WEST VIRGINIA CODE CHAPTER 15 ARTICLE 2C

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§15-2C-1. Definitions.

The following terms when used in this article have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Central abuse registry" or "registry" means the registry created by this article which contains the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect, or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services.

(b) "Child abuse and neglect" or "child abuse or neglect" means those terms as defined in §49-1-201 of this code, and shall include any act with respect to a child which is a crime against the person pursuant to §61-2-1 *et seq*. of this code, any act which is unlawful pursuant to §61-8D-1 *et seq*, of this code and any offense with respect to a child which is enumerated in §15-2C-3 of this code.

(c) "Abuse or neglect of an incapacitated adult" means "abuse," "neglect," and "incapacitated adult" as those terms are defined in §9-6-1 of this code, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to §61-2-1 *et seq*. of this code, and any offense with respect to an incapacitated adult which is enumerated in §15-2C-3 of this code.

(d) "Adult receiving behavioral health services" means a person over the age of 18 years who is receiving any behavioral health service from a licensed behavioral health provider or any behavioral health provider whose services are paid for, in whole or in part, by Medicaid or Medicare.

(e) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

(f) "Residential care facility" means any facility where a child or an incapacitated adult or an adult receiving behavioral health services resides which is subject to registration, licensure, or certification by the Office of Health Facility Licensure and Certification, and includes nursing homes, personal care homes, residential board and care homes, adult family care homes, group homes, legally unlicensed service providers, residential child care facilities, family based foster care homes, specialized family care homes, and intermediate care facilities for the mentally retarded.

(g) "Misappropriation of property" means any act which is a crime against property under §61-3-1 *et seq*. of this code with respect to a child in a residential care facility or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a child or an incapacitated adult or an adult receiving behavioral health services who is a recipient of home care services.

(h) "Home care" or "home care services" means services provided to children or

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incapacitated adults or adults receiving behavioral health services in the home through a hospice provider, a community care provider, a home health agency, through the Medicaid waiver program, or through any person when that service is reimbursable under the state Medicaid program.

(i) "Requester" means the West Virginia Department of Education, any residential care facility, any state licensed day care center, any qualified entity as defined in this section, or any provider of home care services or an adult receiving behavioral health services, providing to the Central Abuse Registry the name of an individual and other information necessary to identify that individual, and either: (1) Certifying that the individual is being considered for employment or service as a volunteer by the requester or for a contractual relationship with the requester where the individual will provide services to a child or an incapacitated adult or an adult receiving behavioral health services for compensation; or contractors and vendors who have or may have unsupervised access to the child, disabled, or elderly person for whom the qualified entity provides care; or (2) certifying that an allegation of abuse, neglect, or misappropriation of property has been made against the individual.

(j) "Qualified entity" means any business, agency, or organization that provides care, treatment, education, training, instruction, supervision, or recreation for children, the elderly, or individuals with disabilities and is a public, private, or not-for-profit entity within the State of West Virginia and meets the definition of qualified entity under the federal National Child Protection Act of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

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§15-2C-2. Central Abuse Registry; required information; procedures; fees and use thereof.

(a) The Criminal Identification Bureau of the West Virginia State Police shall establish a Central Abuse Registry, to contain information relating to criminal convictions involving child abuse or neglect, abuse or neglect of an incapacitated adult or an adult receiving behavioral health services and misappropriation of property by individuals specified in subsection (b) of this section and information relating to individuals required to be registered as a sex offender.

(b) The Central Abuse Registry shall contain, at a minimum, information relating to: Convictions of a misdemeanor or a felony involving abuse, neglect or misappropriation of property, by an individual performing services for compensation, within the scope of the individual's employment or contract to provide services, in a residential care facility, in a licensed day care center in connection with providing behavioral health services, or in connection with the provision of home care services; information relating to individuals convicted of specific offenses enumerated in §15-2C-3 (a) of this code with respect to a child or an incapacitated adult or an adult receiving behavioral health services; information relating to all individuals required to register with the Child Abuse and Neglect Registry established pursuant to §15-13-1 *et seq.* of this code; and information relating to all individuals required to register with the West Virginia State Police as sex offenders pursuant to the provisions of §15-12-1 *et seq.* of this code. The Central Abuse Registry shall contain the following information:

(1) The individual's full name;

(2) Sufficient information to identify the individual, including date of birth, social security number and fingerprints if available;

(3) Identification of the criminal offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services;

(4) For cases involving abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a day care center, or of a child or an incapacitated adult or an adult receiving behavioral health services receiving home care services, sufficient information to identify the location where the documentation of any investigation by the Department of Human Services is on file and the location of pertinent court files; and

(5) Any statement by the individual disputing the conviction, if he or she chooses to make and file one.

(c) Upon conviction in the criminal courts of this state of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult or an adult receiving behavioral health services, the individual so convicted shall be placed on the

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Central Abuse Registry.

(d) A person required to be placed on the Central Abuse Registry pursuant to this section shall pay an annual fee of $125, to be paid between January 1 and June 30 of each year. The annual fee shall be paid to the State Police. The State Police shall provide the registrant with a written receipt of each payment made by the registrant towards this annual fee. Once the annual fee is paid in full, the State Police will provide the registrant with a receipt that specifically provides that the annual fee contemplated in this article has been satisfied. The West Virginia State Police shall compile and maintain a record of any payment made by a registrant to which the State Police shall have access.

(e) The State Police shall remit the entirety of a payment of the annual fee, made pursuant to this section, to the state treasurer who shall deposit these funds into the State Treasury and credit said funds to the account of the State Police. The State Police is hereby authorized to utilize the funds collected from these annual fees, first to enhance mental health services for current and former employees of the West Virginia State Police, including but not limited to hiring, or contracting, mental health professionals, conducting periodic educational seminars, meetings, trainings or conferences addressing mental health issues that affect persons that are, or have been, employed as law enforcement, and then for any other use essential to the general operations of the State Police: *Provided*, That failure to pay the annual fee, or provide proof of payment of the annual fee, pursuant to this subsection may not be considered a violation of the person's supervised release: *Provided, however*, That a person required to register pursuant to both this article and §15-12-2 of this code shall pay only one such annual fee of $125, which fee shall satisfy the registration requirements and payment obligations under both articles: *Provided further*, That written notice by the State Police served upon the registrant, by certified mail at the last address provided by the registrant, stating that that the annual fee has not been paid, may be recorded 30 days after the notice was received by the registrant in the office of the county clerk where the person required to register resides. This notice shall have the effect of a judgment and shall be recorded and indexed by the county clerk in the judgment lien docket. This judgment lien will be released by the State Police within 30 days upon full and complete payment by the registrant. The State Police shall provide written verification of the release of the lien to the registrant at the last address provided by the registrant.

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§15-2C-3. Reports of certain convictions by prosecuting attorneys.

(a) The central abuse registry shall maintain information relating to child abuse or neglect, abuse or neglect of an incapacitated adult or adult receiving behavioral health services, and misappropriation of property with respect to individuals convicted of certain offenses pursuant to this code, when the victim of the crime is a child or an incapacitated adult or an adult receiving behavioral health services, to include:

(1) First or second degree murder pursuant to section one, article two, chapter sixty-one of this code;

(2) Voluntary manslaughter pursuant to section four, article two, chapter sixty-one of this code;

(3) Attempt to kill or injure by poison pursuant to section seven, article two, chapter sixty-one of this code;

(4) Malicious or unlawful assault pursuant to section nine, article two, chapter sixty-one of this code;

(5) Assault during commission of or attempt to commit a felony pursuant to section ten, article two, chapter sixty-one of this code;

(6) Extortion by threats pursuant to section thirteen, article two, chapter sixty-one of this code;

(7) Abduction of a person or kidnapping or concealing a child pursuant to section fourteen, article two, chapter sixty-one of this code;

(8) Enticing away or otherwise kidnapping any person pursuant to section fourteen-a, article two, chapter sixty-one of this code;

(9) A misdemeanor or felony sexual offense pursuant to article eight-b, chapter sixty-one of this code;

(10) Filming of sexually explicit conduct of minors pursuant to article eight-c, chapter sixty-one of this code;

(11) Misdemeanor or felony child abuse pursuant to article eight-d, chapter sixty-one of this code;

(12) A violent crime against the elderly which is an offense under the provisions of section nine or ten, article two, chapter sixty-one of this code which is subject to the sentencing provisions of section ten-a of said article two; or

(13) A property offense pursuant to article three, chapter sixty-one of this code, with respect

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to a child in a residential care facility or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a child or an incapacitated adult or an adult receiving behavioral health services who is a recipient of home care services, when the individual committing the offense was providing services for compensation in the residential care facility or within the home.

(b) The prosecuting attorneys in each of the fifty-five counties within the state, upon conviction of a misdemeanor, a felony or a lesser included misdemeanor offense for those specific offenses set forth in subsection (a) of this section, shall report the conviction to the central abuse registry, together with additional information, provided in a form, as may be required by the criminal identification bureau for registry purposes. Reporting procedures shall be developed by the criminal identification bureau in conjunction with the prosecuting attorneys' institute and the office of the administrator of the Supreme Court of Appeals.

(c) Information relating to convictions prior to the effective date of this section of a misdemeanor or a felony constituting child abuse or abuse or neglect of an incapacitated adult receiving behavioral health services shall, to the extent which is feasible and practicable, be placed on the central abuse registry. When any requester requests information related to a named individual, the criminal identification bureau may search and release other information maintained by the bureau to determine whether that individual has been convicted of offenses which are subject to inclusion on the registry.

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§15-2C-4. Disclosure of information.

(a) The information contained in the central abuse registry is confidential, and may not be disclosed except as specifically provided in this section. The criminal identification bureau shall disclose the information described in subdivisions (1) through (3) and subdivision (5), subsection (b), section two of this article to any requester, except that the name of the victim of the act alleged shall not appear on the information disclosed and shall be stricken from any statement filed by an individual. The Department of Human Services shall certify, not later than fifteen days following the effective date of this section, the list of requesters authorized to obtain registry information, and shall inform the criminal identification bureau promptly of subsequent additions and deletions from the list. The information contained in the registry with respect to an individual shall be provided to that individual promptly upon request. Individuals on the registry requesting registry information shall be afforded the opportunity to file statements correcting any misstatements or inaccuracies contained in the registry. The criminal identification bureau may disclose registry information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign states and of the State of West Virginia upon proper request stating that the information requested is necessary in the interest of and will be used solely in the administration of official duties and the criminal laws. Agreements with other states providing for the reciprocal sharing of abuse registry information are specifically authorized.

(b) An active file on requests for information by requesters shall be maintained by the criminal identification bureau for a period of one year from the date of a request. If an individual who is the subject of the request is placed on the registry with respect to any conviction within one year of the date of the request, that information shall promptly be disclosed to the requester.

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§15-2C-5. Expungement of registry listing.

Registry listings of abuse, neglect or misappropriation of property with respect to an individual shall promptly be expunged in cases where a conviction is vacated or overturned following appeal by a court having jurisdiction; where the record of a conviction is expunged by a court having jurisdiction; or in cases where the individual so convicted is granted executive clemency with respect to the conviction.

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§15-2C-6. Fees.

The criminal identification bureau may charge, and any requester shall pay, a user charge of $10 for each request for information made by a requester to the central abuse registry. In order to expedite requests by requesters, the criminal identification bureau may establish a procedure permitting service providers or qualified entities as defined in §15-2C-1 of this code to deposit funds with the bureau in anticipation of requests. Fees pursuant to this section shall be paid into a special account in the State Treasury to be expended for: (1) Registry purposes and criminal recordkeeping; (2) information technology support and infrastructure; and (3) technology-related hardware and/or software that is associated with the routine operations of the West Virginia State Police Criminal Identification Bureau, including, but not limited to, the creation, transport, storage, and delivery of criminal justice information: *Provided,* That for and after the fiscal year ending June 30, 1998, all expenditures shall be made in accordance with appropriation by the Legislature. Amounts collected which are found from time-to-time to exceed the funds needed for central abuse registry and criminal recordkeeping purposes may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. For purposes of this section, the term "criminal recordkeeping" means the compiling of fingerprints, photographs, criminal disposition reports, uniform crime report statistics, and other relevant data regarding the arrest, conviction, incarceration, and post-conviction status of criminal violators and sex offenders.

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§15-2C-7. Registration of home care agencies required; form of registration; information to be provided.

(a) In order to permit providers of home care services not otherwise required to be licensed, certified or registered with the Office of Health Facility Licensure and Certification by other provision of this code to access information in the central abuse registry, all home care service providers not currently licensed, certified or registered by the department shall register with the office of health facilities licensure and certification. No fee may be charged for registration. Registration information shall be provided on a registration form, but no provision of information shall be deemed to meet the registration requirement until the signature of the service provider is recorded on the registration form.

(b) Information required for registration shall include the following:

(1) Name, address and telephone number of the service provider;

(2) The geographic area where services are provided to consumers, the number of homes where services are provided and the number of consumers provided service; and

(3) The services, such as nursing care or personal assistance, provided to consumers.

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§15-2C-8. Service provider responsibilities.

All residential care facilities, day care centers, providers to adults with behavioral health needs and home care service providers authorized to operate in West Virginia shall:

(1) Provide notice to current employees of the agency and other persons providing services under a contract with the agency within sixty days of the effective date of this article, and provide notice to any newly hired employee or person at the time an employment or contractual relationship is entered into, which notice shall be in the following form: "NOTICE: All service providers in the State of West Virginia are subject to provisions of law creating a central abuse registry. Any person providing services for compensation to children or to incapacitated adults or to adults receiving behavioral health services, who is convicted of a misdemeanor or felony offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services, is subject to listing on the central abuse registry. The fact that a person is listed on the registry may be disclosed in specific instances provided by law. Listing on the registry may limit future employment opportunities, including opportunities for employment with residential care facilities, day care centers and home care agencies. It is the policy of _____ [name of agency] to promptly report all suspected instances of abuse, neglect or misappropriation of property to the proper authorities and to cooperate fully in the prosecution of these offenses."

(2) Cooperate fully with law enforcement, prosecuting attorneys and court personnel in criminal prosecutions of acts of child abuse or neglect or abuse or neglect of an incapacitated adult or adult receiving behavioral health services.

(3) Respond promptly to all requests by other service providers for references for former or present employees of the agency, which response may include a subjective assessment as to whether the individual for whom the reference is sought is suited to provide services to children or incapacitated adults or to adults receiving behavioral health services.

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§15-2C-9. Responsibilities of a Qualified Entity.

(a) Any business, agency or organization that provides care, treatment, education, training, instruction, supervision or recreation for children, the elderly or individuals with disabilities and is a public, private or not-for-profit entity within the State of West Virginia and is a qualified entity as defined in section one of this article may utilize the Central Abuse Registry for part of its screening process for its current and/or prospective employees. Prospective employees and volunteers, for the purposes of this section, include contractors and vendors who have or may have unsupervised access to children or disabled or elderly persons for whom the qualified entity provides care.

(b) In order to verify eligibility as a qualified entity, the business, agency or organization shall apply to the West Virginia State Police on a form prescribed by the superintendent.

(c) Once verified as a qualified entity by the West Virginia State Police, the entity shall keep all records necessary to facilitate a security audit by the West Virginia State Police and shall cooperate in such audits as the West Virginia State Police or other authorities may deem necessary. Such records include, but are not limited to, criminal history records; notification that an individual has no criminal history; internal policies and procedures articulating the provisions for physical security; records of all disseminations of criminal history information; and a current, executed qualified entity user agreement with the West Virginia State Police.

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