WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

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ENROLLED

House Bill No. 2903
(By Delegates DeLong, Douglas, Cann and Swartzmiller)

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Passed April 12, 2001

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections one, two, three and eight, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to including on a central registry those persons who have abused, neglected or committed other crimes against persons who are adults receiving behavioral health services.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and eight, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

1 The following words 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 shall contain 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 section three, article one, chapter forty-nine of this code, and shall include any act with respect to a child which is a crime against the person pursuant to article two, chapter sixty-one of this code, any act which is unlawful pursuant to article eight-d of chapter sixty-one, and any offense with respect to a child which is enumerated in section three of this article.

(c) "Abuse or neglect of an incapacitated adult" means "abuse" "neglect" and "incapacitated adult" as those terms are defined in section one, article six, chapter nine, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to article two, chapter sixty-one of this code, and any offense with respect to an incapacitated adult which is enumerated in section three of this article.

(d) "Adult receiving behavioral health services" means a person over the age of eighteen 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 adult receiving behavioral health services resides which is subject to registration, licensure
or certification by the department of health and human resources, and shall include 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 article three, chapter sixty-one 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 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 incapacitated adults or an adult 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 any residential care facility, any state licensed day care center, or any provider of home care services or provider of 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 by the requester or for a contractual relationship with the requester wherein the individual will provide services to a child or an incapacitated adult or an adult receiving behavioral health services for compensation; or (2) certifying that an allegation of abuse, neglect or misappropriation of property has been made against the individual.
§15-2C-2. Central abuse registry; required information; procedures.

(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 subsection (a), section three of this article with respect to a child or an incapacitated adult or an adult receiving behavioral health services; and information relating to all individuals required to register with the West Virginia state police as sex offenders pursuant to the provisions of article twelve, chapter fifteen 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 health and human resources 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 central abuse registry.

§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 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.


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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the __ day of ____________, 2001.

Governor