

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 376

BY SENATOR BOSO

[Originating in the Committee on the Judiciary;

reported on March 24, 2017]

1 A BILL to amend and reenact §15-12-1a, §15-12-2, §15-12-2a, §15-12-2b, §15-12-3a and §15-
2 12-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5-
3 103 of said code, all relating generally to amending the Sex Offender Registration Act;
4 clarifying intent of Sex Offender Registration Act; requiring juveniles to register as sex
5 offenders if adjudicated delinquent of certain sex crimes; imposing additional disclosure
6 and registration requirements for persons required to register as sex offenders; requiring
7 juveniles adjudicated delinquent of certain sex crimes to sign in open court a statement
8 acknowledging their understanding of the requirements of the Sex Offender Registration
9 Act; expanding the types of sex crimes that qualify as sexually violent offenses; permitting
10 courts to designate certain juveniles adjudicated delinquent of sex crimes as sexually
11 violent predators; establishing procedures for juveniles to appeal sexually violent predator
12 designation; establishing length of time juveniles adjudicated delinquent of sex crimes
13 must comply with provisions of Sex Offender Registration Act; and creating exception to
14 the confidentiality of juvenile records to facilitate compliance with the Sex Offender
15 Registration Act.

Be it enacted by the Legislature of West Virginia:

1 That §15-12-1a, §15-12-2, §15-12-2a, §15-12-2b, §15-12-3a and §15-12-4 of the Code of
2 West Virginia, 1931, as amended, be amended and reenacted; and that §49-5-103 of said code
3 be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-1a. Intent and findings.

1 (a) It is the intent of this article to assist law-enforcement agencies' efforts to protect the
2 public from sex offenders by requiring sex offenders to register with the State Police detachment
3 in the county where he or she shall reside and by making certain information about sex offenders
4 available to the public as provided in this article. It is not the intent of the Legislature that the

5 information be used to inflict retribution or additional punishment on any person convicted or
6 adjudicated delinquent as a juvenile of any offense requiring registration under this article. This
7 article is intended to be regulatory in nature and not penal.

8 (b) The Legislature finds and declares that there is a compelling and necessary public
9 interest that the public have information concerning persons convicted or adjudicated delinquent
10 as a juvenile of sexual offenses in order to allow members of the public to adequately protect
11 themselves and their children from these persons.

12 (c) The Legislature also finds and declares that persons required to register as sex
13 offenders pursuant to this article have a reduced expectation of privacy because of the state's
14 interest in public safety.

§15-12-2. Registration.

1 (a) The provisions of this article apply both retroactively and prospectively.

2 (b) Any person who has been convicted or adjudicated delinquent as a juvenile of an
3 offense or an attempted offense or has been found not guilty by reason of mental illness, mental
4 retardation or addiction of an offense under any of the following provisions of chapter sixty-one of
5 this code or under a statutory provision of another state, the United States Code or the Uniform
6 Code of Military Justice which requires proof of the same essential elements shall register as set
7 forth in subsection (d) of this section and according to the internal management rules promulgated
8 by the superintendent under authority of section twenty-five, article two of this chapter:

9 (1) Article eight-a;

10 (2) Article eight-b, including the provisions of former section six of said article, relating to
11 the offense of sexual assault of a spouse, which was repealed by an Act of the Legislature during
12 the year 2000 legislative session;

13 (3) Article eight-c;

14 (4) Sections five and six, article eight-d;

15 (5) Section fourteen, article two;

16 (6) Sections six, seven, twelve and thirteen, article eight; or

17 (7) Section fourteen-b, article three-c, as it relates to violations of those provisions of
18 chapter sixty-one listed in this subsection; or

19 (8) Sections two, five and six, article fourteen: *Provided*, That as to section two of said
20 article only those violations involving human trafficking for purposes of sexual servitude require
21 registration pursuant to this subsection.

22 (c) Any person who has been convicted or adjudicated delinquent as a juvenile of a
23 criminal offense and the sentencing judge made a written finding that the offense was sexually
24 motivated shall also register as set forth in this article.

25 (d) Persons required to register under the provisions of this article shall register in person
26 at the West Virginia State Police detachment responsible for covering the county of his or her
27 residence, and in doing so, provide or cooperate in providing, at a minimum, the following when
28 registering:

29 (1) The full name of the registrant, including any aliases, nicknames or other names used
30 by the registrant;

31 (2) The address where the registrant intends to reside or resides at the time of registration,
32 the address of any habitable real property owned or leased by the registrant that he or she
33 regularly visits: *Provided*, That a post office box may not be provided in lieu of a physical
34 residential address, the name and address of the registrant's employer or place of occupation at
35 the time of registration, the names and addresses of any anticipated future employers or places
36 of occupation, the name and address of any school or training facility the registrant is attending
37 at the time of registration and the names and addresses of any schools or training facilities the
38 registrant expects to attend;

39 (3) The registrant's Social Security number;

40 (4) A full-face photograph of the registrant at the time of registration;

41 (5) A brief description of the crime or crimes for which the registrant was convicted or

42 adjudicated delinquent as a juvenile;

43 (6) Fingerprints and palm prints;

44 (7) Information related to any motor vehicle, trailer or motor home owned or regularly
45 operated by a registrant, including vehicle make, model, color and license plate number: *Provided,*
46 That for the purposes of this article, the term “trailer” shall mean travel trailer, fold-down camping
47 trailer and house trailer as those terms are defined in section one, article one, chapter seventeen-
48 a of this code;

49 (8) Information relating to any Internet accounts the registrant has and the screen names,
50 user names or aliases the registrant uses on the Internet; ~~and~~

51 (9) Information related to any telephone or electronic paging device numbers that the
52 registrant has or uses, including, but not limited to, residential, work and mobile telephone
53 numbers;

54 (10) A photocopy of a valid driver’s license or identification card (to include a tribal
55 identification card) issued to the sex offender by a jurisdiction;

56 (11) A photocopy of passport and immigration documents; and

57 (12) A photocopy of professional licensing information: all licensing of the registrant that
58 authorizes the registrant to engage in an occupation or carry out a trade or business.

59 (e) (1) On the date that any person convicted or adjudicated delinquent as a juvenile or
60 found not guilty by reason of mental illness, mental retardation or addiction of any of the crimes
61 listed in subsection (b) of this section, hereinafter referred to as a “qualifying offense”, including
62 those persons who are continuing under some post-conviction or post-adjudication of delinquency
63 supervisory status, are released, granted probation or a suspended sentence, released on parole,
64 probation, home detention, work release, conditional release or any other release from
65 confinement, the Commissioner of Corrections, regional jail administrator, city official or sheriff
66 operating a jail or Secretary of the Department of Health and Human Resources who releases
67 the person and any parole or probation officer who releases the person or supervises the person

68 following the release, shall obtain all information required by subsection (d) of this section prior to
69 the release of the person, inform the person of his or her duty to register and send written notice
70 of the release of the person to the State Police within three business days of receiving the
71 information. The notice must include the information required by said subsection. Any person
72 having a duty to register for a qualifying offense shall register upon conviction or adjudication of
73 delinquency, unless that person is confined or incarcerated, in which case he or she shall register
74 within three business days of release, transfer or other change in disposition status. Any person
75 currently registered who is incarcerated for any offense shall re-register within three business
76 days of his or her release.

77 (2) Notwithstanding any provision of this article to the contrary, a court of this state shall,
78 upon presiding over a criminal matter resulting in conviction or adjudication of a juvenile
79 delinquent or a finding of not guilty by reason of mental illness, mental retardation or addiction of
80 a qualifying offense, cause, within seventy-two hours of entry of the commitment or sentencing
81 order, the transmittal to the sex offender registry for inclusion in the registry all information
82 required for registration by a registrant as well as the following nonidentifying information
83 regarding the victim or victims:

- 84 (A) His or her sex;
- 85 (B) His or her age at the time of the offense; and
- 86 (C) The relationship between the victim and the perpetrator.

87 The provisions of this paragraph do not relieve a person required to register pursuant to
88 this section from complying with any provision of this article.

89 (f) For any person determined to be a sexually violent predator, the notice required by
90 subsection (d) of this section must also include:

- 91 (1) Identifying factors, including physical characteristics;
- 92 (2) History of the offense; and
- 93 (3) Documentation of any treatment received for the mental abnormality or personality

94 disorder.

95 (g) At the time the person is convicted or adjudicated delinquent as a juvenile or found not
96 guilty by reason of mental illness, mental retardation or addiction in a court of this State of the
97 crimes set forth in subsection (b) of this section, the person shall sign in open court a statement
98 acknowledging that he or she understands the requirements imposed by this article. The court
99 shall inform the person so convicted or adjudicated delinquent as a juvenile of the requirements
100 to register imposed by this article and shall further satisfy itself by interrogation of the defendant,
101 the juvenile respondent, or his or her counsel that the defendant or juvenile respondent has
102 received notice of the provisions of this article and that the defendant or juvenile respondent
103 understands the provisions. The statement, when signed and witnessed, constitutes prima facie
104 evidence that the person had knowledge of the requirements of this article. Upon completion of
105 the statement, the court shall provide a copy to the registry. Persons who have not signed a
106 statement under the provisions of this subsection and who are subject to the registration
107 requirements of this article must be informed of the requirement by the State Police whenever the
108 State Police obtain information that the person is subject to registration requirements.

109 (h) The State Police shall maintain a central registry of all persons who register under this
110 article and shall release information only as provided in this article. The information required to
111 be made public by the State Police by subdivision (2), subsection (b), section five of this article is
112 to be accessible through the Internet. No information relating to telephone or electronic paging
113 device numbers a registrant has or uses may be released through the Internet.

114 (i) For the purpose of this article, "sexually violent offense" means:

115 (1) Sexual assault in the first degree as set forth in section three, article eight-b, chapter
116 sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

117 (2) Sexual assault in the second degree as set forth in section four, article eight-b, chapter
118 sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

119 (3) Sexual assault of a spouse as set forth in the former provisions of section six, article

120 eight-b, chapter sixty-one of this code, which was repealed by an Act of the Legislature during the
121 2000 legislative session, or of a similar provision in another state, federal or military jurisdiction;

122 (4) Sexual abuse in the first degree as set forth in section seven, article eight-b, chapter
123 sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

124 (5) Sexual assault in the third degree of an adult who is incapacitated as set forth in section
125 five, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal
126 or military jurisdiction;

127 (6) Human trafficking for the purpose of sexual servitude as set forth in section five, article
128 fourteen, chapter sixty-one of this code or of a similar provision in another state, federal or military
129 jurisdiction;

130 (7) A felonious criminal invasion of privacy as set forth in section twenty-eight, article eight,
131 chapter sixty-one of this code or of a similar provision in another state, federal or military
132 jurisdiction;

133 (8) Indecent exposure as set forth in section nine, article eight, chapter sixty-one of this
134 code or of a similar provision in another state, federal or military jurisdiction;

135 (9) Conspiracy to violate any of the provisions of subdivision (1) through (8), inclusive, of
136 this subsection or of a similar provision in another state, federal or military jurisdiction.

137 (j) For purposes of this article, the term “sexually motivated” means that one of the
138 purposes for which a person committed the crime was for any person’s sexual gratification.

139 (k) For purposes of this article, the term “sexually violent predator” means a person who
140 has been convicted or adjudicated delinquent as a juvenile or found not guilty by reason of mental
141 illness, mental retardation or addiction of a sexually violent offense and who suffers from a mental
142 abnormality or personality disorder that makes the person likely to engage in predatory sexually
143 violent offenses.

144 (l) For purposes of this article, the term “mental abnormality” means a congenital or
145 acquired condition of a person, that affects the emotional or volitional capacity of the person in a

146 manner that predisposes that person to the commission of criminal sexual acts to a degree that
147 makes the person a menace to the health and safety of other persons.

148 (m) For purposes of this article, the term “predatory act” means an act directed at a
149 stranger or at a person with whom a relationship has been established or promoted for the primary
150 purpose of victimization.

151 (n) For the purposes of this article, the term “business days” means days exclusive of
152 Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this
153 code.

§15-12-2a. Court determination of sexually violent predator.

1 (a) The circuit court that has sentenced a person for the commission of a sexually violent
2 offense or that has entered a judgment of acquittal of a charge of committing a sexually violent
3 offense in which the defendant has been found not guilty by reason of mental illness, mental
4 retardation or addiction shall make a determination whether:

5 (1) A person is a sexually violent predator; or

6 (2) A person is not a sexually violent predator.

7 (b) A hearing to make a determination as provided in subsection (a) of this section is a
8 summary proceeding, triable before the court without a jury.

9 (c) A proceeding seeking to establish that a person is a sexually violent predator is initiated
10 by the filing of a written pleading by the prosecuting attorney. The pleading shall describe the
11 record of the judgment of the court on the person’s conviction or adjudication of delinquency as a
12 juvenile or finding of not guilty by reason of mental illness, mental retardation or addiction of a
13 sexually violent offense and shall set forth a short and plain statement of the prosecutor’s claim
14 that the person suffers from a mental abnormality or personality disorder that makes the person
15 likely to engage in predatory sexually violent offenses.

16 (d) Prior to making a determination pursuant to the provisions of this section, the
17 sentencing court may order a psychiatric or other clinical examination and, after examination, may

18 further order a period of observation in an appropriate facility within this state designated by the
19 court after consultation with the Director of the Division of Health.

20 (e) Prior to making a determination pursuant to the provisions of this section, the
21 sentencing court shall request and receive a report by the board established pursuant to section
22 two-b of this article. The report shall set forth the findings and recommendation of the board on
23 the issue of whether the person is a sexually violent predator.

24 (f) At a hearing to determine whether a person is a sexually violent predator, the person
25 shall be present and shall have the right to be represented by counsel, introduce evidence and
26 cross-examine witnesses. The offender shall have access to a summary of the medical evidence
27 to be presented by the state. The offender shall have the right to an examination by an
28 independent expert of his or her choice and testimony from the expert as a medical witness on
29 his or her behalf. At the termination of the hearing the court shall make a finding of fact upon a
30 preponderance of the evidence as to whether the person is a sexually violent predator.

31 (g) If a person is determined by the circuit court to be a sexually violent predator, the clerk
32 of the court shall forward a copy of the order to the State Police in the manner promulgated in
33 accordance with the provisions of article three, chapter twenty-nine-a of this code.

§15-12-2b. Creation of Sex Offender Registration Advisory Board.

1 (a) There is hereby created within the Department of Military Affairs and Public Safety a
2 Sex Offender Registration Advisory Board consisting of a minimum of five members appointed by
3 the Secretary of the Department of Military Affairs and Public Safety. At least two of the members
4 shall be experts in the field of the behavior and treatment of sexual offenders, and each shall be
5 a physician, psychologist or social worker in the employ of this state appointed by the secretary
6 in consultation with the Director of the Division of Health. The remaining members shall be victims'
7 rights advocates and representatives of law-enforcement agencies. Members of the board shall
8 be reimbursed their reasonable expenses pursuant to the rules promulgated by the Department
9 of Administration for the reimbursement of expenses of state officials and employees and shall

10 receive no other compensation for their services. The board shall utilize the staff of the division
11 or office within the Department of Military Affairs and Public Safety designated by the secretary
12 thereof in carrying out its duties and responsibilities as set forth in this article.

13 (b) The board shall assist the circuit courts of this state in determining whether persons
14 convicted or adjudicated delinquent as a juvenile of sexually violent offenses are sexually violent
15 predators.

§15-12-3a. Petition for removal of sexually violent predator designation.

1 A proceeding seeking to remove a person's designation as a sexually violent predator may
2 be initiated by the filing of a petition by the person so designated in the original sentencing court.
3 The petition shall set forth that the underlying qualifying conviction or adjudication of delinquency
4 as a juvenile has been reversed or vacated. Upon receipt of proof that no qualifying conviction or
5 adjudication of delinquency exists, the court shall enter an order directing the removal of the
6 designation.

§15-12-4. Duration.

1 (a) A person required to register under the terms of this article shall continue to comply
2 with this section, except during ensuing periods of incarceration or confinement, until:

3 (1) Ten years have elapsed since the person was released from prison, jail or a mental
4 health facility or ten years have elapsed since the person was placed on probation, parole or
5 supervised or conditional release. The ten-year registration period shall not be reduced by the
6 sex offender's release from probation, parole or supervised or conditional release; or

7 (2) Ten years have elapsed since the person was released from a juvenile correctional
8 facility or juvenile detention facility or ten years have elapsed since the person was released from
9 the juvenile jurisdiction of the court; or

10 ~~(2)~~ (3) For the life of that person if that person: (A) Has one or more prior convictions or
11 has previously been found not guilty by reason of mental illness, mental retardation or addiction
12 for any qualifying offense referred to in this article; or (B) has been convicted or has been found

13 not guilty by reason of mental illness, mental retardation or addiction of a qualifying offense as
14 referred to in this article, and upon motion of the prosecuting attorney, the court finds by clear and
15 convincing evidence, that the qualifying offense involved multiple victims or multiple violations of
16 the qualifying offense; or (C) has been convicted or has been found not guilty by reason of mental
17 illness, mental retardation or addiction of a sexually violent offense; or (D) has been determined
18 pursuant to section two-a of this article to be a sexually violent predator; or (E) has been convicted
19 or has been found not guilty by reason of mental illness, mental retardation or addiction of a
20 qualifying offense as referred to in this article, involving a minor.

21 (b) Notwithstanding any other provision of this section, if the offender is adjudicated
22 delinquent as a juvenile of a crime or crimes requiring registration as a sex offender, the offender
23 shall comply with the provisions of this article for the duration set forth in subdivision (2),
24 subsection (a) of this section.

25 ~~(b)~~ (c) A person whose conviction or adjudication of delinquency as a juvenile is overturned
26 for the offense which required them to register under this article shall, upon petition to the court,
27 have their name removed from the registry.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. RECORDKEEPING AND DATABASE.

§49-5-103. Confidentiality of juvenile records; permissible disclosures; penalties; damages.

1 (a) Any findings or orders of the court in a juvenile proceeding shall be known as the
2 juvenile record and shall be maintained by the clerk of the court.

3 (b) Records of a juvenile proceeding conducted under this chapter are not public records
4 and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

5 (c) Notwithstanding the provisions of subsection (b) of this section, a copy of a juvenile's
6 records shall automatically be disclosed to certain school officials, subject to the following terms
7 and conditions:

8 (1) Only the records of certain juveniles shall be disclosed. These include, and are limited
9 to, cases in which:

10 (A) The juvenile has been charged with an offense which:

11 (i) Involves violence against another person;

12 (ii) Involves possession of a dangerous or deadly weapon; or

13 (iii) Involves possession or delivery of a controlled substance as that term is defined in
14 section one hundred one, article one, chapter sixty-a of this code; and

15 (B) The juvenile's case has proceeded to a point where one or more of the following has
16 occurred:

17 (i) A circuit court judge or magistrate has determined that there is probable cause to
18 believe that the juvenile committed the offense as charged;

19 (ii) A circuit court judge or magistrate has placed the juvenile on probation for the offense;

20 (iii) A circuit court judge or magistrate has placed the juvenile into a preadjudicatory
21 community supervision period in accordance with section seven hundred eight, article four of this
22 chapter; or

23 (iv) Some other type of disposition has been made of the case other than dismissal.

24 (2) The circuit court for each judicial circuit in West Virginia shall designate one person to
25 supervise the disclosure of juvenile records to certain school officials.

26 (3) If the juvenile attends a West Virginia public school, the person designated by the
27 circuit court shall automatically disclose all records of the juvenile's case to the county
28 superintendent of schools in the county in which the juvenile attends school and to the principal
29 of the school which the juvenile attends, subject to the following:

30 (A) At a minimum, the records shall disclose the following information:

31 (i) Copies of the arrest report;

32 (ii) Copies of all investigations;

33 (iii) Copies of any psychological test results and any mental health records;

34 (iv) Copies of any evaluation reports for probation or facility placement; and
35 (v) Any other material that would alert the school to potential danger that the juvenile may
36 pose to himself, herself or others;

37 (B) The disclosure of the juvenile's psychological test results and any mental health
38 records shall only be made in accordance with subdivision (14) of this subsection;

39 (C) If the disclosure of any record to be automatically disclosed under this section is
40 restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996, PL
41 104-191, and any amendments and regulations under the act, the person designated by the circuit
42 court shall provide the superintendent and principal any notice of the existence of the record that
43 is permissible under the act and, if applicable, any action that is required to obtain the record; and

44 (D) When multiple disclosures are required by this subsection, the person designated by
45 the circuit court is required to disclose only material in the juvenile record that had not previously
46 been disclosed to the county superintendent and the principal of the school which the juvenile
47 attends.

48 (4) If the juvenile attends a private school in West Virginia, the person designated by the
49 circuit court shall determine the identity of the highest ranking person at that school and shall
50 automatically disclose all records of a juvenile's case to that person.

51 (5) If the juvenile does not attend school at the time the juvenile's case is pending, the
52 person designated by the circuit court may not transmit the juvenile's records to any school.
53 However, the person designated by the circuit court shall transmit the juvenile's records to any
54 school in West Virginia which the juvenile subsequently attends.

55 (6) The person designated by the circuit court may not automatically transmit juvenile
56 records to a school which is not located in West Virginia. Instead, the person designated by the
57 circuit court shall contact the out-of-state school, inform it that juvenile records exist and make an
58 inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the
59 person designated by the circuit court shall consult with the circuit judge who presided over the

60 case to determine whether the juvenile records should be disclosed to the out-of-state school.
61 The circuit judge has discretion in determining whether to disclose the juvenile records and shall
62 consider whether the other state's law regarding disclosure provides for sufficient confidentiality
63 of juvenile records, using this section as a guide. If the circuit judge orders the juvenile records to
64 be disclosed, they shall be disclosed in accordance with subdivision (7) of this subsection.

65 (7) The person designated by the circuit court shall transmit the juvenile's records to the
66 appropriate school official under cover of a letter emphasizing the confidentiality of those records
67 and directing the official to consult this section of the code. A copy of this section of the code shall
68 be transmitted with the juvenile's records and cover letter.

69 (8) Juvenile records are absolutely confidential by the school official to whom they are
70 transmitted and nothing contained within the juvenile's records may be noted on the juvenile's
71 permanent educational record. The juvenile records are to be maintained in a secure location and
72 are not to be copied under any circumstances. However, the principal of a school to whom the
73 records are transmitted shall have the duty to disclose the contents of those records to any
74 teacher who teaches a class in which the subject juvenile is enrolled and to the regular driver of
75 a school bus in which the subject juvenile is regularly transported to or from school, except that
76 the disclosure of the juvenile's psychological test results and any mental health records may only
77 be made in accordance with subdivision (14) of this subsection. Furthermore, any school official
78 to whom the juvenile's records are transmitted may disclose the contents of those records to any
79 adult within the school system who, in the discretion of the school official, has the need to be
80 aware of the contents of those records.

81 (9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's
82 records, the appropriate official at that school shall seal the records and return them to the circuit
83 court which sent them to that school. If the juvenile has changed schools for any reason, the
84 former school shall inform the circuit court of the name and location of the new school which the
85 juvenile attends or will be attending. If the new school is located within West Virginia, the person

86 designated by the circuit court shall forward the juvenile's records to the juvenile's new school in
87 the same manner as provided in subdivision (7) of this subsection. If the new school is not located
88 within West Virginia, the person designated by the circuit court shall handle the juvenile records
89 in accordance with subdivision (6) of this subsection.

90 If the juvenile has been found not guilty of an offense for which records were previously
91 forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit court
92 may not forward those records to the juvenile's new school. However, this does not affect records
93 related to other prior or future offenses. If the juvenile has graduated or quit school or will
94 otherwise not be attending another school, the circuit court shall retain the juvenile's records and
95 handle them as otherwise provided in this article.

96 (10) Under no circumstances may one school transmit a juvenile's records to another
97 school.

98 (11) Under no circumstances may juvenile records be automatically transmitted to a
99 college, university or other post-secondary school.

100 (12) No one may suffer any penalty, civil or criminal, for accidentally or negligently
101 attributing certain juvenile records to the wrong person. However, that person has the affirmative
102 duty to promptly correct any mistake that he or she has made in disclosing juvenile records when
103 the mistake is brought to his or her attention. A person who intentionally attributes false
104 information to a certain person shall be subjected to both criminal and civil penalties in accordance
105 with subsection (e) of this section.

106 (13) If a circuit judge or magistrate has determined that there is probable cause to believe
107 that a juvenile has committed an offense but there has been no final adjudication of the charge,
108 the records which are transmitted by the circuit court shall be accompanied by a notice which
109 clearly states in bold print that there has been no determination of delinquency and that our legal
110 system requires a presumption of innocence.

111 (14) The county superintendent shall designate the school psychologist or psychologists

112 to receive the juvenile's psychological test results and any mental health records. The
113 psychologist designated shall review the juvenile's psychological test results and any mental
114 health records and, in the psychologist's professional judgment, may disclose to the principal of
115 the school that the juvenile attends and other school employees who would have a need to know
116 the psychological test results, mental health records and any behavior that may trigger violence
117 or other disruptive behavior by the juvenile. Other school employees include, but are not limited
118 to, any teacher who teaches a class in which the subject juvenile is enrolled and the regular driver
119 of a school bus in which the subject juvenile is regularly transported to or from school.

120 (d) Notwithstanding the provisions of subsection (b) of this section, juvenile records may
121 be disclosed, subject to the following terms and conditions:

122 (1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant
123 to the provisions of subsection (c) or (d), section seven hundred ten, article four of this chapter,
124 the juvenile records are open to public inspection.

125 (2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant
126 to the provisions of subsection (e), (f) or (g), section seven hundred ten, article four of this chapter,
127 the juvenile records are open to public inspection only if the juvenile fails to file a timely appeal of
128 the transfer order, or the Supreme Court of Appeals refuses to hear or denies an appeal which
129 has been timely filed.

130 (3) If a juvenile is fourteen years of age or older and a court has determined there is a
131 probable cause to believe the juvenile committed an offense set forth in subsection (g), section
132 seven hundred ten, article four of this chapter, but the case is not transferred to criminal
133 jurisdiction, the juvenile records are open to public inspection pending trial only if the juvenile is
134 released on bond and no longer detained or adjudicated delinquent of the offense.

135 (4) If a juvenile is younger than fourteen years of age and a court has determined there is
136 probable cause to believe that the juvenile committed the crime of murder under section one, two
137 or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree

138 under section three, article eight-b of chapter sixty-one, but the case is not transferred to criminal
139 jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile
140 is released on bond and no longer detained or adjudicated delinquent of the offense.

141 (5) Upon a written petition and pursuant to a written order, the circuit court may permit
142 disclosure of juvenile records to:

143 (A) A court, in this state or another state, which has juvenile jurisdiction and has the
144 juvenile before it in a juvenile proceeding;

145 (B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile
146 which requests records for the purpose of a presentence report or disposition proceeding;

147 (C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

148 (D) The officials of a public institution to which the juvenile is committed if they require
149 those records for transfer, parole or discharge; or

150 (E) A person who is conducting research. However, juvenile records may be disclosed for
151 research purposes only upon the condition that information which would identify the subject
152 juvenile or the juvenile's family may not be disclosed.

153 (6) Notwithstanding any other provision of this code, juvenile records shall be disclosed,
154 or copies made available, to a probation officer upon his or her request. Any probation officer may
155 access relevant juvenile case information contained in any electronic database maintained by or
156 for the Supreme Court of Appeals and share it with any other probation officer.

157 (7) Notwithstanding any other provision of this code, juvenile records shall be disclosed,
158 or copies made available, in response to any lawfully issued subpoena from a federal court or
159 federal agency.

160 (8) Notwithstanding any other provision of this code, juvenile records shall be disclosed,
161 or copies made available, to the department or the Division of Juvenile Services for purposes of
162 case planning for the juvenile and his or her parents, custodians or guardians.

163 (9) Notwithstanding any other provision of this code, if a juvenile has been adjudicated

164 delinquent of a criminal offense that requires registration as a sex offender pursuant to section
165 two, article twelve, chapter fifteen of this code, the resulting juvenile record and its contents may
166 be disclosed, or copies made available, to the extent necessary to comply with the registration,
167 disclosure and distribution provisions of said article.

168 (e) Any records open to public inspection pursuant to this section are subject to the same
169 requirements governing the disclosure of adult criminal records.

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