ENROLLED

House Bill No. 3049

(By Delegates Stemple, Mezzatesta, Williams, Carmichael, Swartzmiller, Louisos and Harrison)

Passed April 14, 2001

In Effect July 1, 2001
AN ACT to amend and reenact section one, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three, chapter eighteen-a of said code by adding thereto a new section, designated section ten, all relating to public safety; including on the central abuse registry those persons who have abused, neglected or committed other crimes against persons who are adults, receiving behavioral health services; authorizing the state department of education to request information from the central abuse registry; requiring fingerprinting and criminal record checks of certain applicants with state department of education; and use and disclosure of information obtained from record checks.

Be it enacted by the Legislature of West Virginia:

That section one, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article three, chapter eighteen-a of said code be amended by adding thereto a new section, designated section ten, all to read as follows:
CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§ 15-2C-1. Definitions.

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 said 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 an 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 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 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, 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 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.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-10. Criminal history check of applicants for licensure by the state department of education.

Beginning the first day of January, two thousand two, any applicant for an initial license issued by the West Virginia department of education shall be fingerprinted by the West Virginia state police in accordance with state board policy in order to determine the applicant's suitability for licensure. The fingerprints shall be analyzed by the state police for a state criminal history record check through the central abuse registry and then forwarded to the federal bureau of investigation for a national criminal history record check. Information contained in either the central abuse registry record or the federal bureau of investigation record may form the basis for the denial of a certificate for just cause. The applicant for initial certification pays for the cost of obtaining the central abuse registry record and the federal bureau of investigation record.

Upon written consent to the state department by the applicant and within ninety days of the state fingerprint analysis, the results of a state analysis may be provided to a county board with which the applicant is applying for employment without further cost to the applicant.
Information maintained by the state department or a county board which was obtained for the purpose of this section is exempt from the disclosure provisions of chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information.
Enr. H. B. 3049]

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 July 1, 2001.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of April, 2001.

Governor