

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 495

By Senators Trump, Takubo, Clements, Woelfel,

Deeds, and Rucker

[Originating in the Committee on the Judiciary;

reported on February 6, 2023]

1 A BILL to amend and reenact §15A-4-8a of the Code of West Virginia, 1931, as amended, relating
2 generally to correctional institutions and juvenile facilities; deeming certain video and audio
3 recordings records and reports to be confidential; creating exceptions to confidentiality;
4 requiring court or administrative tribunal orders directing disclosure to contain a provision
5 limiting disclosure to the purposes necessary to the proceeding and prohibiting
6 unauthorized use and publication; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-8a. Facility video and security records confidential; exceptions.

1 ~~(a) The contents of any correctional or juvenile facility video, incident report, or~~
2 ~~investigation report related to the safe and secure management of inmates and residents may be~~
3 ~~disclosed or released to the commissioner's agents, representatives, and designees, but such~~
4 ~~records are otherwise confidential and not subject to public disclosure or release except as set~~
5 ~~forth in this section.~~

6 ~~(b) Notwithstanding any provision of this code to the contrary, the contents of any~~
7 ~~correctional or juvenile facility video, incident report, or investigation report related to the safe and~~
8 ~~secure management of inmates and residents may be disclosed or released to an appropriate law-~~
9 ~~enforcement agency, when disclosure or release is necessary for the investigation, prevention, or~~
10 ~~prosecution of a crime or to safeguard the orderly operation of the correctional institution:~~
11 ~~*Provided*, That, with respect to records relating to juvenile residents, the law-enforcement agency~~
12 ~~in receipt of any such records shall treat the records as confidential pursuant to the provisions set~~
13 ~~forth in §49-5-101(a) of this code.~~

14 ~~(c) Disclosure or release may also be made in civil or administrative proceedings pursuant~~
15 ~~to an order of a court or an administrative tribunal with the entry of an appropriate protective order~~
16 ~~prohibiting the misuse and reproduction of disclosed or released records: *Provided*, That the~~
17 ~~disclosure or release of records from a juvenile facility required for an employee grievance shall be~~

18 ~~made strictly in accordance with the provisions of §49-5-101 of this code.~~

19 ~~(d) The commissioner may authorize an attorney, licensed before the bar of this state and~~
20 ~~who is representing a person with a potential claim for personal injury or a violation of the United~~
21 ~~States Constitution or West Virginia Constitution allegedly caused by the division, to view facility~~
22 ~~video, incident reports, or investigation reports related to the safe and secure management of~~
23 ~~inmates and residents for purposes of determining the validity of a claim against the division, but~~
24 ~~such video, incident reports, or investigation reports related to the safe and secure management of~~
25 ~~inmates and residents shall not be released to the licensed attorney prior to institution of a suit or~~
26 ~~petition for pre-suit discovery in the appropriate forum and after the entry of an appropriate~~
27 ~~protective order prohibiting the misuse and reproduction of disclosed records.~~

28 ~~(e) The confidentiality provisions of this section shall extend to any person receiving such~~
29 ~~records and may not be used for any unauthorized purpose except upon order of a court of record~~

30 (a) The contents of all records necessary for the safe and secure management of inmates
31 and residents committed to state correctional and juvenile facilities are confidential and may only
32 be disclosed or released:

33 (1) Pursuant to this section;

34 (2) As required by the provisions of §29B-1-1 et seq. of this code; or

35 (3) In accordance with the discovery provisions of the West Virginia Rules of Civil
36 Procedure or the West Virginia Rules of Criminal Procedure.

37 (b) As used in this section, "records necessary for the safe and secure management of
38 inmates and residents" means:

39 (1) Video and audio recordings produced in a correctional or juvenile facility;

40 (2) Incident reports and attachments thereto;

41 (3) Investigation reports and any attachments thereto, including, but not limited to, witness
42 statements; and

43 (4) Any document or recording generated within a facility containing information which

44 would reasonably place the safety of an employee, inmate, or resident in jeopardy.

45 (c) Records protected pursuant to the provisions of this section may be disclosed:

46 (1) To the Secretary of the Department of Homeland Security, his or her designees, and the
47 commissioner or his or her designees for official use;

48 (2) To law enforcement when release is determined by the commissioner or his or her
49 designees to be necessary for the investigation, prevention, or prosecution of a crime or crimes;

50 (3) To the Juvenile Justice Commission and its designees acting in the course of their
51 official duties; and

52 (4) Pursuant to a lawful order of a court of record or an administrative tribunal for use in a
53 civil, criminal, or administrative matter: *Provided*, That the order shall contain a provision limiting
54 disclosure or publication of the records to purposes necessary to the proceeding and prohibiting its
55 unauthorized use and reproduction.

56 (5) The commissioner may authorize an attorney, licensed to practice law in this state and
57 who is representing a person with a potential claim for personal injury or a violation of the United
58 States Constitution or West Virginia Constitution allegedly caused by the division, to view facility
59 video, incident reports, or investigation reports related to the safe and secure management of
60 inmates and residents for purposes of determining the validity of a claim against the division:
61 *Provided*, That such video, incident reports, or investigation reports related to the safe and secure
62 management of inmates and residents shall not be released to the licensed attorney prior to
63 institution of a suit or petition for pre-suit discovery in the appropriate forum and after the entry of
64 an appropriate protective order prohibiting the misuse and reproduction of disclosed records.

65 (d) The commissioner may, under the conditions set forth in subdivision (5), subsection (c)
66 of this section, authorize an attorney, licensed to practice in this state and who is representing a
67 person related by consanguinity or affinity to an inmate or resident who has suffered an alleged
68 injury or death while in the custody of the division.

69 (e) The confidentiality provisions of this section extends to any person receiving such

70 records and may not be used for any unauthorized purpose except upon order of a court of record
71 or administrative tribunal.