

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 647

BY SENATOR TRUMP

[Passed March 11, 2023; in effect 90 days from
passage (June 9, 2023)]

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

2023 MAR 29 P 1:23

FILED

SB647

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 647

BY SENATOR TRUMP

[Passed March 11, 2023; in effect 90 days from
passage (June 9, 2023)]

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 29 P 1:23

FILED

1 AN ACT to amend and reenact §49-4-601b of the Code of West Virginia, 1931, as amended,
2 relating to substantiation of abuse and neglect allegations; requiring that when an abuse
3 and/or neglect allegation is substantiated and a child abuse petition could be filed and the
4 department does not do so, records related to the allegation are sealed after one year,
5 absent a new allegation within that year; excluding persons from having records sealed
6 who have a substantiated case but no court case can be filed; requiring that substantiated
7 cases where the court does not adjudicate abuse and/or neglect be deemed
8 unsubstantiated; allowing a petition to seal a file after five years for persons found to be
9 creating an abusing parent; exceptions; criteria; directing the department to propose
10 legislative rules to effectuate the statutory directive; clarifying terms relating to abuse
11 and/or neglect; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

PART VI. PROCEDURES IN CASES OF CHILD NEGLECT OR ABUSE.

§49-4-601b. Substantiation by the department of abuse and neglect; file purging; expungement; exceptions.

1 (a) Notwithstanding any provision of this code to the contrary, when the department
2 substantiates an allegation of abuse and/or neglect against a person, but there is no judicial
3 finding of abuse and/or neglect as a result of the allegation, the department shall provide written
4 notice of the substantiation to the person by certified mail, return receipt requested.

5 (b) The person against whom an abuse and/or neglect allegation has been substantiated,
6 as described in subsection (a) of this section, has the right to contest the substantiation by filing
7 a grievance with the board of review of the department and has the right to appeal the decision
8 of the board of review to the court, in accordance with the provisions of §29A-5-1 *et seq.* of this
9 code regarding administrative appeals.

10 (c) The secretary of the department shall propose legislative rules for promulgation in
11 accordance with §29A-3-1 *et seq.* of this code, within the applicable time limit to be considered
12 by the Legislature during its regular session in the year 2021, which rules shall include, at a
13 minimum:

14 (1) Provisions for ensuring that an individual against whom the department has
15 substantiated an allegation of abuse and/or neglect, but against whom there is no judicial finding
16 of abuse and/or neglect, receives written notice of the substantiation in a timely manner. The
17 written notice shall at a minimum, state the following:

18 (A) The name of the child the person is alleged to have abused and/or neglected, the place
19 or places where the abuse and/or neglect allegedly occurred, and the date or dates on which the
20 abuse and/or neglect is alleged to have occurred;

21 (B) That the person has a right to file a grievance protesting the substantiation of abuse
22 and/or neglect with the board of review of the department and clear instructions regarding how to
23 file a grievance with the board of review, including a description of any applicable time limits;

24 (C) That the person has a right to appeal an adverse decision of the board of review of
25 the department to the courts and notice of any applicable time limits; and

26 (D) A description of any public or nonpublic registry on which the person's name will be
27 included as a result of a substantiated allegation of abuse and/or neglect and a statement that
28 the inclusion of the person's name on the registry may prevent the person from holding jobs from
29 which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

30 (2) Provisions for ensuring that a person against whom an allegation of abuse and/or
31 neglect has been substantiated, but against whom there is no judicial finding of abuse and/or
32 neglect, may file a grievance with the department and provisions guaranteeing that he or she will
33 have a full and fair opportunity to be heard; and

34 (3) Provisions requiring the department to remove a person's name from an abuse and/or
35 neglect registry maintained by the department if a substantiated allegation is successfully
36 challenged in the board of review or in a court.

37 (d) Notwithstanding any provision of this code to the contrary:

38 (1) Where any allegation of abuse and/or neglect is substantiated and a petition for abuse
39 and/or neglect could be filed and the department does not file a petition, all department records
40 related to the allegation shall be sealed one year after the substantiation determination, unless
41 during the one-year period another allegation of child abuse and/or neglect against the person is
42 substantiated: *Provided*, That the provisions of this subdivision do not apply to a person against
43 whom an allegation is substantiated but the circumstances do not allow for the filing of a petition
44 for abuse and/or neglect;

45 (2) Where an allegation of child abuse and/or neglect is substantiated and a petition is
46 filed with the circuit court which does not end in an adjudication that abuse and/or neglect
47 occurred, the allegation shall be considered to have been unsubstantiated.

48 (3)(A) Where an allegation of child abuse and/or neglect is substantiated and a judicial
49 determination of child abuse and/or neglect is found, a person may petition the circuit court which
50 found the person to be an abusing parent to have his or her department record sealed after no
51 less than five years have elapsed since the finding of abuse and/or neglect is rendered: *Provided*,
52 That a petition may not be filed if the person had been the subject of a substantiated allegation of
53 abuse and/or neglect during the period of time after the finding and prior to the filing of the petition;
54 and

55 (B) In its consideration of a petition filed under this subdivision, the court, in its discretion,
56 may look at all relevant factors related to the petition, including, but not limited to, efforts at
57 rehabilitation and family reunification.

58 (e) The sealing of a record pursuant to subsection (d) of this section means that any
59 inquiry of the department about a person having a record of child abuse and/or neglect for
60 purposes of possible employment shall be answered in the negative.

61 (f) The secretary is directed to propose legislative rules pursuant to §29A-1-1 *et seq.* of
62 this code to effectuate the amendments to this section enacted during the regular session of the
63 Legislature, 2023.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

Joe Lavin
Clerk of the Senate

Steve Harrison
Clerk of the House of Delegates

FILED
2023 MAR 29 P 1:23
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Originated in the Senate.

In effect 90 days from passage.

C. P. Blount
President of the Senate

Les Hinkle
Speaker of the House of Delegates

The within is *approved* this the *29th*
Day of *March* 2023.

James Justice
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2023

Time 2:54 pm