

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

Senate Bill No. 108

(BY SENATORS LAIRD, STOLLINGS, JENKINS, PLYMALE
AND MILLER)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 108

2013 MAY -3 PM 12:09
SECRETARY OF STATE
FILE

FILED
2013 MAY -3 PM 12: 09

ENROLLED

Senate Bill No. 108

OFFICE OF THE CLERK
OF THE SENATE

(BY SENATORS LAIRD, STOLLINGS, JENKINS, PLYMALE
AND MILLER)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to repeal §48-25A-1, §48-25A-2 and §48-25A-3 of the Code of West Virginia, 1931, as amended; to repeal §48-27A-1, §48-27A-2 and §48-27A-3 of said code; to repeal §49-5D-5 of said code; and to amend said code by adding thereto a new article, designated §61-12A-1, §61-12A-2, §61-12A-3 and §61-12A-4, all relating to creating a Fatality and Mortality Review Team; setting forth membership of the team; setting forth terms of office; providing that members of the team are not to be compensated or reimbursed expenses; setting forth responsibilities of the team; requiring team to establish certain advisory panels; providing that team members will also serve as advisory panel members; requiring the Commissioner of the Bureau for Public Health, in consultation with the team, to promulgate legislative rules; providing for certain actions the team and advisory panels may not take in exercising their duties; requiring an annual report; providing confidentiality; setting forth record-keeping requirements; authorizing access to certain records; and requiring certain agencies to cooperate with the team and advisory panels.

Be it enacted by the Legislature of West Virginia:

That §48-25A-1, §48-25A-2 and §48-25A-3 of the Code of West Virginia, 1931, as amended, be repealed; that §48-27A-1, §48-27A-2 and §48-27A-3 of said code be repealed; that §49-5D-5

of said code be repealed; and that said code be amended by adding thereto a new article, designated §61-12A-1, §61-12A-2, §61-12A-3 and §61-12A-4, all to read as follows:

ARTICLE 12A. FATALITY AND MORTALITY REVIEW TEAM.

§61-12A-1. Fatality and Mortality Review Team.

1 (a) The Fatality and Mortality Review Team is created
2 under the Bureau for Public Health. The Fatality and
3 Mortality Review Team is a multidisciplinary team created to
4 oversee and coordinate the examination, review and
5 assessment of:

6 (1) The deaths of all persons in West Virginia who die as
7 a result of unintentional prescription or pharmaceutical drug
8 overdoses;

9 (2) The deaths of children under the age of eighteen
10 years;

11 (3) The deaths resulting from suspected domestic
12 violence; and

13 (4) The deaths of all infants and all women who die
14 during pregnancy, at the time of birth or within one year of
15 the birth of a child.

16 (b) The Fatality and Mortality Review Team shall consist
17 of the following members:

18 (1) The Chief Medical Examiner in the Bureau for Public
19 Health or his or her designee, who is to serve as the
chairperson and who is responsible for calling and
coordinating meetings of the Fatality and Mortality Review
Team and meetings of any advisory panel created by the
Fatality and Mortality Review Team;

24 (2) The Commissioner of the Bureau for Public Health or
25 his or her designee;

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

28 (4) A prosecuting attorney, as appointed by the Governor,
29 who shall serve for a term of three years unless otherwise
30 reappointed to a second or subsequent term. A prosecuting
31 attorney appointed to the team shall continue to serve until
32 his or her term expires or until his or her successor has been
33 appointed.

34 (c) Each member shall serve without additional
35 compensation and may not be reimbursed for any expenses
36 incurred in the discharge of his or her duties under the
37 provisions of this article.

**§61-12A-2. Responsibilities of the Fatality and Mortality
Review Team and Advisory Panels.**

1 (a) The Fatality and Mortality Review Team shall
2 establish the following advisory panels to carry out the
3 purposes of this article including:

4 (1) An unintentional pharmaceutical drug overdose
5 fatality review panel to examine, analyze and review deaths
6 resulting from unintentional prescription or pharmaceutical
7 drug overdose;

8 (2) A child fatality review panel to examine, analyze and
9 review deaths of children under the age of eighteen years;

10 (3) A domestic violence fatality review panel to examine,
11 analyze and review deaths resulting from suspected domestic
12 violence;

13 (4) An infant and maternal mortality review panel to
14 examine, analyze and review the deaths of infants and women
15 who die during pregnancy, at the time of birth or within one
16 year of the birth of a child.

17 (b) The members of the Fatality and Mortality Review
18 Team shall serve as members of each of the advisory panels
19 established pursuant to this article.

20 (c) The Commissioner of the Bureau for Public Health, in
21 consultation with the Fatality and Mortality Review Team,
22 shall propose rules for legislative approval in accordance
23 with article three, chapter twenty-nine-a of this code that the
24 advisory panels shall follow. Those rules shall include, at a
25 minimum:

26 (1) The representatives that shall be included on each
27 advisory panel;

28 (2) The responsibilities of each of the advisory panels,
29 including but not limited to, each advisory panel's
30 responsibility to:

31 (A) Review and analyze all deaths as required by this
32 article;

33 (B) Ascertain and document the trends, patterns and risk
34 factors; and

35 (C) Provide statistical information and analysis regarding
36 the causes of certain fatalities;

37 (3) The standard procedures for the conduct of the
38 advisory panels;

39 (4) The processes and protocols for the review and
40 analysis of fatalities and mortalities of those who were not
41 suffering from mortal diseases shortly before death;

42 (5) The processes and protocols to ensure confidentiality
43 of records obtained by the advisory panel;

44 (6) That the advisory panels must submit a report to the
45 Fatality and Mortality Review Team annually, the date the
46 annual report must be submitted and the contents of the
47 annual report;

48 (7) That the advisory panel may include any additional
49 persons with expertise or knowledge in a particular field that
50 it determines are needed in the review and consideration of a
51 particular case as a result of a death in subsection (a), section
52 one of this article;

53 (8) That the advisory panel may provide training for state
54 agencies and local multidisciplinary teams on the matters
55 examined, reviewed and analyzed by the advisory panel;

56 (9) The advisory panel's responsibility to promote public
57 awareness on the matters examined, reviewed and analyzed
58 by the advisory panel;

59 (10) Actions the advisory panel may not take or engage
60 in including:

61 (A) Call witnesses or take testimony from individuals
62 involved in the investigation of a fatality;

63 (B) Contact a family member of the deceased;

64 (C) Enforce any public health standard or criminal law or
65 otherwise participate in any legal proceeding; or

66 (D) Otherwise take any action which, in the
67 determination of a prosecuting attorney or his or her
68 assistants, impairs the ability of the prosecuting attorney, his
69 or her assistants or any law-enforcement officer to perform
70 his or her statutory duties; and

71 (11) Other rules as may be deemed necessary to
72 effectuate the purposes of this article.

73 (d) The Fatality and Mortality Review Team shall submit
74 an annual report to the Governor and to the Legislative
75 Oversight Commission on Health and Human Resources
76 Accountability concerning its activities within the state and
77 the activities of the advisory panels. The report is due
78 annually on December 1. The report is to include statistical
79 information concerning cases reviewed during the year,
80 trends and patterns concerning these cases and the team's
81 recommendations to reduce the number of fatalities and
82 mortalities that occur in the state.

**§61-12A-3. Access to information; other agencies of government
required to cooperate.**

1 (a) Notwithstanding any other provision of this code to
2 the contrary, the Fatality and Mortality Review Team and the
3 advisory panels established by the team pursuant to this
4 article may request information and records as necessary to
5 carry out its responsibilities. Records and information that
6 may be requested under this section include:

7 (1) Medical, dental and mental health records;

8 (2) Substance abuse records to the extent allowed by
9 federal law; and

10 (3) Information and records maintained by any state,
11 county and local government agency, except as provided in
12 subsection (c), section two of this article.

13 (b) State, county and local government agencies shall
14 provide the Fatality and Mortality Review Team and the
15 advisory panels established by the team with any information
16 requested in writing by the team or by an advisory panel.

§61-12A-4. Confidentiality.

1 (a) Proceedings, records and opinions of the Fatality and
2 Mortality Review Team and the advisory panels established
3 by the team pursuant to this article are confidential and are
4 not subject to discovery, subpoena or introduction into
5 evidence in any civil or criminal proceeding. This section
6 does not limit or restrict the right to discover or use in any
7 civil or criminal proceeding anything that is available from
8 another credible source and entirely independent of the
9 proceedings of the team or advisory panels.

10 (b) Members of the Fatality and Mortality Review Team
11 and members of the advisory panels established by the team
12 may not be questioned in any civil or criminal proceeding
13 regarding information presented in or opinions formed as a
14 result of a meeting of the team. This subsection does not
15 prevent a member of the team or an advisory panel from
16 testifying to information obtained independently of the team
17 or advisory panel which is public information.

18 (c) Proceedings, records and opinions of the Fatality and
19 Mortality Review Team and the advisory panels established
20 by the team are exempt from disclosure under the Freedom of
21 Information Act as provided in chapter twenty-ninc-b of this
22 code.

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

Rocky Felman
.....
Member ~~Chairman~~ Senate Committee

James Well
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Merand
.....
Clerk of the Senate

Bryan D. Sal
.....
Clerk of the House of Delegates

Jeffery
.....
President of the Senate

Rocky
.....
Speaker of the House of Delegates

2013 MAY -3 PM 12: 09
SEN. CLERK OF STATE

The within *is approved* this the *3rd*
Day of *May*, 2013.

Carl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:45 pm