

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 504**

BY SENATORS ASHLEY, LAIRD, MAYNARD, MILLER,  
ROMANO, WALTERS AND PLYMALE

[Originating in the Committee on the Judiciary;  
reported on February 12, 2016.]



1 A BILL to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §62-6B-2 of said code; and to amend said code by adding thereto a  
3 new section, designated §62-6B-6, all relating to confidentiality of records; providing that  
4 a recorded interview of a minor in a criminal or abuse or neglect case is generally  
5 confidential and exempt from disclosure; defining terms, including “interviewed child” and  
6 “recorded interview”; providing that recorded interviews of children in criminal and  
7 administrative proceedings are confidential and subject to disclosure only pursuant to a  
8 court order; requesting Supreme Court of Appeals to promulgate rules which ensure  
9 access of parties and counsel to the contents of the recorded interview while ensuring that  
10 unauthorized duplication and publication are eliminated; creating the criminal offense of  
11 unlawfully duplicating, publishing or using a recorded interview in violation of the terms of  
12 a court order or the general confidentiality provision; and establishing penalties therefor.

*Be it enacted by the Legislature of West Virginia:*

1 That §49-5-101 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; that §62-6B-2 of said code be amended and reenacted; and that said code be  
3 amended by adding thereto a new section, designated §62-6B-6, all to read as follows:

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 5. RECORDKEEPING AND DATABASE.**

#### **§49-5-101. Confidentiality of records; nonrelease of records; exceptions; penalties.**

1 (a) Except as otherwise provided in this chapter or by order of the court, all records and  
2 information concerning a child or juvenile which are maintained by the Division of Juvenile  
3 Services, the Department of Health and Human Resources, a child agency or facility, court or  
4 law-enforcement agency is confidential and shall not be released or disclosed to anyone,  
5 including any federal or state agency.

6 (b) Notwithstanding the provisions of subsection (a) of this section or any other provision  
7 of this code to the contrary, records concerning a child or juvenile, except adoption records and  
8 records disclosing the identity of a person making a complaint of child abuse or neglect may be  
9 made available:

10 (1) Where otherwise authorized by this chapter;

11 (2) To:

12 (A) The child;

13 (B) A parent whose parental rights have not been terminated; or

14 (C) The attorney of the child or parent;

15 (3) With the written consent of the child or of someone authorized to act on the child's  
16 behalf; or

17 (4) Pursuant to an order of a court of record. However, the court shall review the record  
18 or records for relevancy and materiality to the issues in the proceeding and safety, and may issue  
19 an order to limit the examination and use of the records or any part thereof.

20 (c) In addition to those persons or entities to whom information may be disclosed under  
21 subsection (b) of this section, information related to child abuse or neglect proceedings, except  
22 information relating to the identity of the person reporting or making a complaint of child abuse or  
23 neglect, shall be made available, upon request, to:

24 (1) Federal, state or local government entities, or any agent of those entities, including  
25 law-enforcement agencies and prosecuting attorneys, having a need for that information in order  
26 to carry out its responsibilities under law to protect children from abuse and neglect;

27 (2) The child fatality review team;

28 (3) Child abuse citizen review panels;

29 (4) Multidisciplinary investigative and treatment teams; or

30 (5) A grand jury, circuit court or family court, upon a finding that information in the records  
31 is necessary for the determination of an issue before the grand jury, circuit court or family court.

32 (d) In the event of a child fatality or near fatality due to child abuse and neglect, information  
33 relating to a fatality or near fatality shall be made public by the Department of Health and Human  
34 Resources and to the entities described in subsection (c) of this section, all under the  
35 circumstances described in that subsection. However, information released by the Department of  
36 Health and Human Resources pursuant to this subsection may not include the identity of a person  
37 reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near  
38 fatality” means any medical condition of the child which is certified by the attending physician to  
39 be life threatening.

40 (e) Except in juvenile proceedings which are transferred to criminal proceedings, law-  
41 enforcement records and files concerning a child or juvenile shall be kept separate from the  
42 records and files of adults and not included within the court files. Law-enforcement records and  
43 files concerning a child or juvenile shall only be open to inspection pursuant to section one  
44 hundred three of this article.

45 (f) Any person who willfully violates this section is guilty of a misdemeanor and, upon  
46 conviction, shall be fined not more than \$1,000, or confined in jail for not more than six months,  
47 or both fined and confined. A person convicted of violating this section is also liable for damages  
48 in the amount of \$300 or actual damages, whichever is greater.

49 (g) Notwithstanding the provisions of this section, or any other provision of this code to the  
50 contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious  
51 crime shall be made available to the public;

52 (h)(1) Notwithstanding the provisions of this section, or any other provision of this code to  
53 the contrary, the Division of Juvenile Services may provide access to and the confidential use of  
54 a treatment plan, court records or other records of a juvenile to an agency in another state which:

55 (A) Performs the same functions in that state that are performed by the Division of Juvenile  
56 Services in this state;

57 (B) Has a reciprocal agreement with this state; and

58 (C) Has legal custody of the juvenile.

59 (2) A record which is shared under this subsection may only provide information which is  
60 relevant to the supervision, care, custody and treatment of the juvenile.

61 (3) The Division of Juvenile Services is authorized to enter into reciprocal agreements with  
62 other states and to propose rules for legislative approval in accordance with article three, chapter  
63 twenty-nine-a of this code to implement this subsection.

64 (4) Other than the authorization explicitly given in this subsection, this subsection may not  
65 be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

66 (5) The records subject to disclosure pursuant to subsection (b) of this section shall not  
67 include a recorded/videotaped interview, as defined in subdivision (6), section two, article six-b,  
68 chapter sixty-two of this code, the disclosure of which is exclusively subject to the provisions of  
69 section six of said article.

## **CHAPTER 62. CRIMINAL PROCEDURE.**

### **ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.**

#### **§62-6B-2. Definitions.**

1 For the purposes of this article, the words or terms defined in this section, and any variation  
2 of those words or terms required by the context, have the meanings ascribed to them in this  
3 section. These definitions are applicable unless a different meaning clearly appears from the  
4 context.

5 (1) "Child witness" means a person under the age of sixteen years of age who is or will be  
6 called to testify in a criminal matter concerning an alleged violation of the provisions of sections  
7 three, four, five and seven, article eight-b, chapter sixty-one of this code in which the child is the  
8 alleged victim.

9 (2) "Live, closed-circuit television" means a simultaneous transmission, by closed-circuit  
10 television or other electronic means, between the courtroom and the testimonial room.

11 (3) "Operator" means the individual authorized by the court to operate the closed-circuit  
12 television equipment used in accordance with the provisions of this article.

13 (4) "Testimonial room" means a room within the courthouse other than the courtroom from  
14 which the testimony of a child witness or the defendant is transmitted to the courtroom by means  
15 of live, closed-circuit television.

16 (5) "Interviewed child" shall mean any person under the age of eighteen who has been  
17 interviewed by means of any type of recording equipment in connection with alleged criminal  
18 behavior or allegations of abuse or neglect of any child under the age of eighteen.

19 (6) "Recorded interview" means any electronic recording of the interview of an interviewed  
20 child conducted by: (1) An employee or representative of a child advocacy center as that term is  
21 defined in section one hundred one, article three, chapter forty-nine of this code; (2) any  
22 psychologist, psychiatrist, physician, nurse, social worker or other person appointed by the court  
23 to interview the interviewed child as provided in subsection (c), section three of this article; or (3)  
24 a child protective services worker, law-enforcement officer, prosecuting attorney or any  
25 representative of his or her office, or any other person investigating allegations of criminal  
26 behavior or behavior alleged to constitute abuse or neglect of a child. All written documentation  
27 in any form that is related to the recorded interview shall also be deemed confidential.

**§62-6B-6. CONFIDENTIALITY OF RECORDED INTERVIEWS OF CHILDREN.**

1 (a) Except as provided by the provisions of this article, recorded interviews of an  
2 interviewed child in any judicial or administrative proceeding shall not be published or duplicated  
3 except pursuant to the terms of an order of a court of competent jurisdiction.

4 (b) Prior to the commencement of formal proceedings as contemplated in subsection (a)  
5 of this section, the persons or agencies listed in subdivision (6), section two of this article shall be  
6 entitled to access to or copies of the recorded interview of an interviewed child: *Provided, That*  
7 prior to the commencement of formal proceedings only psychologists, psychiatrists, physicians,

8 nurses and social workers who are providing services to the interviewed child may be afforded  
9 reasonable access to the recorded interview.

10 (c) The Supreme Court of Appeals is requested to promulgate a rule or rules regulating in  
11 the courts of this state the publication and duplication of recorded interviews. The Supreme Court  
12 of Appeals is further requested to include in any rule it chooses to promulgate limitations upon  
13 distribution of recorded interviews that ensure that while parties and counsel have access to the  
14 recorded interview the opportunity to duplicate, publish and distribute copies of the recorded  
15 interview is eliminated.

16 (d) Any person who knowingly and willfully duplicates, publishes or uses a recorded  
17 interview in violation of the terms of an order entered by a court of competent jurisdiction or in  
18 violation of the provisions of subsection (b) of this section shall be guilty of a misdemeanor and,  
19 upon conviction, shall be confined in jail for not less than ten days nor more than one year or fined  
20 not less than \$2,000 nor more than \$10,000, or both fined and confined.