

## State of West Virginia Child Death Review Legislation

West Virginia Statute § 49-5D-3-5 (1996) and Regulation Title 64-20-1 (2001)

Link:

<http://www.wvdhhr.org/oss/Abuse%20and%20Neglect%20Judicial%20Benchbook%20V1.00/code2.html#a4913>

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### **§49-5D-5. Child fatality review team.**

The child fatality review team is hereby established under the office of the chief medical examiner. The child fatality review team is a multidisciplinary team created to review the deaths of children under the age of eighteen years as provided for in this section.

The child fatality review team is to consist of the following members, appointed by the governor, to serve three-year terms:

- The chief medical examiner, who is to serve as the chairperson of the child fatality review team;
- Two prosecuting attorneys or their designees;
- The state superintendent of the West Virginia state police or his or her designee;
- One law-enforcement official other than a member of the West Virginia state police;
- One child protective services worker currently employed in investigating reports of child abuse or neglect;
- One physician, specializing in the practice of pediatric medicine or family medicine;
- One physician, specializing in the practice of pediatric critical care medicine;
- One social worker who may be employed in the area of public health;
- The director of the office of maternal and child health of the department of health and human resources or his or her designee;
- One representative of the sudden infant death syndrome program of the office of maternal and child health;
- The director of the division of children's mental health services of the office of behavioral health services or his or her designee;
- The director of the office of social services of the department of health and human resources or his or her designee;
- The superintendent of the department of education or his or her designee;
- The director of the division of juvenile services or his or her designee; and
- The president of the West Virginia association of school nurses or his or her designee.

Members of the child fatality review team shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified. Each appointment of a prosecuting attorney, whether for a full term or to fill a vacancy, is to be made by the governor from among three nominees selected by the West Virginia prosecuting attorneys institute. Each appointment of a law-enforcement officer, whether for a full term or to fill a vacancy, is to be made by the governor from among three nominees selected by the state fraternal order of police or the West Virginia deputy sheriff's association. Each appointment of a child protective services worker and a social worker, whether for a full term or to fill a vacancy, is to be made by the governor from among three nominees selected by the West Virginia social work licensing board. Each appointment of a physician, whether for a full term or to fill a

vacancy, is to be made by the governor from among three nominees selected by the West Virginia state medical association or the West Virginia academy of pediatrics. When an appointment is for a full term, the nomination is to be submitted to the governor not later than eight months prior to the date on which the appointment is to become effective. In the case of an appointment to fill a vacancy, the nominations are to be submitted to the governor within thirty days after the request for the nomination has been made by the governor to the chairperson or president of the organization. When an association fails to submit to the governor nominations for the appointment in accordance with the requirements of this section, the governor may make the appointment without nominations.

Each member of the child fatality review team shall serve without additional compensation and may not be reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.

The child fatality review team shall, pursuant to the provisions of chapter twenty-nine-a, promulgate rules applicable to the following:

- The standard procedures for the establishment, formation and conduct of the child fatality review team; and

- Recommend protocols for the review of child fatalities where other than natural causes are suspected.

The child fatality review team shall:

- Review all deaths of children under the age of eighteen years who are residents of this state in order to identify trends, patterns and risk factors;

- Provide statistical analysis regarding the causes of child fatalities in West Virginia;

- Promote public awareness of the incidence and causes of child fatalities, including recommendations for their reduction; and

- Provide training for state agencies and local multidisciplinary teams.

The child fatality review team shall submit an annual report to the governor and to the Legislature concerning its activities and the incidents of child fatalities within the state. The report is due annually on the first day of December. The report is to include statistics setting forth the number of child fatalities, identifiable trends in child fatalities in the state, including possible causes, if any, and recommendations to reduce the number of preventable child fatalities in the state. The report is to also include the number of children whose deaths have been determined to have been unexpected or unexplained.

A local multidisciplinary investigative team created pursuant to the provisions of section two of this article shall review all cases referred to it pursuant to the provisions of that section: Provided, That a local multidisciplinary investigative team may refer any or all cases for review of deaths to the child fatality review team. The local multidisciplinary investigative team shall provide all information to the child fatality review team necessary for the child fatality review team to create and submit any report required by this section.

The child fatality review team, in the exercise of its duties as defined in this section, may not:

Call witnesses or take testimony from individuals involved in the investigation of a child fatality;

Contact a family member of the deceased child, except if a member of the team is involved in the investigation of the death and must contact a family member in the course of performing his or her duties outside of the team; or

Enforce any public health standard or criminal law or otherwise participate in any legal proceeding, except if a member of the team is involved in the investigation of the death or resulting prosecution and must participate in a legal proceeding in the course of performing in his or her duties outside of the team.

Proceedings, records and opinions of the child fatality review team are confidential, in accordance with section one, article seven, chapter forty-nine of this code, and are not subject to discovery, subpoena or introduction into evidence in any civil or criminal proceeding. Nothing in this subsection is to be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the proceedings of the child fatality review team.

Members of the child fatality review team may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the team. Nothing in this subsection may be construed to prevent a member of the child fatality review team from testifying to information obtained independently of the team or which is public information.

**§49-5D-6. Other agencies of government required to cooperate.**

State, county and local agencies shall provide the multidisciplinary teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing said agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article remain confidential. For purposes of this section, the term "confidential" shall be construed in accordance with the provisions of section one, article seven of this chapter.

**§49-5D-7. Law enforcement; prosecution; interference with performance of duties.**

No multidisciplinary team may take any action which, in the determination of the prosecuting attorney or his or her assistant, impairs the ability of the prosecuting attorney, his or her assistant, or any law enforcement officer to perform his or her statutory duties.