

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2016**

BY DELEGATES SUMMERS, TULLY, ROHRBACH AND ESPINOSA

[Passed March 10, 2023; in effect ninety days from passage.]



1 AN ACT to amend and reenact §16-5-28 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §49-4-608 of said code; and to amend and reenact §49-5-101 of said  
3 code, all relating to releasing information to facilitate care of a child; providing for qualified  
4 disclosure of confidential information between certain entities; requiring court notices be  
5 sent to child placement agencies in adoption cases; requiring State Registrar to issue copy  
6 of vital record to child placement agency; requiring the disclosed records to be maintained  
7 in compliance with code; and requiring the department to provide electronic access to  
8 certain information.

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

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 5. VITAL STATISTICS.**

#### **§16-5-28. Copies from the system of vital statistics.**

1 In accordance with §16-5-27 of this code and the legislative rules promulgated thereunder:

2 (a) The State Registrar and other custodians of vital records authorized to issue certified  
3 copies shall upon receipt of an application, issue a certified copy of a vital record in his or her  
4 custody to the registrant, his or her parents, spouse, adult children, grandchildren or great-  
5 grandchildren, legal guardian, or their respective authorized representative. Additionally, the State  
6 Registrar and other custodians of vital records, upon receipt of an application, shall issue a  
7 certified copy of a vital record in his or her custody to a child placing agency completing adoption  
8 on behalf of the department. Others may be authorized to obtain certified copies when they  
9 demonstrate that the record is needed for the determination or protection of his or her personal  
10 or property right. The department may promulgate rules to further define others who may obtain  
11 copies of vital records filed under this article.

12 (b) All forms and procedures used in the issuance of certified copies of vital records in the  
13 state shall be approved by the State Registrar. All certified copies of certificates of birth issued

14 shall have security features that deter the document from being altered, counterfeited, duplicated,  
15 or simulated without ready detection in compliance with regulations issued by the federal  
16 government.

17 (c) Each copy or abstract issued shall show the date of registration, and copies or  
18 abstracts issued from records marked "Amended" shall be similarly marked and, when possible,  
19 show the effective date of the amendment. Copies issued from records marked "Delayed" shall  
20 be similarly marked and shall include the date of registration and a description of the evidence  
21 used to establish the delayed certificate. Any copy issued of a "Certificate of Foreign Birth" shall  
22 indicate the foreign birth and show the actual place of birth and the statement that the certificate  
23 is not proof of United States citizenship for the person for whom it is issued.

24 (d) A certified copy of a vital record issued in accordance with this section shall be  
25 considered for all purposes the same as the original, and shall be prima facie evidence of the  
26 facts stated in the record: *Provided*, That the evidentiary value of a certificate or record filed more  
27 than one year after the event, or a record which has been amended, or a certificate of foreign  
28 birth, shall be determined by the judicial or administrative body or official before whom the  
29 certificate is offered as evidence.

30 (e) Nothing in this section shall be construed to permit disclosure of information contained  
31 in the "Information for Medical and Health Use Only" section of the certificate of birth or the  
32 "Information for Statistical Purposes Only" section of the certificate of marriage or certificate of  
33 divorce or annulment unless specifically authorized by the State Registrar for statistical or  
34 research purposes. This information is not subject to subpoena or court order and is not  
35 admissible before any court, tribunal, or judicial body. Information collected for administrative use  
36 may not be included on certified copies of records, and may be disclosed only for administrative,  
37 statistical, or research purposes authorized by state or federal law and legislative rule.

38 (f) When the State Registrar receives information that a certificate may have been  
39 registered through fraud or misrepresentation, he or she may withhold issuance of any copy of  
40 that certificate.

41 (1) The State Registrar shall inform the registrant or the registrant's authorized  
42 representative of the right to request a hearing by the commissioner.

43 (2) The secretary of the department may authorize the State Registrar or another person  
44 to hold an investigation or hearing to determine if fraud or misrepresentation has occurred.

45 (3) If upon conclusion of a hearing or investigation no fraud or misrepresentation is found,  
46 copies may be issued.

47 (4) If fraud or misrepresentation is found by a preponderance of the evidence, the State  
48 Registrar shall remove the certificate from the file. The certificate and evidence will be retained  
49 but will not be subject to inspection or copying except upon order of a court of competent  
50 jurisdiction or by the State Registrar for purposes of prosecution or administration of the system  
51 of vital statistics.

52 (g) No person may prepare or issue any certificate which purports to be an original,  
53 certified copy, or copy of a vital record, except as authorized by this article, or by legislative rule.

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

### **ARTICLE 4. COURT ACTIONS.**

#### **§49-4-608. Permanency hearing; frequency; transitional planning; out-of-state placement; findings; notice; permanent placement review.**

1 (a) *Permanency hearing when reasonable efforts are not required.* — If the court finds  
2 pursuant to this article that the department is not required to make reasonable efforts to preserve  
3 the family, then notwithstanding any other provision a permanency hearing must be held within  
4 30 days following the entry of the court order so finding, and a permanent placement review

5 hearing must be conducted at least once every 90 days thereafter until a permanent placement  
6 is achieved.

7           (b) *Permanency hearing every 12 months until permanency is achieved.* — If 12 months  
8 after receipt by the department or its authorized agent of physical care, custody, and control of a  
9 child either by a court-ordered placement or by a voluntary agreement the department has not  
10 placed a child in an adoptive home, placed the child with a natural parent, placed the child in legal  
11 guardianship, or permanently placed the child with a fit and willing relative, the court shall hold a  
12 permanency hearing. The department shall file a progress report with the court detailing the efforts  
13 that have been made to place the child in a permanent home and copies of the child's case plan,  
14 which shall include the permanency plan as defined in §49-1-201 and §49-4-604 of this code.  
15 Copies of the report shall be sent to the parties and all persons entitled to notice and the right to  
16 be heard. The court shall schedule a hearing giving notice and the right to be present to the child's  
17 attorney; the child; the child's parents; the child's guardians; the child's foster parents; any  
18 preadoptive parent, or any relative providing care for the child; any person entitled to notice and  
19 the right to be heard; and other persons as the court may, in its discretion, direct. The child's  
20 presence may be waived by the child's attorney at the request of the child or if the child is younger  
21 than 12 years-of-age and would suffer emotional harm. The purpose of the hearing is to review  
22 the child's case, to determine whether and under what conditions the child's commitment to the  
23 department shall continue, to determine what efforts are necessary to provide the child with a  
24 permanent home, and to determine if the department has made reasonable efforts to finalize the  
25 permanency plan. The court shall conduct another permanency hearing within 12 months  
26 thereafter for each child who remains in the care, custody, and control of the department until the  
27 child is placed in an adoptive home, returned to his or her parents, placed in legal guardianship,  
28 or permanently placed with a fit and willing relative.

29           (c) *Transitional planning for older children.* — In the case of a child who has attained 16  
30 years of age, the court shall determine the services needed to assist the child to make the

31 transition from foster care to independent living. The child's case plan should specify services  
32 aimed at transitioning the child into adulthood. When a child turns 17, or as soon as a child aged  
33 17 comes into a case, the department must immediately provide the child with assistance and  
34 support in developing a transition plan that is personalized at the direction of the child. The plan  
35 must include specific options on housing, health insurance, education, local opportunities for  
36 mentors, continuing support services, work force support, and employment services, and the plan  
37 should be as detailed as the child may elect. In addition to these requirements, when a child with  
38 special needs turns 17, or as soon as a child aged 17 with special needs comes into a case, he  
39 or she is entitled to the appointment of a department adult services worker to the multidisciplinary  
40 treatment team, and coordination between the multidisciplinary treatment team and other  
41 transition planning teams, such as special education individualized education planning (IEP)  
42 teams.

43           (d) *Out-of-state placements.* — A court may not order a child to be placed in an out-of-  
44 state facility unless the child is diagnosed with a health issue that no in-state facility or program  
45 serves unless a placement out of state is in closer proximity to the child's family for the necessary  
46 care or the services are able to be provided more timely. If the child is to be placed with a relative  
47 or other responsible person out of state, the court shall use judicial leadership to help expedite  
48 the process under the Interstate Compact for the Placement of Children provided in §49-7-  
49 101 and §49-7-102 of this code and the Uniform Child Custody Jurisdiction and Enforcement Act  
50 provided in §48-20-101 *et seq.* of this code.

51           (e) *Findings in order.* — At the conclusion of the hearing the court shall, in accordance  
52 with the best interests of the child, enter an order containing all the appropriate findings. The court  
53 order shall state:

54           (1) Whether or not the department made reasonable efforts to preserve the family and to  
55 prevent out-of-home placement or that the specific situation made the effort unreasonable;

56 (2) Whether or not the department made reasonable efforts to finalize the permanency  
57 plan and concurrent plan for the child;

58 (3) The appropriateness of the child's current placement, including its distance from the  
59 child's home and whether or not it is the least restrictive one (or most family-like one) available;

60 (4) The appropriateness of the current educational setting and the proximity to the school  
61 in which the child is enrolled at the time of placement;

62 (5) Services required to meet the child's needs and achieve permanency; and

63 (6) In addition, in the case of any child for whom another planned permanent living  
64 arrangement is the permanency plan the court shall: (A) Inquire of the child about the desired  
65 permanency outcome for the child; (B) make a judicial determination explaining why, as of the  
66 date of the hearing, another planned permanent living arrangement is the best permanency plan  
67 for the child; and (C) provide in the court order compelling reasons why it continues to not be in  
68 the best interest of the child to: (i) return home, (ii) be placed for adoption, (iii) be placed with a  
69 legal guardian, or (iv) be placed with a fit and willing relative.

70 (f) The department shall annually report to the court the current status of the placements  
71 of children in the care, custody, and control of the state department who have not been adopted.

72 (g) The department shall file a report with the court in any case where any child in the  
73 custody of the state receives more than three placements in one year no later than 30 days after  
74 the third placement. This report shall be provided to all parties and persons entitled to notice and  
75 the right to be heard. Upon motion by any party, the court shall review these placements and  
76 determine what efforts are necessary to provide the child with a permanent home. No report may  
77 be provided to any parent or parent's attorney whose parental rights have been terminated  
78 pursuant to this article.

79 (h) The department shall give actual notice, in writing, to the court, the child, the child's  
80 attorney, the parents, and the parents' attorney at least 48 hours prior to the move if this is a  
81 planned move, or within 48 hours of the next business day after the move if the child is in imminent



82 danger in the child's current placement, except where the notification would endanger the child or  
83 the foster family. A multidisciplinary treatment team shall convene as soon as practicable after  
84 notice to explore placement options. This requirement is not waived by placement of the child in  
85 a home or other residence maintained by a private provider. No notice may be provided pursuant  
86 to this provision to any parent or parent's attorney whose parental rights have been terminated  
87 pursuant to this article.

88 (i) Nothing in this article precludes any party from petitioning the court for review of the  
89 child's case at any time. The court shall grant the petition upon a showing that there is a change  
90 in circumstance or needs of the child that warrants court review.

91 (j) Any foster parent, preadoptive parent or relative providing care for the child shall be  
92 given notice of and the right to be heard at the permanency hearing provided in this section.

93 (k) Once an adoption case is assigned to a child placing agency, all related court hearing  
94 notices shall be sent to the child placing agency as an interested party.

**ARTICLE 5. RECORD KEEPING AND DATABASE.**

**§49-5-101. Confidentiality of records; non-release 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 Corrections and  
3 Rehabilitation, the Department of Health and Human Resources, a child agency or facility, or court  
4 or law-enforcement agency, are confidential and may 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;
- 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; and
- 19 (4) Pursuant to an order of a court of record: *Provided*, That the court shall review the  
20 record or records for relevancy and materiality to the issues in the proceeding and safety and may  
21 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 and
- 35 (6) The West Virginia Crime Victims Compensation Fund and its designees acting in the  
36 course of their official duties.

37 (d) If there is a child fatality or near fatality due to child abuse and neglect, information  
38 relating to a fatality or near fatality shall be made public by the Department of Health and Human  
39 Resources and provided to the entities described in subsection (c) of this section, all under the  
40 circumstances described in that subsection: *Provided*, That information released by the  
41 Department of Health and Human Resources pursuant to this subsection may not include the  
42 identity of a person reporting or making a complaint of child abuse or neglect. For purposes of  
43 this subsection, “near fatality” means any medical condition of the child which is certified by the  
44 attending physician to be life threatening.

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

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

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

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

61 (A) Performs the same functions in that state that are performed by the Division of  
62 Corrections and Rehabilitation in this state;

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

64 (C) Has legal custody of the juvenile.

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

67 (3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements  
68 with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq.*  
69 of this code to implement this subsection; and

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

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

75 (j) Notwithstanding the provisions of subsection (a) of this section, records in the  
76 possession of the Division of Corrections and Rehabilitation declared to be confidential by the  
77 provisions of subsection (a) of this section may be published and disclosed for use in an employee  
78 grievance if the disclosure is done in compliance with subsections (k), (l), and (m) of this section.

79 (k) Records or information declared confidential by the provisions of this section may not  
80 be released for use in a grievance proceeding except:

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

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

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

86 (1) The division shall ensure that written records or information is redacted of all identifying  
87 information of any juvenile which is not relevant to the resolution of the grievance;

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

89           (3) Records or other information released to a grievant or his or her counsel or  
90 representative pursuant to subsection (k) of this section may only be used for purposes of his or  
91 her grievance proceeding and may not be disclosed, published, copied, or distributed for any  
92 other purpose, and upon the conclusion of the grievance procedure, returned to the Division of  
93 Corrections and Rehabilitation.

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

100           (n) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et*  
101 *seq.* of this code.

102           (o) A child placing agency or a residential child care and treatment facility may disclose  
103 otherwise confidential information to other child placing agencies or residential child care and  
104 treatment facilities when making referrals or providing services on behalf of the child. This  
105 information shall be maintained in the same manner as provided in this code.

106           (p) The department shall provide electronic access to information required to perform an  
107 adoption to child placing agencies as necessary to complete the adoption.

108           (q) A child placing agency completing adoption as a contractor on behalf of the department  
109 shall have access to secure records from vital statistics and other pertinent record holders.



The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

Originated in the House of Delegates.

In effect ninety days from passage.

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within is ..... this the.....  
Day of ....., 2023.

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*Governor*