

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2016

By Delegate Summers, Tully, Rohrbach and Espinosa

[Introduced January 11, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §49-5-101 of the Code of West Virginia, 1931, as amended, relating
2 to releasing information to facilitate care of a child.

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, the Department of Health and Human Resources, a child agency or facility, court or law-
4 enforcement agency are confidential and shall not be released or disclosed to anyone, including
5 any federal or state agency.

6 (b) Notwithstanding the provisions of subsection (a) of this section or any other provision of
7 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 or
18 records for relevancy and materiality to the issues in the proceeding and safety, and may issue an
19 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 law-
25 enforcement agencies and prosecuting attorneys, having a need for that information in order to
26 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 is
31 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 be
39 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, or

47 both fined and confined. A person convicted of violating this section is also liable for damages in
48 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 a
54 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 (i) The records subject to disclosure pursuant to subsection (b) of this section shall not
67 include a recorded/videotaped interview, as defined in §62-6B-2 (6) of this code, the disclosure of
68 which is exclusively subject to the provisions of §62-2-6 of this code.

69 (j) A child agency or facility may disclose otherwise confidential information to other child
70 agencies or facilities when making referrals or providing services on behalf of the child. This
71 information shall be maintained in the same manner as provided in this code.

- 72 (k) The department shall provide access to a child placing agency electronic information
73 required to perform an adoption.

NOTE: The purpose of this bill is to provide certain information to child placing agencies and child care facilities to facilitate placement or services to a child.

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