

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 472

BY SENATORS TRUMP AND WELD

[Originating in the Committee on the Judiciary; reported on February 3, 2022]

1 A BILL to amend and reenact §49-5-101 of the Code of West Virginia, as amended, relating to
2 including the Juvenile Justice Commission and its designees acting in the courses of their
3 official duties to the list of persons and entities granted access to confidential records;
4 granting a current or former employee of the Division of Corrections and Rehabilitation
5 access to relevant juvenile records for purposes of pursuing a grievance; permitting the
6 release of such records only after a hearing to determine relevancy by the Public
7 Employees Grievance Board; providing for the sealing of such relevant records from public
8 view and the redaction of any identifying information related to the juvenile; placing certain
9 limitations on the grieving party's use of such records; permitting a grieving party's
10 attorney or representative access to such records; requiring a court order for any further
11 use of such records outside of the grievance proceeding; requiring that such court orders
12 limit disclosure to the purposes of the proceeding; and clarifying that nothing in the section
13 may be construed to abrogate the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. RECORD KEEPING 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~~ Corrections and Rehabilitation, the Department of Health and Human Resources, a child
4 agency or facility, or court or law-enforcement agency, are confidential and ~~shall~~ may not be
5 released or disclosed to anyone, 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; and

15 (D) The Juvenile Justice Commission and its' designees acting in the course of their official
16 duties;

17 (3) With the written consent of the child or of someone authorized to act on the child's
18 behalf; ~~or~~ and

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

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

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

29 (2) The child fatality review team;

30 (3) Child abuse citizen review panels;

31 (4) Multidisciplinary investigative and treatment teams; or

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

34 ~~In the event of~~ If there is a child fatality or near fatality due to child abuse and neglect,
35 information relating to a fatality or near fatality shall be made public by the Department of Health
36 and Human Resources and provided to the entities described in subsection (c) of this section, all

37 under the circumstances described in that subsection ~~However,~~ :Provided, That information
38 released by the Department of Health and Human Resources pursuant to this subsection may
39 not include the identity of a person reporting or making a complaint of child abuse or neglect. For
40 purposes of this subsection, "near fatality" means any medical condition of the child which is
41 certified by the attending physician to be life threatening.

42 (e) Except in juvenile proceedings which are transferred to criminal proceedings, law-
43 enforcement records and files concerning a child or juvenile shall be kept separate from the
44 records and files of adults and not included within the court files. Law-enforcement records and
45 files concerning a child or juvenile shall only be open to inspection pursuant to ~~section one~~
46 ~~hundred three of this article.~~ §49-5-103 of this code.

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

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

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

58 (A) Performs the same functions in that state that are performed by the Division of ~~Juvenile~~
59 ~~Services~~ Corrections and Rehabilitation in this state;

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

61 (C) Has legal custody of the juvenile.

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

64 (3) The Division of ~~Juvenile Services~~ Corrections and Rehabilitation ~~is authorized to~~ may
65 enter into reciprocal agreements with other states and to propose rules for legislative approval in
66 accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

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

69 (i) The records subject to disclosure pursuant to subsection (b) of this section ~~shall~~ may
70 not include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure
71 of which is exclusively subject to ~~the provisions of~~ §62-6B-6 of this code.

72 (j) Notwithstanding the provision of subsection (a) of this section, records declared to be
73 confidential by the provisions of subsection (a) of this section may be published and disclosed for
74 use in an employee grievance if such is done in compliance with subsections (k), (l), and (m) of
75 this section.

76 (k) No records or information declared confidential by the provisions of this section may
77 be released for use in a grievance proceeding except:

78 (1) Upon written motion of a party; and

79 (2) Upon an order of the Public Employee's Grievance Board entered after an in-camera
80 hearing as to the relevance of such record or information.

81 (l) If production of confidential records or information is disclosed to a grievant, his or her
82 counsel or representative, pursuant to subsection (k) of this section:

83 (1) Written records or information must be redacted of all identifying information of any
84 juvenile which is not relevant to the resolution of the grievance;

85 (2) Relevant video and audio records may be disclosed without redaction;

86 (3) Records or other information released to a grievant or his or her counsel or
87 representative pursuant to subsection (k) of this section may only be used for purposes of his or

88 her grievance proceeding and may not be disclosed, published, copied, or distributed for any
89 other purpose and upon the conclusion of the grievance procedure returned to the Division of
90 Corrections and Rehabilitation.

91 (m) Should a grievant or the Division of Corrections and Rehabilitation seek judicial review
92 of a decision of the Public Employee's Grievance Board, the relevant confidential records
93 disclosed and used in the grievance proceeding may be used in the appeal proceeding upon entry
94 of an order of the circuit court which order shall contain a provision limiting disclosure or
95 publication of the records or information to purposes necessary to the proceeding and prohibiting
96 unauthorized use and reproduction.

97 (n) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 et
98 seq.