WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 616

BY SENATOR WELD

[Introduced February 10, 2022; referred

to the Committee on the Judiciary]

1   A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,

2   designated §61-8B-19, relating to the confidentiality of court files and law-enforcement

3   records of certain enumerated offenses, and the order permitting the examination or

4   copying of certain files; obtaining certain files by the issuance of a subpoena duces tecum;

5   and creating a misdemeanor offense and penalty for a violation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-19. Court files and law-enforcement records; confidentiality.

1   (a) *Records confidential.*-- All records and information maintained by the courts or any

2   police department of the state or any of its political subdivisions, which contain identifying

3   information of a victim or victims in an arrest, investigation, or complaint for the offenses

4   enumerated in §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-14-1 *et seq.* of this

5   code, or for the offenses included in §61-8D-3a, §61-8D-5, and §61-8DB-6 of this code, shall be

6   kept confidential and withheld from inspection, except: (1) when required by law; (2) when

7   necessary for law-enforcement purposes or preparation for court proceedings; or (3) pursuant to

8   an order of a court issued in accordance with subsection (c) of this section.

9   (b) *Orders permitting examination or copying of file contents.*-- Upon written motion filed

10   in the circuit court of the county where the criminal action is pending or has been prosecuted, the

11   court, for good cause shown, may enter an order allowing a person who is not permitted access

12   to a court file or law-enforcement record under subsection (a) of this section to examine and/or

13   copy documents in a file. The orders shall set forth specific findings which demonstrate why the

14   interests of justice necessitate the examination and/or copying, specify the particular documents

15   to be examined and/or copied, and the arrangements under which such examination and/or

16   copying shall take place.

17   (c) *Obtaining confidential records.*-- Except for the provisions of subsection (d) of this

18   section, unless the person who is the subject of confidential records waives confidentiality in

19   writing, the records may not be obtained by subpoena.

20   (d) *Subpoena Duces Tecum.*-- Any court file or law-enforcement record in the offenses

21   included in subsection (a) of this section shall be supplied to any person presenting a valid

22   subpoena duces tecum issued by a state or federal court in any criminal action. Any file or record

23   obtained under this subsection shall be used only in the context of the case in which the subpoena

24   was issued and not for any other purpose.

25   (e) *Victim request.*-- Upon a written request of the victim, no decision of the West Virginia

26   Intermediate Court of Appeals or the West Virginia Supreme Court of Appeals issued on or after

27   July 1, 2022, involving any offenses enumerated in subsection (a) of this section may contain the

28   first or last name of the victim.

29   (f) *Supreme Court authorization.*-- The Supreme Court of Appeals is authorized to

30   promulgate rules prior to July 1, 2022, to the extent necessary to comply with the requirements of

31   this article that shall become effective on that date.

32   (g) *Unlawful acts.*-- Except as otherwise provided in this section, it is unlawful to publish,

33   disseminate, or otherwise disclose the name of any individual identified as a victim of any of the

34   offenses included in subsection (a) of this section. Any person violating this section is guilty of a

35   misdemeanor and, upon conviction thereof, shall be fined not less than $2,500 nor more than

36    $10,000.

NOTE: The purpose of this bill is to keep court files and law-enforcement records regarding certain offenses confidential unless the court should order otherwise.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.