, to preserve family life whenever possible and to encourage cooperation among the states in dealing with the problems of child abuse and neglect.

##### §49-6A-2. Persons mandated to report suspected abuse and neglect.

When any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, humane officer, member of the clergy, circuit court judge, family court judge, employee of the Division of Juvenile Services or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances or cause a report to be made to the Department of Health and Human Resources: *Provided*, That in any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint: *Provided, however*, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency, or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

##### §49-6A-2a. Notification of disposition of reports.

(a) The Department of Health and Human Resources shall develop and implement a procedure to notify any person mandated to report suspected child abuse and neglect under the provisions of section two of this article, of whether an investigation into the reported suspected abuse or neglect has been initiated and when the investigation is completed.

(b) The Department of Health and Human Resources shall develop and implement the above described procedure on or before the first day of January, two thousand six.

##### §49-6A-2b. Mandatory reporting of suspected animal cruelty by child protective service workers.

In the event a child protective service worker, in response to a report mandated by section two of this article, forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, he or she shall report the suspicion and the basis therefor to the county humane officer provided under section one, article ten, chapter seven of this code within twenty-four hours of the response to the report.

##### §49-6A-3. Mandatory reporting to medical examiner or coroner; postmortem investigation.

Any person or official who is required under section two of this article to report cases of suspected child abuse or neglect and who has reasonable cause to suspect that a child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner or coroner. Upon the receipt of such a report, the medical examiner or coroner shall cause an investigation to be made and report his findings to the police, the appropriate prosecuting attorney, the local child protective service agency and, if the institution making a report is a hospital, to the hospital.

##### §49-6A-4. Photographs and X rays.

Any person required to report cases of children suspected of being abused or neglected may take or cause to be taken,

at public expense, photographs of the areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child. Any photographs or X rays taken shall be sent to the appropriate child protective service as soon as possible.

**§49-6A-5. Reporting procedures.**

Reports of child abuse and neglect pursuant to this article shall be made immediately by telephone to the local state department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department shall establish and maintain a twenty-four hour, seven-day-a-week telephone number to receive such calls reporting suspected or known child abuse or neglect.

A copy of any report of serious physical abuse, sexual abuse or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner's office. All reports under this article shall be confidential and unless there are pending proceedings with regard thereto shall be destroyed thirty years following their preparation. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

**§49-6A-6. Immunity from liability.**

Any person, official or institution participating in good faith in any act permitted or required by this article shall be immune from any civil or criminal liability that otherwise might result by reason of such actions.

**§49-6A-7. Abrogation of privileged communications.**

The privileged quality of communications between husband and wife and between any professional person and his patient or his client, except that between attorney and client, is hereby abrogated in situations involving suspected or known child abuse or neglect.

**§49-6A-8. Failure to report; penalty.**

Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section five of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ten days or fined not more than one hundred dollars, or both.

**§49-6A-9. Establishment of child protective services; general duties and powers; immunity from civil liability; cooperation of other state agencies.**

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

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

Each local child protective services office shall:

(1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a 24-hour, seven-day-a-week basis and cross-file all such reports under the names of the children, the family and any person substantiated as being an abuser or neglecter by investigation of the Department of Health and Human Resources, with use of such cross-filing of such person's name limited to the internal use of the department;

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

(3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within fourteen days there shall be a face-to-face

interview with the child or children and the development of a protection plan, if necessary for the safety or health of the child, which may involve law-enforcement officers or the court;

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

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

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

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

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

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

(2) In case of disobedience to the subpoena, in compelling the production of documents, the secretary may invoke the aid of: (A) The circuit court with jurisdiction over the served party if the person served is a resident; or (B) the circuit court of the county in which the local child protective services office conducting the investigation is located if the person served is a nonresident.

(3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The investigation is one the Division of Child Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the inquiry is not too broad or indefinite; (D) the information sought is not already in the possession of the Division of Child Protective Services; and (E) any administrative steps required by law have been followed.

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

(g) No child protective services caseworker may be held personally liable for any professional decision or action thereupon: Arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated thereupon: *Provided*, That nothing in this subsection protects any child protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional misconduct.

#### **§49-6A-10. Educational programs.**

Within available funding and as appropriate, the state department shall conduct educational programs with the staff of the state department, persons required to report, and the general public in order to encourage maximum reporting of child abuse and neglect, and to improve communication, cooperation and coordination among all agencies involved in the identification, prevention and treatment of the abuse and neglect of children.

**§49-6A-11. Statistical reports.**

The Department of Health and Human Resources shall maintain a statewide child abuse and neglect statistical index of all substantiated allegations of child abuse or neglect cases to include information contained in the reports required under this article and any other information considered appropriate by the Secretary of the Department of Health and Human Resources. Nothing in the statistical data index maintained by the Department of Health and Human Resources may contain information of a specific nature that would identify individual cases or persons. Notwithstanding the provisions of section one, article seven, chapter forty-nine of this code, the Department of Health and Human Resources shall provide copies of the statistical data maintained pursuant to this subsection to the State Police child abuse and neglect investigations unit to carry out its responsibilities to protect children from abuse and neglect.

Note: WV Code updated with legislation passed through the [2011 4th Special Session](#)