WEST VIRGINIA CODE CHAPTER 49 ARTICLE 6

WV Legislature

§49-6-101. Clearinghouse function; State Police requirements; rule-making.

(a) The Missing Children Information Clearinghouse is established under the West Virginia State Police. The State Police:

(1) Shall provide for the administration of the clearinghouse; and

(2) May promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

(b) The clearinghouse is a central repository of information on missing children and shall be used by all law-enforcement agencies in this state.

(c) The clearinghouse shall:

(1) Establish a system of intrastate communication of information relating to missing children;

(2) Provide a centralized file for the exchange of information on missing children and unidentified bodies of children within the state;

(3) Communicate with the National Crime Information Center for the exchange of information on missing children suspected of interstate travel;

(4) Collect, process, maintain and disseminate accurate and complete information on missing children;

(5) Provide a statewide toll-free telephone line for the reporting of missing children and for receiving information on missing children;

(6) Disseminate to custodians, law-enforcement agencies, the state Department of Education, the Bureau for Children and Families and the general public information that explains how to prevent child abduction and what to do if a child becomes missing;

(7) Compile statistics relating to the incidence of missing children within the state;

(8) Provide training materials and technical assistance to law-enforcement agencies and social services agencies pertaining to missing children; and

(9) Establish a media protocol for disseminating information pertaining to missing children.

(d) The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of missing children.

(e) The State Police may accept public or private grants, gifts and donations to assist in carrying out the provisions of this article.

WV Legislature

§49-6-102. State Department of Education; missing children program; rule-making.

(a) The State Department of Education shall develop and administer a program for the location of missing children who may be enrolled in the West Virginia school system, including private schools, and for the reporting of children who may be missing or who may be unlawfully removed from schools.

(b) The program shall include the use of information received from the clearinghouse and shall be coordinated with the operations of the clearinghouse.

(c) The State Board of Education may promulgate rules in accordance with article three, chapter twenty-nine-a of this code for the operation of the program and shall require the participation of all school districts and state-accredited private schools in this state.

WV Legislature

§49-6-103. Information to clearinghouse; definitions.

(a) The Department of Human Services and every law-enforcement agency in West Virginia shall provide to the clearinghouse or another investigating law-enforcement agency any information that would assist in locating or identifying a missing child.

(b) For purposes of this article:

(1) "Missing and endangered child" means any missing child for which there are substantial indications the child is at high risk of harm or in immediate danger, and rapid action is required, including, but not limited to:

(A) Physically or mentally disabled and dependent upon an agency or another individual for care;

(B) Under the age of 13;

(C) Missing under circumstances which indicate the child's safety may be in danger; or

(D) A foster child and has been determined a missing and endangered child by the Department of Human Services.

(2) "Missing child" means any child under the age of 18 whose whereabouts are unknown to the child's legal custodian.

WV Legislature

§49-6-104. Custodian request for information.

(a) Upon written request made to a law-enforcement agency by the custodian of a missing child, the law-enforcement agency shall request from the clearinghouse information concerning the child that may aid the custodian in locating or identifying the child.

(b) A law-enforcement agency to which a request has been made pursuant to subsection (a) of this section shall report to the custodian on the results of its inquiry within fourteen calendar days after the day the written request is received by the law-enforcement agency.

WV Legislature

§49-6-105. Missing child report forms; where filed.

(a) The clearinghouse shall distribute missing child and missing and endangered child report forms to law-enforcement agencies in the state and to the Department of Human Services.

(b) A missing child or missing and endangered child report may be made to a law-enforcement agency in person or by telephone, or other indirect method of communication, and the person taking the report may enter the information on the form for the reporter. A missing child or missing and endangered child report form may be completed by the reporter and delivered to a law-enforcement office.

(c) A copy of the report form shall be maintained by the clearinghouse.

WV Legislature

§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.

(a) A law-enforcement agency, upon receiving a missing child or missing and endangered child report, shall:

(1) Start an investigation to determine the present location of the child if it determines that the child is in danger; and

(2) Enter the name of the missing child or missing and endangered child into the clearinghouse and the National Crime Information Center missing person file if the child meets the center's criteria, with all available identifying features, including dental records, fingerprints, other physical characteristics, and a description of the clothing worn when the missing child or missing and endangered child was last seen.

(b) Information not immediately available shall be obtained as soon as possible by the law-enforcement agency and entered into the clearinghouse and the National Crime Information Center file as a supplement to the original entry.

(c) All West Virginia law-enforcement agencies shall enter information about all unidentified bodies of children found in their jurisdiction into the clearinghouse and the National Crime Information Center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the National Crime Information Center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(d) A law-enforcement agency, upon receiving a missing and endangered child report, shall immediately:

(1) Start an investigation to determine the present location of the child if it determines that the child is missing and endangered; and

(2) Issue a Missing and Endangered Child Advisory pursuant to §15-3D-9 of this code.

WV Legislature

§49-6-107. Release of dental records; cause shown; immunity.

(a) At the time a missing child report is made, the law-enforcement agency to which the missing child report is given may, when feasible and appropriate, provide a dental record release form to the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the missing child. The law-enforcement agency shall endorse the dental record release form with a notation that a missing child report has been made in compliance with this article. When the dental record release form is properly completed by the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the missing child and contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release dental records relating to the missing child to the law-enforcement agency.

(b) A circuit court judge may for good cause shown authorize the release of dental records of a missing child to a law-enforcement agency.

(c) A law-enforcement agency which receives dental records under subsection (a) or (b) of this section shall send the dental records to the clearinghouse.

(d) A dentist or physician who releases dental records to a person presenting a proper release executed or ordered pursuant to this section is immune from civil liability or criminal prosecution for the release of the dental records.

WV Legislature

§49-6-108. Cross-checking and matching.

(a) The clearinghouse shall, in accordance with national crime information center policies and procedures, cross-check and attempt to match unidentified bodies with descriptions of missing children. When the clearinghouse discovers a possible match between an unidentified body and a missing child description, the clearinghouse shall notify the appropriate law-enforcement agencies.

(b) A law-enforcement agency that receives notice of a possible match shall make arrangements for positive identification. If a positive identification is made, the law-enforcement agency shall complete and close the investigation with notification to the clearinghouse.

WV Legislature

§49-6-109. Interagency cooperation.

(a) State agencies and public and private schools shall cooperate with a law-enforcement agency that is investigating any missing child or missing and endangered child report and shall furnish any information, including confidential information, that will assist the law-enforcement agency in completing the investigation.

(b) Information provided by a state agency or a public or private school may not be released to any person outside the law-enforcement agency or the clearinghouse, except as provided by rules of the West Virginia State Police.

WV Legislature

§49-6-110. Confidentiality of records; rulemaking; requirements.

(a) The State Police shall promulgate rules according §29A-3-1 *et seq*. of this code to provide for the classification of information and records as confidential that:

(1) Are otherwise confidential under state or federal law or rules promulgated pursuant to state or federal law;

(2) Are related to the investigation by a law-enforcement agency of a missing child, a missing and endangered child, or an unidentified body, if the State Police, in consultation with the law-enforcement agency, determines that release of the information would be deleterious to the investigation;

(3) Are records or notations that the clearinghouse maintains for internal use in matters relating to missing children or missing and endangered children and unidentified bodies and the State Police determines that release of the internal documents might interfere with an investigation by a law-enforcement agency in West Virginia or any other jurisdiction; or

(4) Are records or information that the State Police determines might interfere with an investigation or otherwise harm a child or custodian.

(b) The rules may provide for the sharing of confidential information with the custodian of the missing child or missing and endangered child: *Provided*, That confidential information, which is not believed to jeopardize an investigation, must be shared with the custodian when the legal custodian is the Department of Human Services.

(c) Notwithstanding any other provision of this code to the contrary, the Department of Human Services may share confidential information with any law-enforcement agency and the National Center for Missing and Exploited Children in the case of a child who runs away from home or is determined missing.

WV Legislature

§49-6-111. Attorney general to require compliance.

The Attorney General shall require each law-enforcement agency to comply with the provisions of the Missing Children Information Act and may seek writs of mandamus or other appropriate remedies to enforce this article.

WV Legislature

§49-6-112. Agencies to receive report; law-enforcement agency requirements.

(a) Upon completion of the missing child or missing and endangered child report the law-enforcement agency shall immediately forward the contents of the report to the missing children information clearinghouse and the National Crime Information Center's missing person file. However, if an information entry into the National Crime Information Center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(b) Within 15 days of completion of the report, if the child is less than 13 years of age the law-enforcement agency may, when appropriate, forward the contents of the report to the last:

(1) Child care center or child care home in which the child was enrolled; or

(2) School the child attended in West Virginia, if any.

(c) A law-enforcement agency involved in the investigation of a missing child or missing and endangered child shall:

(1) Update the initial report filed by the agency that received notification of the missing child or missing and endangered child upon the discovery of new information concerning the investigation;

(2) Forward the updated report to the appropriate agencies and organizations;

(3) Search the National Crime Information Center's wanted person file for reports of arrest warrants issued for persons who allegedly abducted or unlawfully retained children and compare these reports to the missing child's National Crime Information Center's missing person file; and

(4) Notify all law-enforcement agencies involved in the investigation, the missing children information clearinghouse, and the National Crime Information Center when the missing child is located.

WV Legislature

§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

(a) The Clearinghouse Advisory Council is continued as a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of 11 members who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Six members to be appointed by the Governor, with the advice and consent of the Senate, with not more than four belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with preventing the abduction, runaway, or exploitation of children or locating missing or missing and endangered children;

(2) The Secretary of the Department of Human Services or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;

(4) The State Superintendent of Schools or his or her designee;

(5) The Director of the Division of Administrative Services or his or her designee; and

(6) The Commissioner of the Bureau for Children and Families or his or her designee.

(b) The Governor shall appoint the six council members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy may serve only for the unexpired term. A member is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the same manner as the original appointment was made.

(c) Members of the council are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) A majority of serving members constitutes a quorum for the purpose of conducting business. The chair of the council shall be designated by the Governor from among the appointed council members who represent nonprofit organizations involved with preventing the abduction, runaway, or exploitation of children or locating missing children or missing and endangered children. The term of the chair shall run concurrently with his or her term of office as a member of the council. The council shall meet semiannually at the call of the chair. The council shall conduct all meetings in accordance with the open governmental meetings law pursuant to §6-9A-1 *et seq*. of this code.

WV Legislature

(e) The employee of the West Virginia State Police who is primarily responsible for the clearinghouse established by §49-6-101 of this code, shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(f) The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support.

(g) The executive director of the council shall be available to the Governor and to the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.

(h) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the Governor and the Legislature on or before December 15 of each year.

WV Legislature

§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan required to be provided to the Legislature.

The council shall prepare a comprehensive strategic plan and recommendation of programs in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation, or any thereof, of children to locate missing children, advise the West Virginia State Police regarding operation of the clearinghouse and its other responsibilities under this article, and cooperate with and coordinate the efforts of state agencies and private organizations involved with issues relating to missing or exploited children. The council may seek public and private grants, contracts, matching funds, and procurement arrangements from the state and federal government, private industry, and other agencies in furtherance of its mission and programs. An initial comprehensive strategic plan that will support and foster efforts to prevent the abduction, runaway, and exploitation of children, and to locate missing children, shall be developed and provided to the Governor, the Speaker of the House of Delegates, and the President of the Senate no later than July 1, 2020, and shall include, but not be limited to, the following:

(1) Findings and determinations regarding the extent of the problem in this state related to: (A) Abducted children; (B) missing children; (C) exploited children; and (D) missing and endangered children.

(2) Findings and determinations identifying the systems, both public and private, existing in the state to prevent the abduction, runaway, or exploitation of children, and to locate missing children, and assessing the strengths and weaknesses of those systems and the clearinghouse;

(3) The inclusion of exploited children within the functions of the clearinghouse. For purposes of this article, an exploited child is a person under the age of 18 years who has been: (A) Used in the production of pornography; (B) subjected to sexual exploitation or sexual offenses under §61-8B-1 *et seq.* of this code; or (C) employed or exhibited in any injurious, immoral, or dangerous business or occupation in violation of §§61-8-5 through 61-8-8 of this code;

(4) Recommendations of legislative changes required to improve the effectiveness of the clearinghouse and other efforts to prevent abduction, runaway, or exploitation of children, and to locate missing children. Those recommendations shall consider the following:

(A) Interaction of the clearinghouse with child custody proceedings;

(B) Involvement of hospitals, child care centers, and other private agencies in efforts to prevent child abduction, runaway, or exploitation, and to locate missing children;

(C) Publication of a directory of and periodic reports regarding missing children;

(D) Required reporting by public and private agencies and penalties for failure to report and

false reporting;

(E) Removal of names from the list of missing children;

(F) Creating of an advocate for missing and exploited children;

(G) State funding for the clearinghouse and efforts to prevent the abduction, runaway, and exploitation of children, and to locate missing children;

(H) Mandated involvement of state agencies, such as publication of information regarding missing children in existing state publications and coordination with the state registrar of vital statistics under §§16-5-12 of this code; and

(I) Expanded requirement for boards of education to notify the clearinghouse in addition to local law-enforcement agencies under §18-2-5c of this code or if a birth certificate or school record received appears to be inaccurate or fraudulent and to receive clearinghouse approval before releasing records;

(5) Methods that will coordinate and engender collaborative efforts among organizations throughout the state, whether public or private, involved with missing or exploited children;

(6) Plans for the use of technology in the clearinghouse and other efforts related to missing or exploited children;

(7) Compliance of the clearinghouse, state law, and all rules promulgated pursuant thereto with applicable federal law so as to enhance opportunities for receiving federal grants;

(8) Consultation with the state board of education and other agencies responsible for promulgating rules under this article;

(9) Possible methods for identifying missing children prior to enrollment in a public or nonpublic school;

(10) The feasibility and effectiveness of utilizing the federal parent locator service in locating missing children; and

(11) Programs for voluntary fingerprinting.

WV Legislature

§49-6-115. Public-private partnerships; funding.

(a) In furtherance of its mission, the clearinghouse council is authorized to enter into contracts or joint venture agreements with federal and state agencies; with nonprofit corporations organized pursuant to the corporate laws of this state or other jurisdictions that are qualified under Section 501(c)(3) of the Internal Revenue Code; and with other organizations that conduct research, make grants, improve educational programs and work for the prevention of missing or exploited children and to locate missing children. All contracts and joint venture agreements must be approved by a majority vote of the council. The council may also enter into contractual agreements for consideration or recompense to it even though the entities are funded from sources other than the state. Members of the council are not prohibited from sitting on the boards of directors of any contracting private nonprofit corporation, foundation or firm. However, members of the council are not exempt from chapter six-b of this code.

(b) The council shall solicit and is authorized to receive and accept gifts or grants from private foundations, corporations, individuals, devises and bequests or from other lawful sources. The funds shall be paid into a special account in the State Treasury for the use and benefit of the council.

WV Legislature

§49-6-116. Establish a missing foster child locator unit program.

(a) The Secretary of the West Virginia Department of Human Services shall establish a Missing Foster Child Locator Unit within the department with a minimum staffing of a northern-based caseworker, a southern-based caseworker, and an identified worker located in the Centralized Intake Unit.

(b) The duties of the Missing Foster Child Locator Unit shall include, but are not limited to, the following:

(1) Receiving reports of missing foster children;

(2) Assisting law enforcement in locating missing foster children who have been reported missing; and

(3) Interviewing missing foster children and completing trafficking screening once the child is located.

(c) For this section, "missing foster child" means missing child or missing and endangered child, as defined in §49-6-103 of this code, who is a foster child at the time he or she was reported missing.

(d) Beginning in July 1, 2021, and each year thereafter, the Secretary of the Department of Human Services shall provide a status report to the Legislative Oversight Committee on Health and Human Resources Accountability.

(e) The secretary shall implement and administer this program at least until December 31, 2022. The secretary may administer this program after such date.

WV Legislature